

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

983. FIRST APPEAL NO.1228 OF 2022

- 1] Nilesh s/o. Ranjit Bhoite,
Age: 41 years, Occu : Business,
Honorary Secretary,
Jalgaon Zilla Maratha Vidya Prasarak
Sahakari Samaj Ltd. Jalgaon
R/o. Ahilya Niwas, Bhoite Nagar,
Jalgaon, Tq. & Dist. Jalgaon.
- 2] Jaywantrao s/o. Pandurang Yeole,
Age : Major, Occu : Agril.,
Director of Jalgaon Zilla Maratha
Vidya Prasarak Sahakari Samaj Ltd.
Jalgaon
R/o. At Shivaji Nagar, Yawal,
Tq. Yawal, Dist. Jalgaon. **.. Appellants**

Versus

The Joint Charity Commissioner,
Nashik Division, Nashik & others **.. Respondents**

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Mr.V.D.Hon, Senior Advocate i/b.Mr.A.D.Shinde, Advocate
for the appellants.

Mr.A.B.Kale, Advocate holding for Mr.N.E.Deshmukh,
Advocate for respondent no.4

Mr.Rajesh H.Mewara, Advocate for respondent nos.5 to 20.

Mr.Vinod P. Patil, Advocate for respondent no.3.

Mr.S.K.Kadam, Advocate for respondent no.2.

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CORAM : S.G.DIGE, J.

DATE : 04.08.2022

PER COURT :

1] Heard.

2] Challenge in this Appeal is the impugned judgment and order dated 28th April, 2022 passed by the learned Joint Charity Commissioner, Nashik below Exh. 5 in Application No.11 of 2020.

3] It is the contention of the learned counsel for the appellants that the learned Joint Charity Commissioner has disposed of Exhibit 5 by passing the order that the opponent and the persons on behalf of them are hereby restrained from entering into the property of trust and causing damage to the property till further six weeks. It should not have been six weeks, it should be till final disposal of the main application pending before the Joint Charity Commissioner.

4] It is contention of the learned counsel for the appellants that the appellants are the trustees of Jalgaon

Zilla Maratha Vidya Prasarak Sahakari Samaj Ltd. Jalgaon [for short 'the said trust']. Respondent nos.3 to 19 are claiming to be the trustees of the said trust and they are causing damage to the trust property, hence, application under Section 41-E of the Maharashtra Public Trusts Act [for short 'the said Act'] was filed before the Joint Charity Commissioner. Initially, the Joint Charity Commissioner had passed injunction order against respondents by order dated 2nd December, 2020. Thereafter, the respondents challenged the said order before this Court. This Court [Coram : N.J.Jamadar, J.] had directed the Joint Charity Commissioner to decide the application filed under Section 41-E with certain direction. Accordingly, the learned Joint Charity Commissioner decided the said application below Exh.5 and passed the impugned order. The learned Joint Charity Commissioner has considered all submissions made by the appellants but in the operative order, the learned Joint Charity Commissioner has passed the order only for six weeks, hence, this appeal.

5] It is the contention of the learned counsel for respondent nos. 4 to 19 that the respondents are elected trustees of the said trust. The respondents are in power of the said trust since long. In the general body of the said trust, it is decided that the elections of the said trust shall be taken under the provisions of the Maharashtra Co-operative Societies Act. An application under Section 41-E was filed by the appellants by making only one person as party respondent no.2, showing Secretary of the said trust, Shri D.D.Bachav, Director of said trust, but Shri Bachav has resigned from the said trust in the year 2017. An application was filed under Section 145 of Criminal Procedure Code, by the appellant before the Tahsildar. The learned Tahsildar has passed the order on 07.12.2018. The said order of learned Tahsildar was challenged by present respondents before the learned Sessions Judge, Jalgaon. The said Revision was allowed, then order of Sessions Court was challenged before this Court by the appellant. The said order is confirmed by this Court. Then it was challenged

before the Hon'ble Apex Court, the Hon'ble Apex Court also confirmed the said order. The learned counsel for respondent nos.4 to 19 pointed out that in the said order status quo ante is maintained. It is further contended that the respondents are the trustees of the said trust so they cannot be prevented from entering in the trust property and holding the elections. The learned counsel for the respondent nos.4 to 19 relied upon the judgments in the case of Janta Shikshan Sanstha Dapodi, Pune & others Vs. Mr.Ajit Subhash Kashid and others in First Appeal No.262/2019, in the case of Pachora Taluka Co-operative Education Society Ltd. Vs. State of Maharashtra & others reported in **2018 [2] Mh.L.J. 666**, in the case of Bhiwandi Weavers Education Society and others Vs. The State of Maharashtra & others in Writ Petition No.935 of 2011, in the case of Sheikh Husain s/o. Haji Abdul a. Rahim Patel Vs. Mohammad Sarver s/o. Mahammd Husain reported in **2007 [4] Mh.L.J. 817** and in the case of Eruch Merwan Irani and another Vs. Sardar Sarobji Ruttonji Patel and others reported in **2000 [3] All M.R. 1**.

6] Mr.S.K. Kadam, learned counsel for respondent no.2 submits that the respondents are not prevented from taking election elsewhere except property of trust, there was fear in the mind of the Joint Charity Commissioner that if both rival parties are allowed to take election in the trust property and if any untoward incident happened then who would be responsible for the same, hence, requested to pass appropriate order.

7] I have heard all learned counsels. The issue involved in the present Appeal is in respect of Section 41-E of the Maharashtra Public Trusts Act. Section 41-E of the said Act reads thus :

41E. Power to act for protection of Charities.

(1) Where it is brought to the notice of the Charity Commissioner either by the Deputy or Assistant Charity Commissioner through his report or by an application by at least two persons having interest supported by affidavit, -

(a) that any trust property is in danger of being wasted, damaged or improperly

alienated by any trustee or any other persons, or

(b) that the trustee or such person threatens, or intends to remove or dispose of that property,

the Charity Commissioner may by order grant a temporary injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of such property, on such terms as to the duration of injunction, keeping an account, giving security, production of the property or otherwise as he thinks fit.

(2) The Charity Commissioner shall in all such cases, except where it appears that the object of granting injunction would be defeated by delay, before granting an injunction, give notice of the facts brought to his notice to the trustee, or the person concerned.

(3) After hearing the trustee or person concerned and holding such inquiry as he thinks fit, the Charity Commissioner may confirm, discharge or vary or set aside the order of injunction or pass any other appropriate order.

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(5) A trustee or a person against whom the order of injunction or any other order under this section is passed may, within ninety days of

*the date of communication of such order,
appeal to the Court against such order.*

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8] This section empowers the Charity Commissioner to protect the trust property from wasting, damaging and improperly alienated by any trustee or any other persons and if any person threatens or intends to remove or dispose of the trust property, in such case the Charity Commissioner may by order grant a temporary injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of such property. In the present matter, admittedly the learned Joint Charity Commissioner has passed ad-interim relief in respect of the trust property. Both the parties are claiming that they are the trustees. In respect of prevention of holding of election to the respondents, the learned Joint Charity Commissioner has clarified that he has not prevented the respondents from holding elections.

9] Proviso of Sec.41E says that the Charity Commissioner may by order grant a temporary injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of such property, on such terms as to the duration of injunction, keeping an account, giving security, production of the property or otherwise as he thinks fit. Section 41-E (3) reads thus :

(3) After hearing the trustee or person concerned and holding such inquiry as he thinks fit, the Charity Commissioner may confirm, discharge or vary or set aside the order of injunction or pass any other appropriate order.

In the present matter, admittedly, the Joint Charity Commissioner has passed the order on the basis of *prima facie* documents. Respondent nos.4 to 19 have not been heard as they were not made party in the said application. It is the contention of the learned counsel for the appellants that some of the respondents have *suo motu* appeared in the pending applications whereas it is the contention of the

learned counsel for the respondents that their applications for adding parties are pending before the learned Joint Charity Commissioner. For consideration of granting relief of injunction, it needs proper enquiry because both the parties are claiming that they are the trustees and they are in possession and in power of the said trust and such enquiry needs to be done as per Section 41E (3) of the Maharashtra Public Trusts Act by the Joint Charity Commissioner. Hence, in my view, if the Joint Charity Commissioner is directed to make proper enquiry in respect of pending application and decide the said application within 4 weeks on its own merits, it would meet ends of justice. I have gone through the case laws cited by the learned counsel for the respondent nos.4 to 19. The facts of the cited cases and case at hand are different, as in the present case the Joint Charity Commissioner has passed the order on ad-interim application and main application is pending before the Joint Charity Commissioner. Yet it is not finally decided. Hence, the facts of the cited cases would not be applicable to the present case.

10] In view of the above, I pass the following order:-

ORDER

i] The appeal is partly allowed. The Joint Charity Commissioner, Nashik is directed to decide Application No.11/2020 as early as possible preferably within four weeks after receipt of this order.

ii] All the respondents shall file application to join them as party. Respondent nos.4 to 19 shall be added as party respondents in the pending application. The learned Joint Charity Commissioner shall hear them.

iii] Both parties are at liberty to produce evidence in respect of their contentions if they desire. The learned Joint Charity Commissioner shall decide the application on its own merits.

iv] The interim relief granted earlier to continue till final disposal of Application No.11/2020.

v] Appeal is accordingly disposed of.

vi] In view of disposal of main Appeal, all pending Civil Applications are disposed of.

[S.G.DIGE]
JUDGE

DDC