



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 WRIT PETITION NO. 6088 OF 2024

SHIRISH DAMODAR MODAK AND OTHERS
VERSUS
VASANT HASTAMAL LODHA AND OTHERS

...

Mr. Rajendrraa Deshmukkh, Senior Advocate a/w Mr. Kunal Kale i/by
Mr. S.V. Natu, Advocate for the Petitioners
Mr. S. R. Yadav-Lonikar, AGP for Respondents-State
Mr. N. B. Patekar, Advocae for Respondent Nos. 1 to 3
Mr. G. A. Gadhe, Advocate for Respondent Nos. 4 to 9

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRADE, JJ.

DATE : 11th July, 2024

ORDER:

1. We have heard the learned Senior Advocate and the learned Advocates for the various parties in the first session. We granted a pass over for the parties to take instructions. In the second session, after this matter is called out, the parties submit that the impugned order dated 26.04.2024, be quashed and set aside by consent and the application under Section 41(A) of the Maharashtra Public Trusts Act, be relegated to the Deputy Charity Commissioner, Ahmednagar to enable the parties to address the authority and for passing an order, afresh.

2. For the sake of brevity, we may record that the proceeding under Section 41(A) in Enquiry No. 195 of 2024, was posted on the board of the Deputy Charity Commissioner on 6 occasions. Certified

copy of the Roznama indicates the various dates on which the matter was posted and the progress made in the nature of filing of documents, seeking adjournments, etc. Exhibit Nos. were also granted up to Exh.

31. The matter was posted on 26.04.2024, for compliances and hearing. However, the impugned order has been passed on 26.04.2024, apparently without granting an opportunity of hearing to the Petitioners before us.

3. Needless to state, a proceeding under Section 41 (A) is now recognized to be an administrative function and an order passed by the authority is assailed directly under our Writ jurisdiction under Article 226 of the Constitution of India.

4. Nevertheless, the Roznama indicates that the concerned Court was permitting the parties to file their documents and participate in the hearing. Notices were issued. List of documents with accompanying documents were being placed on record and suddenly, on 26.04.2024, the impugned order is passed when the Roznama dated 16.04.2024 indicates 'पुढील तारीख – पूर्तता - 26.04.2024' (Next date – Compliance). The Petitioners were to file the reply.

5. As such, by consent, the impugned order is quashed and set aside and the application under section 41(A) is restored to the file of the Deputy Charity Commissioner, Ahmednagar.

6. Considering the undisputed position that in a proceeding bearing No. 41-E-13/2024 before the Joint Charity Commissioner, Pune, the present Petitioners have already undertaken, not to create third party interest in the trust property and the property would not be alienated, without following the due process of law, the Petitioners agree that they are bound by the such statement made before the authority, until such statement is revoked or an order is passed.

7. Let all the parties before us appear before the Deputy Charity Commissioner, Ahmednagar on 29.07.2024. Thereafter, they would abide by the dates on which the matter is posted for hearing and would render co-operation to the authority.

8. All contentions of the litigating parties are kept open.

9. In view of the above, **this Writ Petition stands disposed off.**

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan