

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION (WP) NO.7679 OF 2018**

- 1) Shri Pravin Vijayrao Pawar,
Age about – 37 yrs, Occ- Social Work
and Agriculturist (President of
Maharshee Gorakshan Sanstha,
Chandur Bazar), R/o Maharana Pratak
Chowk, Chandur Bazar, Tq. Chandur
Bazar, Dist. Amravati.
- 2) Shri Sanjeev Kamalkoshor Mundhada,
Age about – 51 yrs, Occ – Agriculturist
Business and Social Worker (Trustee
Hindu Smashan Sanstha, Amravati),
R/o 44, Yogi Rana, Ravikiran Colony,
Nawathe, Amravati, Tq. and Dist.
Amravati.

.... Petitioner(s)

// VERSUS //

- 1) State of Maharashtra,
through Deputy Charity
Commissioner, Amravati having its
office at 2nd Floor, Mhada Bhavan,
Tope Nagar, Opposite Maltekadi,
Amravati, Tq. and Dist. Amravati.
- 2) Shri Jugalkishor Narayandasji Harkut,
Age about – 72 yrs, Occ – Retired, R/o
Marwadipura, Chandur Bazar, Tq.
Chandur Bazar, Dist. Amravati.
- 3) Shri Shriram Hanumantrao
Deshpande, Age about 62 yrs, Occ-
Retired, R/o Uday Colony, Chandur
Bazar, Tq. Chandur Bazar, Dist.

Amravati.

- 4) Shri Suresh Raghupatirao Kathale,
Age – 64 yrs, Occ. Retired Teacher, R/o
Malipura, Ward No.1, Chandur Bazar,
Tq. Chandur Bazar, Dist. Amravati.
- 5) Shri Shriram Govindramji Kabra,
Age – 74 Yrs, Occ – Agriculturist, R/o
Netaji Chowk, Chandur Bazar, Tq.
Chandur Bazar, Dist. Amravati.
- 6) Shri Laxminarayan Rameshchandraji
Sharma, Age – 35 yrs, Occ.
Construction, R/o Jaistambh Chowk,
Chandur Bazar, Tq. Chandur Bazar,
Dist. Amravati.

... Respondent(s)

Shri C.A. Babrekar, Advocate for the Petitioner/s

Shri H.D. Dubey, AGP for the Respondent No.1/State.

Shri Z.A. Fidvi, Advocate h/f Shri Sudame, Advocate for the
respondent Nos.2 to 6

CORAM : ANIL S. KILOR, J.

DATED : 11.07.2023

ORAL JUDGMENT :

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by
consent by the parties.

3. In the present writ petition, the order dated 23.12.2014
passed under Section 50A(1) of the Maharashtra Public Trusts Act,

1950 (for short “the Trust Act”), settling a scheme in respect of trust i.e. Shri Dharmal Sansthan Chandur Bazar, District Amravati for proper administration and management and confirmation of the same vide order 26.07.2017 passed by the District Judge-3, Amravati, are under challenge.

4. The trust, namely Shri Dharmal Sansthan Chandur Bazar, District Amravati, is a registered public trust under the Trust Act and the object of the trust is social and charitable in nature. In the said trust, there were two trustees and both of them have expired and therefore, the respondent Nos.2 and 3 approached to the Deputy Charity Commissioner, Amravati by filing an application under Section 50A(1) of the Trust Act.

5. It is the case of the respondent Nos.2 and 3 that, they are devotees as well as well wishers and managing the affairs of the trust. It is further contended that it is necessary that the trust should have certain rules and regulations and therefore, it is necessary to settle the scheme under Section 50A(1) of the Trust Act, to run the affairs and management of the trust, and to

streamline the same. The Deputy Charity Commissioner allowed the said application and settled the scheme and thereby appointed the respondent Nos.2 to 6 as first board of trustees under the scheme. The said order dated 23.12.2014 was carried before the District Judge, Amravati by filing the Misc. Civil Application No.21 of 2011 under Section 72 of the Trust Act.

6. The learned District Judge dismissed the application and confirmed the order of the Deputy Charity Commissioner vide judgment and order dated 26.07.2017, which is the subject matter of the present petition.

7. In the present matter, there is no dispute that earlier there were two trustees in the trust and both have died long back and thereby, the respondent Nos.2 and 3, being the legal heirs of the earlier trustees, were managing the trust. Thus, it is evident that, on the date when the application under Section 50A(1) of the Trust Act was filed, there was no trustee in the trust and the application moved by the respondent Nos.2 and 3, was in the capacity as interested persons.

8. The learned counsel for the petitioners submits that there is no doubt that under Section 50A of the Trust Act, the Charity Commissioner has wide powers, however, where there is no trustee, such power to appoint trustees, lies under Section 47 of the Trust Act. He therefore, submits that the Deputy Charity Commissioner has committed error in exercising the powers under Section 50A of the Trust Act in stead of under Section 47 of the Trust Act.

9. On the other hand, the learned counsel for the respondent Nos.2 to 6 opposed the present writ petition and submits that considering the wide powers under Section 50A of the Trust Act, the Deputy Charity Commissioner has rightly settled the scheme and also appointed the first board of trustees by appointing the respondent Nos.2 to 6. He submits that as the Charity Commissioner has powers under Section 47 of the Trust Act as well as under Section 50A of the Trust Act, to appoint trustee and since the Deputy Charity Commissioner, Amravati has exercised its power under Section 50A of the Trust Act, it cannot be faulted.

10. It is thus, evident that the controversy involved is, whether where there is no trustee, can the Charity Commissioner exercise the powers under Section 50A of the Trust Act, when the specific powers to appoint trustee, in such contingency, are given under Section 47 of the Trust Act. It is therefore, appropriate to refer to Section 47 and Section 50A of the Trust Act, which read thus:

“47. Power of Charity Commissioner to appoint, suspend, remove or discharge trustees and to vest property to new trustees :

(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 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.

...

50A. Power of Charity Commissioner to frame, amalgamate or modify schemes.

(1) Notwithstanding anything contained in section 50, where the [Assistant or Deputy Charity Commissioner] has reason to believe that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, the [Assistant or Deputy Charity Commissioner] may, if, after giving the trustees of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust.

(2) Where the [Assistant or Deputy Charity Commissioner] is of opinion that in the interest of the proper management or administration, two or more public trusts may be amalgamated by framing a common scheme for the same, he may, after -

(a) publishing a notice in the Official Gazette [and also if necessary in any newspaper which in the opinion of the [Assistant or Deputy Charity Commissioner] is best calculated to bring to the notice of

persons likely to be interested in the trust] with a wide circulation in the region in which the trust is registered, and

(b) giving the trustees of such trusts and all other interested persons due opportunity to be heard,

frame a common scheme for the same.

(3) The [Assistant or Deputy Charity Commissioner] may, at any time, after hearing the trustees, modify the scheme framed by him under sub section (1) or sub section (2).

[(4) The scheme framed under sub section (1) or sub section (2) or modified under sub section (3) shall, subject to the decision of the Charity Commissioner under section 70, have effect as a scheme settled or altered, as the case may be, under a decree of a Court under section 50.]]”

11. From the language of the Section 47 of the Trust Act, it is evident that, where there is no trustee for such trust or the trust cannot be administered until the vacancy is filled, any person interested in public trust may apply to the Charity Commissioner for appointment of new trustee. Sub-section (3) of the Section 47 of the Trust Act, speaks about the necessary factors, the Charity Commissioner shall have regard to, while appointing trustee, which are as follows :

(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

12. The language of Section 50A of the Trust Act, empowers the Charity Commissioner to settle a scheme, where the Charity Commissioner has reason to believe that in the interest of proper management or administration of a public trust, a scheme should be settled for it or where two or more persons having interest in a public trust, make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it. Thus, it is evident that, the powers under Section 50A of the Trust Act are wide and also covers appointment of trustee.

13. In the present matter, admittedly, no trustee was there in the trust in dispute. The interested persons i.e. respondent Nos.2 and 3 applied under Section 50A(1) of the Trust Act for framing a

scheme. Considering the language of the Section 47 of the Trust Act, the respondent Nos.2 and 3 ought to have applied under Section 47 of the Trust Act for appointment of new trustees.

14. The Deputy Charity Commissioner also failed to appreciate the fact that there was no trustee in the trust and the new trustees can be appointed in such contingency under Section 47 of the Trust Act. However, instead of exercising jurisdiction under Section 47 of the Trust Act or asking the respondent Nos.2 and 3 to apply under Section 47 of the Trust Act, he exercised the powers under Section 50A of the Trust Act.

15. In the circumstances, I have no hesitation to hold that the Deputy Charity Commissioner, Amravati has committed error by framing the scheme and appointing the first board of trustees in the present matter.

16. As the learned District Judge failed to consider the scope of Sections 47 and 50A of the Trust Act, the impugned judgment and order dated 26.07.2017 also vitiates. Accordingly, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The judgment and order dated 26.07.2017 in Misc. Civil Application No.21/2015 passed by the District Judge-3, Amravati, is hereby quashed and set aside.
- (iii) The order dated 23.12.2014 in Inquiry No.20/2014 passed by the Deputy Charity Commissioner, Amravati, is hereby quashed and set aside.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]