

Anand

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

WRIT PETITION NO. 14016 OF 2023

Dr. Girish Kamlakarrao Maindarkar .Petitioner

Vs.

Dr. Lalitrao Bhaskarrao Patil & ors. .Respondents

**WITH
WRIT PETITION NO. 14017 OF 2023**

Dr. Mehernosh Jamshed Jassawalla .Petitioner

Vs.

Dr. Lalitrao Bhaskarrao Patil & ors. .Respondents

Mr. Sanjeev Gorwadkar, Senior Advocate i/b. Mr. S. M. Kamble, Advocate, for the Petitioner **in W. P. No. 14016 of 2023**
Mr. Atul Damle, Senior Advocate i/b. Mr. S. M. Kamble, Advocate, for the Petitioner **in W. P. No. 14017 of 2023**
Mr. Amrut Joshi a/w. Ms. Pratibha Rupnavar i/b. Samatva Legal Associates, Advocate, for Respondent Nos. 1 & 2
Mr. S. D. Rayrikar, AGP, for Respondent No. 27 - State

CORAM : MADHAV J. JAMDAR, J.

DATE : 07.11.2023

P. C.

1. Heard Mr. Gorwadkar, learned senior counsel appearing for the Petitioner in W. P. No. 14016 of 2023, Mr. Damle, learned senior counsel appearing for the Petitioner in W. P. No. 14017 of 2023, Mr. Amrut Joshi, learned counsel appearing for Respondent Nos. 1 & 2 and Mr. Rayrikar, learned AGP appearing for Respondent No. 27 - The Charity

Commissioner.

2. At the outset, Mr. Gorwadkar, learned senior counsel and Mr. Damle, learned senior counsel state that leave may be granted to delete the names of Respondent Nos. 3 to 26 in both the Petitions, as the Petitioner and Respondent Nos. 1 & 2 are the contesting parties. Leave granted. Amendment be carried out forthwith. Re-verification is dispensed with.

3. The challenge in W. P. No. 14016 of 2023 is to the order dated 15.09.2023 passed by the learned Charity Commissioner below Exhs. 58 & 62 in Application No. CC/11/2023 filed under Section 41-D of the Maharashtra Public Trusts Act, 1950 (**"Said Act"**).

4. Respondent Nos. 1 & 2 filed an Application under Section 41-D of the said Act bearing No. CC/11/2023. Sub Section (2)(a) of Section 41-D of the said Act reads as under :-

"When the Charity Commissioner proposes to take action under sub-section (1), the Charity Commissioner may issue notice to the trustee or the person against whom the action is proposed to be taken only when he finds that there is *prima facie* material to proceed against the said person."

5. Thus, what is contemplated under Sub Section (2)(a) of Section 41-D of the said Act is that when the Charity Commissioner proposes to take action under sub-section (1), the Charity Commissioner may issue notice to the trustee or the person against whom the action is proposed to be taken only when he finds that there is *prima facie* material to proceed against the said person.

6. In this particular case, the Charity Commissioner vide order dated 08.05.2023 has passed the following order.

“Issue notice to the opponents.”

7. Thus, it is clear that the Charity Commissioner has not recorded *prima facie* satisfaction under Sub Section (2)(a) of Section 41-D of the said Act.

8. In view of above position, learned counsels appearing for the contesting parties state that no detail reasons be given for passing this order.

9. Accordingly, the following order is passed.

O R D E R

(i) The order dated 08.05.2023 passed by the learned Charity Commissioner in Application No. CC/11/2023 is quashed & set aside;

(ii) In view of setting aside of the order dated 08.05.2023, learned counsel appearing for respective Petitioners are seeking withdrawal of Exh. 58 and Exh. 62 Applications and accordingly same are allowed to be withdrawn. Consequently, the order dated 15.09.2023 passed by the learned Charity Commissioner below Exhs. 58 & 62 in Application No. CC/11/2023 is quashed & set aside as said Applications are dismissed as withdrawn;

(iii) The learned Charity Commissioner to comply with sub section (2)(a) of Section 41-D of the said Act;

(iv) The learned Charity Commissioner is requested to take decision as expeditiously as possible and in any event **on or before 29.02.2024**;

(v) It is clarified that no personal hearing is required to be given to the Petitioner when the learned Charity Commissioner considers whether there is any material to proceed against the Petitioner under Sub Section (2)(a) of Section 41-D of the said Act, as Sub Section (2)(a) of Section 41-D of the said Act contemplates that only Applicants i. e. Respondent Nos. 1 & 2 in this case are required to be heard at that stage.

10. The Writ Petitions are disposed of in above terms with no order as to costs. However, it is clarified that this Court has not considered the merits and all the contentions on merits are expressly kept open.

(MADHAV J. JAMDAR, J.)