

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2018 of 2021

Smt. Pooja Kishorkumar Jaiswal
 @ Sau. Pooja w/o Amol Jaiswal,
 Age 26 years, Occ. Household,
 R/o. Vishal, A-2, Pawan Watika,
 New Tapadiya Nagar, Tq. and District Akola.

..... **PETITIONER**

...V E R S U S...

1. Learned Asst. Charity Commissioner,
Akola Region, District Akola.
2. Shri Narayankumar Jawaharlalji Jaiswal,
Age 58 years, Occupation-Agriculturist,
R/o. Pinjar, Tq. Barshitakali, District Akola.
3. Shri Lahuram Shivilalji Jaiswal,
Age-67 years, Occupation-Agriculturist,
R/o. Sikoda, Tq. and District Akola.
4. ~~Shri Satyanarayan Mahavirlal Jaiswal,
Age-76 years, Occupation-Agriculturist,
R/o. Sanglud Bk, Tq. and District Akola.~~
5. Shri Jagdishlal Shankarlal Jaiswal,
Age-62 years, Occupation-Agriculturist,
R/o. Punoti Kd. Tq. and District Akola.
6. Shri Amol Rameshwarlal Jaiswal,
Age-33 years, Occupation-Legal practitioner,
R/o. Vishal A-2, Pawan Watika,
New Tapadiya Nagar, Tq. and District Akola.

..... **RESPONDENTS**

Res. No.4 is
deleted as per
Court's order
dated
12.10.2022

 Shri D.P.Bhongade, Advocate for petitioner.
 Shri C.A.Babrekar, Advocate for respondent nos. 2, 3 and 5.

CORAM :- A.S.CHANDURKAR AND M. W. CHANDWANI, JJ.

DATE :- OCTOBER 12, 2022

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the order 22.01.2021 passed under Section 41A of the Maharashtra Public Trusts Act, 1950 (for short, the said Act). It is the case of the respondent nos. 2, 3 and 5 herein that they are members of one Kanhaiyalal Trust, Akola having registration No. A-122. Field bearing Gat No.297 admeasuring 11 H 55 R is stated to be owned by the said public Trust. The husband of the petitioner-respondent no.6 is alleged to have sold 6 H of the aforesaid land to the petitioner on 26.06.2020. It is their case that in absence of any permission sought under Section 36 of the said Act, such alienation could not have been effected. In that backdrop the respondent nos. 2, 3 and 5 filed an application under Section 41A of the said Act praying that the petitioner as well as her husband-respondent no.6 be restrained from entering the Trust property and from dealing with the same. The learned Assistant Charity Commissioner by the order dated 22.01.2021 allowed the said application partly and directed the petitioner and the respondent no.6 not to create any third party rights in

the Trust property and also restrained the petitioner from disturbing the peaceful possession of the trustees. Various other ancillary directions were also issued by the learned Assistant Charity Commissioner. Being aggrieved the petitioner has challenged the aforesaid order.

3. Shri D.P.Bhongade, learned counsel for the petitioner submitted that it was not permissible for the learned Assistant Charity Commissioner to have issued any prohibitory order especially when the power exercised was under Section 41A of the said Act. Relying upon the decision in *Vanmala Manoharrao Kamdi and others Vs. Deputy Charity Commissioner, Nagpur and others [2012(3) Mh.L.J. 594]*, it was submitted that the power to be exercised was purely administrative in nature and there was no jurisdiction with the learned Assistant Charity Commissioner either to adjudicate any dispute or to pass any adjudicatory order and restraining the petitioner from creating any third party rights and further restraining the petitioner from disturbing the peaceful possession of the trustees. The learned Assistant Charity Commissioner had travelled beyond the scope as permissible under Section 41A of the said Act. It is submitted that the petitioner was in possession of the suit property pursuant to a registered sale deed dated 26.06.2020 and hence unless that sale deed was set aside, the petitioner could not have been restrained from enjoying the property as purchased. On

this count, it is submitted that the impugned order was liable to be set aside.

4. Shri C.A.Babrekar, learned counsel for the respondent nos. 2, 3 and 5 on the other hand submitted that in the absence of any permission under Section 36 of the said Act, it was not permissible for the respondent no.6 to have executed the sale deed in favour the petitioner. The Resolution on the basis of which the sale deed was executed was not signed by the majority of the trustees. Similarly, the sale deed being without permission of the learned Joint Charity Commissioner, no rights were created in favour of the petitioner. The directions issued were with a view to protect the interest of the Trust. It is thus submitted that no interference with the impugned order was called for. In addition, it was submitted that the trustees had filed proceedings under Section 41E of the said Act praying that the petitioner be restrained from alienating the Trust property in any manner whatsoever. The learned Joint Charity Commissioner on 11.10.2022 has passed an interim order granting such temporary injunction in favour of the trustees. The learned counsel produced the said order for perusal. Hence no interference with the impugned order was called for.

5. We have heard the learned counsel for the parties and we have perused the documents on record. The petitioner claims right in 6 H of field

Gat No.297 on the basis of sale deed stated to be executed by the respondent no.6 on 26.06.2020. According to the trustees, the said land belongs to the Trust while according to the petitioner the sale deed has been executed in her favour in a legal manner. The learned Assistant Charity Commissioner while considering the application under Section 41A has noted that in absence of any sanction under Section 36 of the said Act, it was not permissible for the respondent no.6 to alienate the Trust property. Hence one of the directions issued to the trustees was to file appropriate proceedings for raising a challenge to the sale deed dated 26.06.2020. Insofar as this direction is concerned, we find that the same is in the interest of the Trust and would facilitate resolution of the dispute as to whether the petitioner has a valid title to the suit property or whether the Trust property has been wrongly alienated. This direction in our view would fall within purview of Section 41A of the said Act.

6. It is however seen that the learned Assistant Charity Commissioner has also restrained the petitioner and the respondent no.6 from creating any third party interest in field Gat No.297 and has also restrained the present petitioner from disturbing the peaceful possession of the trustees over the Trust property. It is clear that the jurisdiction to pass an order of injunction or order of prohibitory nature is conferred by Section 41E of the said Act and

such power has to be exercised by the learned Charity Commissioner/Joint Charity Commissioner. In the present case, while entertaining the application under Section 41A of the said Act, the learned Assistant Charity Commissioner has exercised such power. The law in that regard has been laid down by the Division Bench in the decision in *Vanmala Manoharrao Kamdi and others* (supra) wherein the scope of power to be exercised under Section 41A has been clearly explained. It has also been held that power under Section 41E is of a judicial nature and same has to be exercised in the manner provided under the said Act. While exercising power under Section 41A it is not permissible to adjudicate the respective rights of the parties. To that extent the challenge as raised to Direction Nos. 3 and 4 of the impugned order deserves to be upheld and those directions are liable to be set aside. At the same time, it is noted that the learned Joint Charity Commissioner on 11.10.2020 has passed an interim order in proceedings under Section 41E of the said Act. These interim directions for the present are sufficient to safeguard the interests of the trustees with regard to the Trust property.

7. Insofar as Direction No.7 in the impugned order is concerned, we find that it would be open for the trustees to take further steps with regard to the area excluding the petitioner's sale deed. The trustees can rely upon Direction No.7 while seeking to conduct auction of the Trust property for

agricultural purposes.

Insofar as Directions Nos. 5 and 8 to 12 are concerned, they fall within the purview of Section 41A of the said Act. There is no need to interfere with those directions.

8. In the light of aforesaid discussion, the order dated 22.01.2021 passed under Section 41A of the said Act is interfered with only to the extent of Direction Nos. 3 and 4 therein. The said directions are set aside. It is however clarified that the interim order passed in proceedings under Section 41E of the said Act on 11.10.2022 would continue to operate until the same is modified/vacated in any appropriate proceeding.

Insofar as Direction No.7 is concerned, the same would continue to operate for the land excluding the area purchased by the petitioner.

9. With these directions the writ petition is partly allowed and disposed of. Rule accordingly. No costs.

(M.W.CHANDWANI, J.)

(A.S.CHANDURKAR, J.)

Andurkar..