

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 WRIT PETITION NO.12573 OF 2022

JAY VISHWABHARTI COOPERATIVE THROUGH ITS MEMEBER DR
DHONDIRAM KACHRU PAWAR AND ANOTHER
VERSUS
THE DEPUTY CHARITY COMMISSIONER AND ANOTHER
...

Advocate for Petitioners : Mr Tatyasaheb B. Bhosale

CORAM : SSANDEEP V. MARNE, J.
DATE : 14th DECEMBER, 2022

PER COURT :

1. Petitioners' application filed under section 41A of the Maharashtra Public Trusts Act, 1950 (in short "the Act") has been rejected by the Deputy Charity Commissioner by order dated 23.09.2022.
2. The application under section 41A of the Act, was filed on the basis of lease deed executed between the petitioner society and the respondent Trust under which the respondent Trust agreed to admit two members of the petitioner society as its trustees. However, since the agreement was not honoured, the application under section 41A of the Act was filed.
3. The Deputy Charity Commissioner has rejected the application observing that in the event of dishonour of the terms of the lease deed, petitioner has remedy of filing suit for enforcement. The Deputy Charity Commissioner has also held that the objective of section 41A of the Act of 1950 is entirely different. It is held that the admission of a person as a

Trustee is entirely within the jurisdiction of Governing Council and that the Deputy Charity Commissioner cannot direct admission of any person to be a trustee under the provisions of Section 41A of the Act.

4. Mr Bhosale, learned counsel for petitioner has relied upon the Judgment of this Court in case of ***Harishchandra Dhondiram Kalgude and others Vs. Suresh Maruti Mhaske and others reported in 2022 (2) Mh.L.J. 275*** in support of his contention that the suit is not maintainable against the Public Trust. However, the facts of the said case are entirely different. In the present case, petitioner society is essentially aggrieved on account of non-honour of the lease agreement executed between petitioner society and the respondent. Petitioner society cannot seek specific performance of that lease agreement by filing proceedings under Section 41A of the Act before the Deputy Charity Commissioner.

5. In my view, the application filed by petitioner society under Section 41A of the Act has rightly been rejected by the Deputy Charity Commissioner. There is no infirmity in the impugned order.

6. The writ petition is devoid of merits and the same is dismissed without any orders as to costs.

[SANDEEP V. MARNE, J.]

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