

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

FIRST APPEAL NO.147 OF 2023

Shaikh Abdus Salam Abdul Aziz,
Age : 66 years, Occu.: Retired,
R/o.: H. No. 25, Bagroza Hudco,
Ahmednagar,
Taluka & District : Ahmednagar. APPELLANT

VERSUS

1. Hajrat Saibaba Bahuuddeshiya
Sahikshanik V Samajik Vikas Sanstha,
Tq. and District : Aurangabad.
2. Sayyad Shakeel Ur Rehman Sayyad Mehmood
Age : 55 years, Occu. : Business,
R/o.: Plot No.9, Galli No.1, I/F of
Asifia Masjid, Asfia Colony, Aurangabad,
Taluka & District : Aurangabad.
3. Sayyad Khwaja Muzammil Usmani,
Age : 26 years, Occu.: Business,
R/o.: H. No. 1-21-8, Plot No.9,
Ghati Road, Asifia Colony, Aurangabad,
Taluka & District : Aurangabad
4. The Joint Charity Commissioner,
Aurangabad.
5. Sayyad Jalil Ur Rehman,
Age : 55 years, Occu.: Teacher,
R/o.: Plot No.7, Ikra Apartment,
2nd Floor, Near Nurani Masjid,
Bhadkal Gate, Aurangabad,
Taluka & District : Aurangabad
6. Smt. Shaikh Tarannum,
Age : Major, Occu.: Assistant Teacher,
R/o.: Plot No.7, Ikra Apartment,
2nd floor, Near Nurani Masjid,
Bhadkal Gate, Aurangabad,

Taluka & District : Aurangabad ... RESPONDENTS

.....

Advocate for Appellant : Ms. M. S. Mhase
AGP for Respondent No.4-State : Mr. S. N. Kendre
Advocate for Respondent No.2 : Mr. S. S. Kulkarni

....

CORAM : SANDIPKUMAR C. MORE, J.

**RESERVED ON : 07/07/2023
PRONOUNCED ON : 02/08/2023**

....

JUDGMENT :

1. The appellant, who is original respondent No.1 in Application No.2 of 2022, has challenged the order passed by present respondent No.4 i.e. the Joint Charity Commissioner, Aurangabad, whereby he was restrained for posing or pretending himself as a president @ trustee of the said trust till disposal of main petition or accepting change report by the competent authority in that regard whichever occurred earlier.

2. The background facts are as under :

Present respondent Nos.2 & 3 have filed the Application No.2 of 2022 under Section 41(E) of the Maharashtra Public Trust Act, 1950 (in short 'the Act') for restraining the appellant from posing as a president of the trust by contending that the said trust runs educational institutes, which are receiving grant from the State Government. Further, the audit of the trust is also being carried out. There are many employees in the aforesaid educational institutes but the present appellant alongwith respondent Nos.5 & 6 started sending several applications in Charity Commissioner's

Office by posing himself as a president. Due to such behaviour of the present appellant, there was danger to the property of the trust and therefore, the present respondent Nos.2 & 3 were constrained to file the aforesaid application under Section 41(E) of the Act, wherein they prayed for interim temporary injunction by filing an application at Exhibit-3. The learned Joint Charity Commissioner, Aurangabad vide order dated 15/09/2022 passed on application Exhibit-3, restrained the appellant as mentioned above and hence this appeal.

3. The learned counsel for the appellant submits that respondent Nos.2 & 3 have filed an application before the learned Joint Charity Commissioner for protection of the trust property from the acts of present appellant but in fact the trust does not have any property and therefore, the application filed by respondent No.2 & 3 under Section 41(E) of the Act itself is not maintainable. According to her, the appellant is president of trust and looking after the trust affairs but respondent Nos.2 & 3 are unnecessarily opposing the same. She pointed out that there is absolutely no pleading as to how the trust property is being wasted. Moreover, she pointed out from the said application itself that respondent No.3 is claiming restraining order against the appellant only on presumptions. She also submitted that the learned Joint Charity Commissioner has definitely erred in granting final relief at interim stage, which is not at all permissible. In support of her submission, she relied upon order passed by this court at principal seat in First Appeal No. 262 of 2019 (Janta Shikshan Sanstha, Dapodi, Pune and others vs. Mr. Ajit Subhash Kashid and others) with C.A. No. 989 of 2019 (Coram: K. K. Tated, J.) dated 16/08/2019.

4. On the contrary, the learned counsel for respondent No.2 strongly resisted the submissions made on behalf of the appellant. He pointed out that the definition of property does not include only immovable property but it also includes movable property and intellectual property such as reputation of trust and financial assets. He pointed out that there are certain acts on the part of the appellant, which have caused financial damage to the trust as well as its employees. According to him, the learned Joint Charity Commissioner has supervisory powers and can issue injunction looking to the circumstances. Thus, he prayed for dismissal of the appeal.

5. Heard rival submissions. Also perused entire documents on record alongwith record and proceedings and impugned judgment in the light of the submissions made on behalf of the rival parties.

6. It is significant to note that the appellant has challenged the impugned order dated 15/09/2022 mainly on two grounds that Application No.2 of 2022 filed by present respondent Nos.2 & 3 is not at all maintainable under Section 41(E) of the Act since there is no property of trust in existence and that the learned Joint Charity Commissioner wrongly granted final relief at interim stage. So far as grant of interim relief similar to final relief at interim stage is concerned, Section 41(E) of the Act itself provides the same. If it is found that any trust property is in danger of being wasted, damaged or improperly alienated by any trustee or any other person or that the trustee or such person threatens or intends to remove or dispose of that property.

7. The learned counsel for the appellant pointed out that the trust in dispute does not possess any immovable property which can be endangered by the so called acts of the appellant. She pointed out that even the learned Joint Charity Commissioner in the impugned order has admitted that the trust is not having any movable or immovable property. However, the term property is not having restricted meaning only to the extent of movable or immovable property but it is having wider meaning. The concept of trust property itself refers to the assets that have been placed in to fiduciary relationship between a trustor and trustee for a designated beneficiary. Therefore, the trust property may include any type of asset including cash, securities, real estate or life insurance policies. Thus, there is no point in restricting the definition of property only to the immovable property as claimed by the learned counsel for the appellant. Further, there are certain documents on record filed by the learned counsel for respondent Nos.2 & 3, which indicate that the present appellant had issued certain letters to headmaster, Assistant Charity Commissioner, Aurangabad and one clerk of Daulatabad Madhamik Shala by posing himself as a president of the trust. However, on the day of sending these letters, he was not at all holding the post of president. Further, it appears that he had also stopped increment of concerned employee as mentioned in the letter without there being any authority to him. Thus, these acts clearly indicate that the appellant had tried to interfere with the financial activities of the trust.

8. Though the learned counsel for the appellant relied upon following observation :

" It is to be noted that in an application under Section 41(e) of the said Act, an injunction can be issued to restrain an act of the type mentioned in clause (a) or (b) or to make such an order for the purpose of preventing the waste, damage, alienation, sale, removal or disposition of the property. The trust property, complained of must be in danger of being wasted, damaged or wrongfully disposed of. This is an essential requisite and there must be prima facie case to show such eminent danger. Where there is no allegation of danger of such waste or damage, the application should be rejected. Temporary injunction requires that some injury must be threatened. Injury must be legal injury and not any fancied injury. The other element to be considered is whether irreparable injury or inconvenience may result if the injunction is refused. Mere prospect or apprehension of injury is not sufficient. A mere allegation of waste, etc. is not enough. There must be proof of actual or reasonably apprehended danger of such waste or damage, before an injunction can be granted. The question as to what constitutes sufficient danger or waste or damage will depend upon the facts and circumstances of each case. In order to show that the property is in danger of being alienated some overt act towards the alienation of the property such, for example as negotiations or offers for sale should be alleged and proved. The threat or intent to remove or dispose of property with a view to damage the trust property, must be proved by definite evidence."

in the judgment relied by her passed by this court in First Appeal No. 262 of 2019 (Janta Shikshan Sanstha, Dapodi, Pune and others vs. Mr. Ajit Subhash Kashid and others), but such observation is not applicable in the instant matter since there are

certain documents on record which clearly indicate that the appellant had tried to interfere in respect of financial activities of the trust, which can also be considered as a property of trust in wider sense.

9. Further, it appears that change report for the period from 2014 to 2019 is already accepted and remained unchallenged. Further, change report for the period from 2019 to 2024 is also filed and it is pending. Be that as it may, but what is relevant from the record is that the appellant had tried to disturb the property of trust and therefore, I am of the opinion that the learned Joint Commissioner has rightly prohibited the appellant from posing or pretending himself as a president of the trust till disposal of the main petition or accepting the change report by the competent authority in that regard. It is extremely important to note that the impugned order is only an interim arrangement and the appellant is having every opportunity to rebut the allegations made by respondent Nos.2 & 3 against him or by challenging the pending change report. By considering all these facts, I find that the learned Joint Charity Commissioner has passed appropriate order, which is the subject matter of this appeal and there is no reason to interfere with it. As such, the appeal stands dismissed.

10. Civil application, pending if any, also stands disposed of.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-