



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12339 OF 2022

**JAGDISH RANCHHODDAS VAISHNAV
VERSUS
THE JOINT CHARITY COMMISSIONER AND OTHERS**

Mr. Y. D. Kale, Advocate for the petitioner
Mr. B. A. Shinde, AGP for the respondent/State

CORAM : R. M. JOSHI, J.

DATE : 8th JULY, 2024

PER COURT :-

1. This petition takes exception to clause Nos. 2 and 3 of the operative part of the order dated 30/09/2022 passed by the Joint Charity Commissioner, Aurangabad Region, Aurangabad in S. M. Application No. 09/2013 under Section 41D of the Maharashtra Public Trusts Act, 1950 (for short 'Act').

2. It is the case of the petitioner that their forefather were trustees of Shriram Mandir, Vaijapur, Tq. Vaijapur, Dist. Aurangabad which is subsequently registered as P.T.R. No. A-1527-Aurangabad. It is claimed by the petitioner that they used to perform all religious work including worship management as hereditary trustees of the said trust. It is alleged that around the year 1960, without any intimation or consent

of the forefathers of the petitioner, the said Shri Ram Mandir was registered under the Public Trusts Act. It is further alleged that two strangers, namely, Hiralalsing Kisansing Rajput and Jivansing Babusing Rajput filed application for framing of scheme for the management of the trust before Assistant Charity Commissioner which came to be allowed on 02/08/1997. There is further allegation that the said trustees did not maintain affairs of the trust and hence an inquiry was conducted by the Inspector under the Public Trusts Act and report was forwarded to Assistant Charity Commissioner, who in turn sent the report to Joint Charity Commissioner. By invoking provisions of Section 41D of the Act an inquiry was conducted. Petitioner filed application on 28/10/2013 in the said proceedings which came to be allowed by order dated 08/07/2015.

3. Petitioner had also challenged order dated 02/08/1997 passed by the Assistant Charity Commissioner by filing trust appeal under Section 72 of the Act along with application for condonation of delay. The learned District Judge, Vaijapur in Trust Appeal No. 01/2015 passed order on 01/08/2022 allowing the said appeal. Though such application of the petitioner was allowed in the proceedings before Joint Charity Commissioner, he was not permitted to argue on the ground that the inquiry contemplated under Section 41D of the Act is *suo moto*

inquiry. Application came to be allowed by passing the impugned order. Being aggrieved by clause Nos.2 and 3 of the operative part of the order, hence, present petition.

4. Learned counsel for the petitioner submits that clause 1 of the impugned order is not under challenge and hence this Court is not required to take into consideration the legality of the same. As far as clause Nos.2 and 3 of the order is concerned, it is argued that the Joint Charity Commissioner has not taken into consideration order passed by District Judge-1, Vaijapur whereby the order passed by the Assistant Charity Commissioner is set aside and that the proceedings were directed to be decided afresh. In view of the said direction of the District Court, it was not within the jurisdiction of the Joint Charity Commissioner to issue directions as recorded in clause Nos.2 and 3 of the operative part of the order.

5. Learned AGP does not dispute the afore stated facts, more particularly, the fact that the Joint Charity Commissioner has not taken into consideration order passed by the District Judge-1 in Trust Appeal No. 01/2015. It is submitted, on instructions, that the application pending before the Assistant Charity Commissioner as relegated back by the order of District Court would be decided within four months from

today.

6. Having regard to the afore stated facts the impugned order, to the extent of clause Nos.2 and 3 cannot sustain, as the same has been passed in ignorance of the order passed by District Court in Trust Appeal No. 01/2015 . Since the proceedings are relegated back to the Assistant Charity Commissioner in inquiry application No. 18/1996, said inquiry is necessary to be completed before passing any further order.

7. Having regard to these facts, Clause Nos.2 and 3 fo the impugned order are set aside. Petition stands allowed in the above terms.

(R. M. JOSHI, J.)

ssp