

Dusane

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

WRIT PETITION NO.11012 2023

Devidas Sitaram Chingare ...Petitioner

V/s.

Rameshwar Shankarlal Malani & Ors. ...Respondents

Mr. S.S. Kulkarni i/by Mr. Sujay S. Palshikar for
Petitioner.

Mr. P.G. Sawant, AGP for State.

CORAM: MADHAV J. JAMDAR, J.
DATE: 8th December 2023

JUDGMENT :

- 1.** Heard Mr. Kulkarni, learned Counsel appearing for the Petitioner.
- 2.** In this Writ Petition filed under Article 227 of Constitution of India, the challenge is to the legality and validity of order dated 15th June 2023 passed by learned Joint Charity Commissioner, Nashik Region, Nashik below Exhibit 34 in P.T.R. No. A-76/Nashik in Application No.32 of 2021. The said Application 32 of 2021 has been filed under Section 47 of the Maharashtra Public Trusts Act ("**said Act**"). The Petitioner

filed application bearing Exhibit 34 in said Application No.32 of 2021 challenging the maintainability of the application filed under Section 47 of the said Act.

3. It is the contention of Mr. Kulkarni, learned Counsel appearing for the Petitioner that there are a total of seven trustees, out of which two are ex-officio trustees. He states that five trustees are deceased. It is his contention that in any case two ex-officio trustees are managing affairs of the Trust and therefore, Section 47 of the said Act will have no application. To substantiate the said contention, he relied on the decision of a learned Single Judge of this Court in the case of **Gyandev Tukaram Devare And Ors. vs Ganpat Nathu Devre And Ors**¹. In the said decision, it has been held that Section 47 of the said Act does not confer any general power on the Charity Commissioner to appoint new trustees. Power under Section 47 of the said Act, can be exercised only in cases specifically covered under the said Section. The relevant portion of Section 47 of the said Act reads as under:

47. (1) Any person interested in a public trust may apply to the Charity Commissioner for the appointment of a new trustee, where there is no trustee for such trust or the trust cannot be

1 [1995 (1) Mh. L.J. 99]

administered until the vacancy is filled, or for the suspension, removal or discharge of a trustee, when a trustee of such trust,—

- (a) disclaims or dies;*
- (b) is for a continuous period of six months absent from India without the leave of the Charity Commissioner or the Deputy or Assistant Charity Commissioner or the officer authorised by the State Government in this behalf;*
- (c) leaves India for the purpose of residing abroad ;*
- (d) is declared as insolvent;*
- (e) desires to be discharged from the trust;*
- (f) refuses to act as a trustee ;*
- (g) becomes in the opinion of the Charity Commissioner unfit or physically incapable to act in the trust or accepts a position which is inconsistent with his position as trustee;*
- (h) in any of the cases mentioned in Chapter III, is not available to administer the trust; or*
- (i) is convicted of an offence punishable under this Act or an offence involving moral turpitude.*

(2) The Charity Commissioner may, after hearing the parties and making such enquiry as he may deem fit, by order appoint any person as a trustee or may also remove or discharge any trustee for any of the reasons specified in sub- section (1).

(3) In appointing a trustee under sub-section (2), the Charity Commissioner shall have regard—

- (a) to the wishes of the author of that trust;**
- (b) to the wishes of the persons, if any, empowered to appoint a new trustee;*
- (c) to the question whether the appointment will promote or impede the execution of the trust;*
- (d) to the interest of the public or the section of the public who have interest in the trust ; and*

(e) to the custom and usage of the trust.

(4) It shall be lawful for the Charity Commissioner upon making any order appointing a new trustee under sub-section (2) either by the same or by any subsequent order to direct that any property subject to the trust shall vest in the person so appointed and thereupon it shall so vest.

(5) An appeal shall lie to the Court, against the order of Charity Commissioner under sub-section (2), as if such order was a decree of a district court as a court of original jurisdiction from which an appeal lies, within sixty days from the date of the order, which shall otherwise be final.

(Emphasis added)

4. Out of seven trustees, only two trustees who are ex-officio trustees are administering the affairs of the Trust. The scheme of the Trust clearly shows that the quorum is of minimum four Trustees. Therefore, there is no substance in the contention of Mr. Kulkarni, learned Counsel that Section 47 of the said Act will have no application to the present case.

5. Mr. Kulkarni, learned Counsel has pointed out Clause Nos. 16 and 20 of the scheme of the Trust. However, the said clauses have no relevance as far as maintainability of the Application under Section 47 of the said Act is concerned. Accordingly, there is no substance in the present Writ Petition.

6. It is clarified that this court has only considered maintainability of the Application filed under Section 47 of the

said Act and all other contentions on merits of all the concerned are expressly kept open.

7. The Writ Petition is disposed of in above terms however with no order as to costs.

(MADHAV J. JAMDAR, J.)

BHALCHANDRA
GOPAL DUSANE

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