

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1981 OF 2022

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Shri Balaji Mandir Trust & anr. ...Petitioners

Versus

Ld. Charity Commissioner & ors. ...Respondents

Mr. Surel Shah, a/w Manoj Patil, i/b Ashish Pawar, for the
Petitioners.

Mr. C. D. Mali, AGP for the State – Respondent Nos.1 and 2.

Mr. Ashok Tajane, for Respondent Nos.3 to 6.

CORAM: N. J. JAMADAR, J.

DATED : 31st MARCH, 2023

ORDER:-

1. This petition under Article 227 of the Constitution of India takes exception to an order dated 19th January, 2022 passed by the learned Charity Commissioner, Maharashtra State, Mumbai, on an application being Application No.CC/42/2021 thereby rejecting the prayer to transfer a proceeding being Application No.18 of 2017 pending on the file of Joint Charity Commissioner, Pune, under Section 41D of the Maharashtra Public Trust Act, 1950 (“the Act, 1950”) and all matters pertaining to Shri. Balaji Mandir Trust, a public trust registered under the provisions of the Act, 1950, to the file of the Charity Commissioner or any other Joint Charity Commissioner.

2. Petitioner Nos.1 and 2 are the trustees of Shri Balaji Mandir Trust. Respondent Nos.3 to 6 preferred an application under Section 41D of the Act, 1950 for the removal of the petitioners and other Trustees. Initially, the learned Joint Charity Commissioner by an order dated 17th July, 2017 opined that there was no sufficient evidence to initiate proceedings against the Trustees under Section 41D of the Act, 1950. However, respondent Nos.3 to 6 were granted liberty to adduce evidence before issue of notice to the Trustees. By a further order dated 11th September, 2017, the learned Joint Charity Commissioner referred the complaint to the Inspector under Section 37(b) of the Act, 1950 with a direction to submit report under Sub-Section (3) of Section 37.

3. The petitioners allege respondent Nos.3 to 6 moved this Court in Writ Petition No.969 of 2021 and, behind the back of the petitioners, obtained a direction to decide Application No.18 of 2017 as expeditiously as possible and, in any case, on or before 30th June, 2021.

4. The petitioners assert when the proceedings commenced the learned Joint Charity Commissioner has, contrary to the view expressed in the earlier orders, passed a number of orders to the detriment of the petitioners. The learned Joint Charity

Commissioner allegedly ante dated an order passed below application (Exhibit-27) preferred by the petitioners to reject Application No.18 of 2017, visited the Trust property and made observations which betrayed a pronounced bias against the petitioners. The learned Joint Charity Commissioner unjustifiably cast the entire burden of proof on the petitioners. Apprehending that the petitioners may not get justice, the petitioners filed an application for transfer of the proceedings before the learned Charity Commissioner.

5. By the impugned order, the learned Charity Commissioner was persuaded to reject the application opining, *inter alia*, that the learned Joint Charity Commissioner in view of the order passed by this Court in Writ Petition No.969 of 2021 was justified in insisting for an expeditious hearing and disposal of the proceedings.

6. Being aggrieved, the petitioners have invoked the writ jurisdiction of this Court.

7. Mr. Shah, the learned Counsel for the petitioners, urged that the acts and conduct reflected in the orders passed and observations made by the learned Joint Charity Commissioner clearly reflect bias in judicial disposition. There are, according to Mr. Shah, circumstances which give rise to a reasonable

apprehension in the mind of the petitioners that they may not get justice. The learned Charity Commissioner did not advert to any of the grounds pleaded by the petitioners which give rise to such apprehension. Application for transfer could not have been rejected by ascribing a sole reason that the expeditious hearing and disposal of Application No.18 of 2017 was necessary in view of the order passed by this Court. Therefore, the order passed by the learned Charity Commissioner deserves to be interfered with in exercise of writ jurisdiction, submitted Mr. Shah.

8. The power to remove Trustees under Section 41D of the Act, 1950 is neither uncanalized nor unregulated. Sub-section (2) of Section 41D envisages the stages in which such application is to be processed. Clause (a) of Sub-section (2) warrants that a notice to the Trustees shall not be issued unless the Charity Commissioner finds, *prima facie*, material to proceed against the Trustees. Sub-Clause (b) envisages an opportunity of hearing to the persons to whom the notice is issued by affording 15 days period to file a reply to the notice. Sub-Clause (c) provides that only upon failure to give reply to notice or the reply being unsatisfactory the Charity Commissioner shall frame charges against the person to whom the notice is given. Post framing of charges, again an enquiry by

providing an opportunity to adduce evidence is envisaged before a final order is passed regarding suspension, removal or dismissal of the person to whom such notice is given.

9. Keeping in view the aforesaid structured manner in which a proceeding under Section 41D is required to be adjudicated, reverting to the facts of the case, it becomes abundantly clear that the learned Joint Charity Commissioner has yet not reached the stage envisaged by Clause (c) of Sub-Section (2) of Section 41D of the Act, 1950. The matter is essentially in the realm of pre-charge stage. The orders passed by the learned Joint Charity Commissioner at pre-charge stage thus deserve to be viewed through the aforesaid prism. In any event, the orders which allegedly give arise to apprehension of bias are stated to be assailed by filing proceedings in this Court. If that is the case, the prayer for transfer of the proceedings does not deserve countenance.

10. The insistence of the learned Charity Commissioner for expeditious hearing and disposal in view of the order passed by this Court in Writ Petition No.969 of 2021 stipulating the outer limit within which the proceedings should be concluded, cannot be faulted at. The learned Charity Commissioner was within his rights in not acceding to the prayer for transfer of the

proceedings on the ground that the learned Joint Charity Commissioner was hearing the matter day to day.

11. Moreover, the grounds urged in the application for transfer do not indicate that justice would be a casualty if the proceedings are conducted by the Joint Charity Commissioner, Pune. Thus, in exercise of extraordinary jurisdiction no interference is warranted in the impugned order.

12. Hence, the petition does not deserve to be entertained.

13. The petition thus stands dismissed.

14. It is, however, clarified that the learned Joint Charity Commissioner shall decide Application No.18 of 2017 and the connected proceedings on their own merits and in accordance with law without being influenced by any of the aforesaid observations and the observations made by the learned Charity Commissioner in the impugned order.

[N. J. JAMADAR, J.]