

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

WRIT PETITION NO. 2526 OF 2021

1) Mahadeo Sansthan,
Dudhala, Registration No. A-106,
Dudhala, Tq. and District Akola,
through worshipers :

2) Nandkishor s/o Vasantrao Sonone,
Aged about 48 years,

3) Parshuram s/o Sahebrao Dhole,
Aged about 43 years

Nos. 2 and 3 Cultivators of Dudhala,
Tq. and District Akola.

.... **PETITIONERS**

VERSUS

1) Vinayak s/o Bhaurao Kale,
Aged about 70 years,

2) Sitaram s/o Dattuji Kale,
Aged about 75 years,

Nos. 1 and 2 are the Cultivators of
village Dudhala, Tq. and District Akola,

3) Assistant Charity Commissioner,
Akola, Murtizapur Road, Akola,
Tq. and District Akola.

4) Mangesh s/o Murlidhar Kale,
Aged about 35 years,
Occupation – Cultivator,
R/o Dudhala, Tq. and District Akola.

.... **RESPONDENTS**

Mr. C.A. Joshi, Counsel for the petitioners,
Mr. R.P. Masurkar, Counsel for respondents 1 & 2,
Mr. K.L. Dharmadhikari, AGP for respondent 3,
Mr. A.S. Thotange, Counsel for respondent 4.

CORAM : **ROHIT B. DEO, J.**
DATED : **13th JANUARY, 2022**

ORAL JUDGMENT :

Heard. **Rule.** With consent, the petition is heard finally.

2. The petitioners are assailing the order dated 25-8-2020 rendered by the Assistant Charity Commissioner-1, Akola whereby the Office Superintendent is directed that while leasing out the agricultural field owned by the Public Trust, auction be held after issuing notices to the stakeholders and proclamation in the village by beat of drums, and that the income generated from the auction be deposited in nationalized bank in fixed deposit.

3. Petitioners 2 and 3, claim to be the worshipers of the deity. The respondents would seriously question the status of petitioners 2 and 3 to represent petitioner 1-Public Trust. However, considering the limited issue involved, it would not be necessary for me to delve deeper in the objection.

4. Mr. C.A. Joshi who appears on behalf of the petitioners, would submit that since there is no finding recorded by the authority, of mismanagement in the auction process, the order impugned is unsustainable. The submission is noted only for rejection. In my considered view, for reasons spelt out hereinafter, the arrangement which is impugned, sub-serves the interest of the Trust and the authority must be commended for ensuring that the interest of the Trust is protected. The final submission of Mr. C.A. Joshi is that such an order could not have been passed in exercise of power under Section 41-A of the Act and that it is only the Charity Commissioner who can do so in exercise of power under Section 36 of the Act, is without substance and is noted only as a courtesy to the learned Counsel. Section 36 of the Act has no application since there is no motion moved before the appropriate authority seeking sanction. In any event, no sanction is required for the arrangement which is impugned.

5. It would be necessary to note certain aspects which are culled out by the authority in the order impugned.

6. Mahadeo Sansthan, Dudhala is a Public Trust.

7. Irrefutably, the administration of the Public Trust is plagued by

inter se disputes between the trustees.

8. Multifarious proceedings are pending under the provisions of the Maharashtra Public Trusts Act (Act), in which the rival factions are claiming to be the trustees, to the exclusion of the others.

9. The authority has noted that in the year 2019-2020 the rival factions conducted two separate auctions, and an enquiry was directed. The Inspector registered an appropriate proceedings and issued notice to the rival factions, and none has responded. The authority then noted serious allegations which are made concerning the misappropriation of the income generated from the earlier auction process. One of the allegations is that instead of depositing the auction amount in the account of the Trust, the amount was deposited in the personal account of one trustee and criminal proceedings is pending as regards the said allegation. It is further noted that the trustees are facing several proceedings under the Act, in which serious allegations of misconduct are levelled. One of the allegations is alienation of the Trust property without obtaining the statutory sanction. In fairness to the authority, he has not made any definite observation on issues which are pending in appropriate proceedings.

10. Considering the backdrop in which the authority has chosen to exercise jurisdiction under Section 41-A of the Act, although the order does not specifically refer to the said provision, I see no reason to interfere in writ jurisdiction, particularly since, independently of the findings recorded, I am satisfied that such an arrangement is not only desirable, is imperative, lest the interest of the Trust suffers.

11. The petition is dismissed.

JUDGE

adgokar