

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 445 OF 2021
WITH
INTERIM APPLICATION NO.3412 OF 2021

Shree. Rotmal Deo And Others

...Appellants/Applicants

Versus

Devidas Bhagwan Shitole And Others

...Respondents

...

Mr. Ojas Deolankar, for Appellants/Applicants.

Mr. Prathamesh Bhargude, for Respondent Nos.1 to 3.

Mrs. V.S. Nimbalkar, A.G.P. for Respondent No.4.

...

CORAM : SANDEEP V. MARNE, J.

DATE : OCTOBER 20, 2023

P.C.:

1. The challenge in the present Appeal is to the order dated 23 September 2021 passed by the Joint Charity Commissioner, Pune under provisions of sub-section (1) of Section 41E of the Maharashtra Public Trust Act, 1950 (**MPT Act**). By order dated 23 September 2021, the Joint Charity Commissioner has granted temporary injunction against the Appellants in following terms:

- “1. The respondents No.1 to 7 (all trustees) are hereby restrained from spending the funds received towards the compensation of trust property as well as other amounts received by the trust.
2. The trustees/respondents are hereby restrained from taking any policy decisions without permission of this Authority.
3. The respondents No.2 to 7 are hereby directed to transfer the compensation amount in the account of trust immediately.
4. The respondents No.8 is hereby directed not to transfer the compensation amount in the account of respondents No.2 to 7.
5. The respondents No.2 to 7 are hereby restrained from siphoning any fund of trust in their personal account.
6. The details of account of trust as well as respondents No.2 to 7 should be collected and the respondents are hereby restrained from operating the trust account till further order.
7. Issue letter accordingly to the concerned bank.”

2. Mr. Bhargude, the learned counsel appearing for Respondent Nos. 1 to 3 raises a preliminary objection about maintainability of the present Appeal from order. According to him, under sub-section (5) of Section 41 E of the MPT Act, a substantive appeal needs to be filed against an order passed under sub-section (1) of Section 41E of the MPT Act. The Registry was directed to examine this issue and the Registrar has submitted a report dated 18 April 2022 opining that the present Appeal from Order is maintainable. Mr. Bhargude would however still insist that Appeal from Order is not maintainable. Leaving the issue of maintainability of the present Appeal from

Order open, I proceed to dispose of the present Appeal from Order on account of the limited controversy involved in the present Appeal.

3. By the impugned order, the Joint Charity Commissioner has granted interim injunction against Appellants. Under provisions of sub-section (3) of Section 41E of MPT Act, the Joint Charity Commissioner is required to hear the affected parties/trustees before confirming, discharging or varying or setting aside the order of injunction. One of the complaints of the Appellants is that the impugned order dated 23 September 2021 is passed without granting any opportunity of hearing to the Appellants. This contention is disputed by Mr. Bhargude.

4. Be that as it may. Since the order of confirmation/discharge/vary or setting aside under sub-section (3) of Section 41E of the MPT Act cannot be passed without grant of an opportunity of hearing to the Appellants, in my view, ends of justice would meet if the Joint Charity Commissioner takes up the proceedings for passing an order under sub-section (3) of Section 41E of MPT Act. While taking a final decision under sub-section (3) of Section 41E of MPT Act, the Joint Charity Commissioner shall afford full opportunity of hearing to the Appellants. The Joint Charity Commissioner shall not be

influenced by any of the observations made by him in the order dated 23 September 2021. The Joint Charity Commissioner is requested to take a final decision in the matter under sub-section (3) of Section 41E of MPT Act as expeditiously as possible, preferably within a period of three months from today. Parties to appear before the Joint Charity Commissioner, Pune on 30 October 2023 and obtain further directions.

5. With the above directions, the Appeal from Order is disposed of. In view of disposal of Appeal from Order, Interim Application does not survive and stands disposed of.

(SANDEEP V. MARNE, J.)