

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1349 OF 2022
WITH CA/8808/2022 IN FA/1349/2022
WITH CA/9825/2022 IN FA/1349/2022

PRATAP S/O DATTATRAY TAWARE
VERSUS
KAMLA SHANKAR JOSHI AND OTHERS

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Mr. S.S. Deshmukh h/f. Mr. M.S. Shaikh
– Advocate for Appellant
Mr. R.S. Deshmukh, senior Counsel a/w Mr. Devanag
Deshmukh i/b Mr. A.D. Pawar
– Advocate for Respondent No.2
Mr. C.T. Jadhav – Advocate for Respondent Nos.1 and 3
Mr. M.S. Deshmukh – Advocate for intervenor

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CORAM : S.G. DIGE, J.
DATE : 20th July, 2022

ORDER :

. This appeal is preferred against the order passed by learned Joint Charity Commissioner, Nashik Region, Nashik, dated 14th March, 2022 in Application No.61 of 2021. By the said order, the learned Joint Charity Commissioner has appointed respondents as trustees of “Dalit Mitra Sau Nirmalatai Janseva Foundation, Tal.

Pachora, Dist. Jalgaon” bearing P.T.R. No. F-4262/Jalgaon for the period of two years.

2. It is contention of learned Counsel for appellant that, two Change reports under Section 22 of the Maharashtra Public Trust Act (*for short 'the said Act'*) were filed before the office of learned Assistant Charity Commissioner, Jalgaon and those were pending. In spite of pendency of Change reports the learned Joint Charity Commissioner has appointed respondents as trustees of the said Trust vide impugned order. The respondent Nos.2 and 3 were conscious of the fact that, they are party to the Change report bearing Inquiry No.1184 of 2021 and cannot act in clandestine manner withholding the vital information in relation to presenting the Change report to which respondent No.2 posed as President, whereas respondent No.3 as Executive Trustee. Suppressing the said vital information the respondent Nos. 1 to 3 presented the application under Section 47 of the Act with several unfounded assertions and allegations and without considering all these facts, the learned Joint Charity

Commissioner has passed the order.

3. The learned Counsel further submits that, the learned Joint Charity Commissioner has not considered the scope of Section 47 of the said Act and has not made enquiry which is contemplated as per the Rule 7 and Rule 11 of the said Act. Hence, requested to allow the appeal.

4. Learned Counsel for respondent No.2 submits that, the order passed by learned Joint Charity Commissioner is legal and valid. It was passed on the basis of information provided by respondents.

5. I have heard all learned Counsels. Section 47 of the said Act reads as under :-

[47. Power of Charity Commissioner to appoint, suspend, remove or discharge trustees and to vest property to new trustees

(1) Any person interested in a public trust may apply to the Charity Commissioner for the appointment of a new trustee, where there is not trustee for such trust or the trust cannot be administered until the vacancy is filled, or for the suspension, removal or discharge of a trustee, when a trustee of such trust,-

(a) *disclaims or dies;*

- (b) is for a continuous period of six months absent from India without the leave of the Charity Commissioner or the Deputy or Assistant Charity Commissioner or the officer authorised by the State Government in this behalf;*
 - (c) leaves India for the purpose of residing abroad;*
 - (d) is declared as insolvent;*
 - (e) desires to be discharged from the trust;*
 - (f) refuses to act as a trustee;*
 - (g) becomes in the opinion of the Charity Commissioner unfit or physically incapable to act in the trust or accepts a position which is in consistence with the position as trustee;*
 - (h) In any of the cases mentioned in Chapter III, is not available to administer the trust; or*
 - (i) is convicted of an offence punishable under this Act or an offence involving moral turpitude.*
- (2) The Charity Commissioner may, after hearing the parties and making such enquiry as he may deem fit, by order appoint any person as a trustee or may also remove or discharge any trustee for any of the reasons specified in sub-section (1).
- (3) In appointing a trustee under sub-section (2), the Charity Commissioner shall have regard-
- (a) to the wishes of the author of that trust;*
 - (b) to the wishes of the persons, if any, empowered to appoint a new trustee;*
 - (c) to the question whether the appointment will promote or impede the execution of the trust;*
 - (d) to the interest of the public or the section of the public who have interest in the trust; and*
 - (e) to the custom and usage of the trust.*
- (4) It shall be lawful for the Charity Commissioner

upon making any order appointing a new trustee under sub-section (2) either by the same or by any subsequent order to direct that any property subject to the trust shall vest in the person so appointed and thereupon it shall so vest.

- [(5) An appeal shall lie to the Court against the order of Charity Commissioner under sub-section (2), as if such order was a decree of a district court as a court of original jurisdiction from which an appeal lies, within sixty days from the date of the order, which shall otherwise be final.]]

This section empowers the Charity Commissioner to appoint new trustees, when there are no trustees to administer the Trust or present trustees suffers any disqualification mentioned in Section 47.

6. Admittedly, in this matter respondents have submitted that, trustees of the said Trust are alive. In my view learned Joint Charity Commissioner has erred while passing the order and passed order without considering the fact that, trustees of the said Trust are alive. It is admitted fact that, Change reports are also pending hence, the order passed by learned Charity Commissioner under Section 47 is not proper. It appears from record

that, the Change report of this Trust is held valid for the period 1997-2002. Thereafter, no Change reports are filed till 2021 in respect of trustees of the said Trust. It appears from the record that, the said Trust runs one school and disputes between the trustees are going on. The different Change reports are filed by the trustees.

7. In my view for smooth administration of the Trust, if directions are given to hold the election of the said Trust to the Assistant Charity Commissioner, Jalgaon as per valid members which are mentioned in accepted Change reports for the period of 1997-2002, would meet the ends of justice.

8. Learned Counsel for the both the parties submits that, originally sixteen (16) trustees were there out of that three (3) trustees are died. At present thirteen (13) trustees are there.

9. Learned Counsel for both the parties also submitted that, as this Court has given directions to hold fresh elections hence, pending Change reports filed by both the

parties be disposed off. In view of the above, I pass the following order.

ORDER

- (a) Appeal is partly allowed.
- (b) The order dated 14th March, 2022 passed by the learned Joint Charity Commissioner is hereby quashed and set aside.
- (c) Learned Assistant Charity Commissioner, Jalgaon is directed to hold the election of the said Trust as per approved members on record i.e. as per accepted Change report for the period 1997-2002.
- (e) Learned Assistant Charity Commissioner shall verify the record. Election shall be conducted within one month after receipt of this order. Till then the present thirteen (13) members shall administer the Trust.
- (f) All the Civil Applications are disposed of.
- (g) All pending Change reports are disposed of.

[S.G. DIGE, J.]