

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

FIRST APPEAL NO. 2440 OF 2022

1. Parvatibai w/o. Digambarrao Deshpande,
Age 94 years, Occ. Nil,
R/o. N-4, Madhumalti Apartment, Guru Sahani Nagar,
CIDCO, Aurangabad
at present residing at 21, Shri Vankatadri
Kalpataru Housing Society,
Garkheda Parisar, Aurangabad.
2. Ambadas s/o. Digambarrao Deshpande
Age 74 years, Occ. Nil,
R/o. As above.
3. Shri Guglingappa s/o. Madhav Burande,
Age 66 years, Occ. Nil,
R/o. Devanagari, Aurangabad.

.. APPELLANTS
Ori. Applicants.

VERSUS

1. Shri Balkrishna s/o. Ramkantji Baheti
Age 68 years, Occ. Business,
R/o. Jargalli, Paithan,
Tq. Paithan, Dist. Aurangabad.
2. Shri Shriniwas s/o. Radhakishan Malani,
Died in the month of May 2022.
3. Shri Narayan s/o. Ramkaran Lohiya,
Age 73 years, Occ. Business,
R/o./ Durgawadi, Nath Galli, Paithan,
Dist. Aurangabad.

.. RESPONDENTS.

Mr. Amit G. Mukhedkar, Advocate for the appellants,
Mr. M.M. Joshi, Advocate for respondent Nos. 1 to 3.

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 6TH JULY,, 2023
PRONOUNCED ON : 17TH JULY, 2023**

JUDGMENT :-

1. The appellant/original applicants have approached this Court under Section 47(5) of the Maharashtra Public Trusts Act, impugning the judgment and order dated 2.8.2022 passed in Application No. 188 of 2019 by the learned Joint Charity Commissioner, Aurangabad region, Aurangabad.

2. The appellants/applicants claim that they are life members of the Public Trust, namely, Dnyan Prabodini Shikshan Sanstha, Paithan, District Aurangabad, registered in the year 1981, under the Bombay Public Trusts Act, vide Registration No. F-803(A). The trust is constituted with the aim and object to impart education. The constitution of the trust provides for a managing committee, consisting of 11 members i.e. President, Vice President, Administrator, Treasurer and six members. The term of the managing committee is 3 years. The contention of the petitioners is that presently there are six valid members of the said Public Trust i.e. appellants/respondents herein.

3. The appellants contend that they are interested in management of the affairs of the trust within the meaning of Section 2(10)(d) of the Maharashtra Public Trust Act. Their names are recorded in Schedule I of the trust. After, 1998, no Change Report has been

accepted by the Deputy Charity Commissioner. Since 2001, last authorized Managing Committee ceased to exist. According to the appellants, the de-facto Managing Committee unauthorizedly holding charge of the affairs of the Trust. In this background, the appellants had approached the Assistant Charity Commissioner, Aurangabad under Section 41 of the Maharashtra Public Trusts Act, with a prayer to hold elections of the Managing Committee. The learned Assistant Charity Commissioner, rejected the said application vide judgment and order dated 4.5.2019 observing that since no trustees are available on record, the vacancies are required to be filled in by taking recourse to the appropriate provisions of law.

4. The appellants have, therefore, filed application under Section 47 of the Maharashtra Public Trusts Act. According to the appellants, the constitution of the trust requires minimum 11 members of the Managing Committee to make it functional. However, the learned Joint Charity Commissioner rejected the application No. 188 of 2019 on erroneous ground.

5. Mr. A.G. Mukhedkar, learned advocate appearing for the appellants would invite attention of this Court to the constitution of the Trust, particularly, clause pertaining to Managing Committee. He submits that total 11 members are prescribed for administration of Trust including the President, Vice President, Administrator, Deputy Administrator, Treasurer and members. He would submit that with 6 available members administration of the trust cannot function. Therefore, the learned Jt. Charity Commissioner was called upon to step in and exercise of powers under Section 47 of the Maharashtra Public Trusts Act to appoint members/trustees or issue directions to the existing

members to enroll the members by majority to make 11 members Managing Committee to be functional.

6. Mr. Mukhedkar would further submit that the learned Charity Commissioner misread the provisions of Section 47 of the Maharashtra Public Trusts Act while observing that the trust can function even with lesser members and the jurisdiction under Section 47 cannot be invoked as long as trustees are capable to manage the trust. Mr. Mukhedkar, in support of his contentions relied upon the following observations of this Court in the matter of *R.P. Gupta vs. B.M. Grower and others reported in 1999(101) Bom. L.R. 844.*

“It is true that Section 47 empowers the Charity Commissioner to appoint, suspend, renew or discharge a trustee and vest the property to new trustee but such a power is subject to the existence of the conditions stated in sub-section (1) of Section 47 of the Bombay Public Trusts Act. If a vacancy arises in the board of trustees and a provision is made in the instrument of trust or in the scheme, obviously the Charity Commissioner too has to make appointment of the new trustees in case such eventuality arises in accordance and in conformity with the provisions of such instrument of trust and/or scheme unless of course the provision made in the instrument of trust or scheme or disposition is in conflict with statute.”

7. Mr. Mukhedkar, further relies upon another judgment in the matter of *Ajit Shankarrao Deshmukh Vs. Joint Charity Commissioner reported in 2010(2) AIR Bom. Reporter 172*, wherein similar observations are made.

8. Per contra, Mr. M.M. Joshi, learned advocate appearing for respondent Nos. 1 and 3 would submit that the powers conferred under Section 47 of the Maharashtra Public Trusts Act are controlled by the in-

built contingencies. He would submit that unless trust is without trustee or administration of the trust cannot function until vacancies are filled, the Charity Commissioner cannot step in, to exercise his powers under Section 47 of the Maharashtra Public Trusts Act. He would submit that even according to the petitioners, six trustees are available to administer the trust.

9. Mr. Joshi would further point out that, the Managing Committee of 11 trustees has been elected during the general body meeting dated 20.6.2022 and change report to that effect is pending consideration vide Case No. 768 of 2023 before the Assistant Charity Commissioner at Aurangabad. He would further point out that the appellants have not objected the said change report. Mr. Joshi would further invite attention of this Court to the observations of the learned Joint Charity Commissioner in impugned order to contend that adequate reasons are assigned for refusal to exercise jurisdiction under Section 47 of the Maharashtra Public Trusts Act. As such, he urged to dismiss the appeal.

10. Having heard learned advocates appearing for the parties and perusal of record with their able assistance. It can be gathered that subject trust is registered under the Bombay Public Trusts Act. It has framed its own constitution and rules and regulations. Undisputedly Managing Committee of 11 members is prescribed for the administration of the trust with tenure of 3 years. The new managing Committee is to be appointed by election amongst the members on expiry of 3 years. Apparently, after 1999, no change report in respect of any election is accepted. However, it is not in dispute that the trust has still six members and there is no impediment in administration of the trust by

existing members in terms of constitution. It appears that the ad-hoc body is functional and in-charge of the administration. In this background, the contentious issue posed for consideration of this court is, as to whether the joint Charity Commissioner can step in, to exercise his power under Section 47 of the Maharashtra Public Trust Act and make appointment of the trustees.

Section 47 sub clause (1) reads thus :-

*“Any person interested in a public trust may apply to the Charity Commissioner for appointment of new trustee, **where there is no trustee in such trust or the trust cannot be administered until the vacancy is filled** or for suspension, remove or discharge of trustees*”

11. Plain reading of the aforesaid provision would depict that the Charity Commissioner possess powers to appoint new trustees, however, only in wake of contingencies that no trustee in such trust is available or the trust cannot be administered until vacancy is filled in. As rightly observed by the learned charity commissioner in the impugned order, the constitution of the subject trust, rules and regulations, nowhere prescribe minimum number of trustees to make the trust functional. It is true that managing committee of 11 members is prescribed subject to elections. However, the regulation of the trust nowhere stipulate that the trust cannot function in absence of the minimum number of members in managing committee. There are many contingencies when the vacancies of the trust may arise. Provisions are made in constitution for filling up such vacancies. In that view of the matter, the powers conferred u/s 47 would not permit the Charity Commissioner to step in and appoint the trustees unless pre-requisite contingencies embodied in the section arise. This Court, in the matter of

Dnyandeo Tukaram Deover Vs. Ganpat Nathu Deore reported in 1994 (4) Bom.C.R. 172, observed as under :-

“ Section 47 of the Act does not confer any general power on the Charity Commissioner to appoint new trustees. *Power under Section 47 of the Act can be exercised only cases specifically covered under the Section. In the situation arising in this case, the said section could be invoked if the affairs of the trust could not be administered until the vacancy was filled and the number of surviving trustees had fallen below the prescribed minimum.* Having regard to the above referred rules and the minimum number of members of managing committee or trustee having been not prescribed and seven out of nine trustees surviving, it can not be said that the affairs of the trust could not be administered until the vacancies caused by the death of Arjun Malji Devre and Mohanrao Sukhdeo Devre were first filled up. It is, therefore, obvious that there was no legal impediment in the managing committee continuing to function even with the strength of the managing committee being seven instead of nine for the time being. In view of the above facts, section 47 of the Act could not be invoked. I accept the submission made by the learned Counsel for the appellant to the effect that the application made by the two applicants for appointment of new trustee was not maintainable under section 47 of the Act.”

If the aforesaid observations are considered in facts of case in hand, it is imperative that the appellants have no cause of action to invoke powers of Deputy Charity commissioner u/s 47 of the Maharashtra Public Trusts Act.

10. One more submission advanced on behalf of the respondents

is also relevant in the facts of the case. It is not in dispute that the change reports in respect of the election of the managing committee for the period from 2022 to 2025 is submitted before the Assistant charity Commissioner, who is empowered to cause inquiry and take decision regarding acceptance or otherwise of the change report. The appellants herein may object to such change report. The Assistant Charity Commissioner would be rendering his decision after considering the rival submissions. Such inquiry would also reveal as to whether trustees as claimed in the change report have been validly appointed. In this background, no reason is made out before this court to cause interference in the impugned order passed by the Joint Charity Commissioner.

Resultantly First Appeal fails and same is dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-