IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1277 OF 2023
WITH
INTERIM APPLICATION NO.18140 OF 2023

Shri. Ravindra Dagadu Gaikwad & Ors. ..Appellants
Versus
Arun Ashok Jadhav & Ors. ..Respondents

Mr. Vineet Naik, Senior Advocate a/w Ashutosh M. Kulkarni i/by Akshay A. Kulkarni, for the Appellants.
Mr. A. Y. Sakhare, Senior Advocate i/by Anant Wargaonkar, for Respondent Nos.1 & 2.
Mr. A. R. Patil, AGP for the Respondent No.6/State.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 18th JANUARY, 2024
PRONOUNCED ON : 23rd JANUARY, 2024

P.C.

1. This Appeal takes exception to the order passed by the learned Joint Charity Commissioner-2, Pune dated 24.11.2023 on application below Exh.5 in Inquiry Application No.48 of 2021 filed under Section 41E of the Maharashtra Public Trusts Act, 1950 (hereainafter referred as "the said Act"). The present Appellant Nos.1, 2 and 5 to 7 are restrained from looking after the affairs of the Trust. One Dr. B. G. Patil, Principal of the Engineering College run by the Trust and one Asif Shaikh working in the office of the Charity Commissioner are given authority to operate the accounts of

the Trust in the Banks till further order. Appellant Nos.1 and 2 are directed to give explanation about the amount allegedly withdrawn by them from the account of the Trust along with statement of account. Further Principal Dr. B. G. Patil is directed to look after the day to day affairs of the College. The Inspector to give monthly visit and to report to the office of Joint Charity Commissioner about day to day management and daily transactions. In case of necessary expenses sending proposals etc., the proposals are to be submitted to the concerned authorities. The Assistant Charity Commissioner, Solapur is directed to dispose of the Scheme Applications, Change Applications and other Applications in respect of the Trust as early as possible.

2. The present Appellants, who claim to be trustees elected in the meeting dated 20.08.2023 are before this Court. Respondent Nos.1 and 2 are the contesting Respondents. As per the leave granted by this Court, Respondent Nos.3, 4 and 5 are deleted. Respondent No.6, Joint Charity Commissioner, Pune is represented by learned AGP, Mr. A. R. Patil.

3. Heard parties.

4. The facts in short are that the present Appellants claim to have been elected as trustees in a meeting dated 20.08.2023 of namely Kai. Sushilabai Gaikwad Bahu-Uddeshiya Sanstha, Solapur bearing Registration No.F-7181 registered under the Maharashtra

Public Trusts Act. The said Trust is established in the year 2006. Present Appellant Nos.1 to 5 were members of the society since inception. As usual, there are two groups in the Trust and two Change Reports are presently pending before Ld. ACC. One Scheme Application is also pending before the learned Assistant Charity Commissioner. One change report is filed in March, 2023 by the Respondents i.e. Change Report No.478 of 2023 on the basis of meeting held on 19.07.2019, which is filed by Respondent No.1. Another Change Report No.1479 of 2023 is pending on the basis of the meeting dated 20.08.2023 showing the present Appellants are elected as trustees. Pending these two proceedings, their Scheme Application is pending which is said to be filed in view of meeting dated 19.07.2019, wherein compromise was entered between the parties and that scheme application is pending bearing Scheme Application No.273 of 2020. There is no dispute about the pending proceedings.

5. Pending the above proceedings, Respondent Nos.1 and 2 filed an application under Section 41E of the said Act levelling various allegations against Appellant Nos.1, 2 and 4. It is alleged that the present Appellants on the basis of the false and fabricated documents, shown that they are elected as trustees to the Trust. The Trust runs a College, namely Bharatratna Indira Gandhi Engineering College having six bank accounts, three accounts in different branch of Axis Bank and three accounts in Bank of Baroda, Main Branch, Solapur. The said accounts are operated by founder President and

Treasurer in view of Change Report No.478 of 2023 and given to the Bank. Appellant No.1 thereafter on the basis of Change No.1479 of 2023 by showing board resolution got their names entered as the persons authorized to operate the account. The Bank called for an opinion from their legal adviser. On the basis of advise of legal adviser, the Bank accepted the change on the basis of resolution dated 20.08.2023. The main allegation is that on the basis of this, now the present Appellant Nos.1, 2 and 5 have withdrawn the amount of Rs.28,50,000/- during period 25.08.2023 till 09.10.2023. Out of the said amount, Rs.14,50,000/- is transferred to salary account of the employees and remaining amount is converted to their own use. It is stated in the application that because of this, the Principal of the College Dr. B. G. Patil was given authority by Respondent No.6 in the application, namely Dagadu Gaikwad to collect the education fees from the students. Various other allegations are made. A prayer is made that the present Appellants be restrained from making any correspondence, operating Bank Accounts and using the seal of the Trust. Further prayer is made seeking direction to Appellants to redeposit/refund the amount of Rs.28,50,000/- in the account of the Trust and other reliefs.

6. The Respondents have also filed an application below Exh.5 in this Application. In the Interim Application, a prayer of injunction is made. In prayer clause (b), it is prayed that Chairman, Secretary or Treasurer as per Change Application No.478 of 2023 be directed to operate Bank accounts pending Scheme Application

No.278 of 2021 under Section 50A.

7. The present Appellant Nos.1 and 2 appeared and filed pursis informing that the Bank accounts mentioned in the application are being operated by them. It was undertaken that they will not withdraw amount from the said accounts and the transactions shall be made through RTGS or by cross cheques only for statutory payments. They filed their say raising objections about maintainability, *locus-standi* and non-joinder of necessary party etc. They also raised challenge stating that the prayers in the application are beyond the powers under Section 41E of the said Act.

8. Learned JCC heard the application Exh.5. He mainly recorded that there are proceedings pending before the Assistant Charity Commissioner. He recorded that the meeting shown to have held on 20.08.2023, *prima-facie* appears to be illegal. The Appellant Nos.1 and 2 have been prepared false and bogus resolution and submitted it to the Bank. Branch of the Bank in collusion with the Appellant Nos.1 and 2 allowed them to operate the account. There are two groups in existence as appears from the record. He further concluded that though a pursis/undertaking is filed by Appellant Nos.1 and 2, they may continue to operate Bank accounts and there is possibility of misuse of their powers against the interest of the Trust causing loss to the Trust and passed the impugned order.

9. The main submissions of the Appellants are, (i)

Applications and the prayers are beyond the scope of Section 41E; (ii) the reliefs which are not prayed in application below Exh.5, are granted; (iii) the elected trustees are restrained from operating Bank accounts; (iv) the orders are passed pending the main proceedings.

10. In support of these submissions, learned senior advocate invited attention to paragraphs 10 and 11 of the main order stating that these findings recorded are not correct and are beyond the powers under Section 41E of the said Act. The Change Report is rightly filed after the meeting dated 20.08.2023. Another Change Report is filed on 5th April, 2023 on the basis of general meeting dated 19.07.2019 by the present Respondents. There is no explanation for delay caused in filing Change Report No.478 of 2023. Next, he submitted that the purpose of Section 41E of the said Act, is to protect the trust property in case the trust property is in danger of is being wasted, damaged or improperly alienated by any trustee or any other person, or that the trustee or such person threatens or intends to remove or dispose of that property. The Charity Commissioner, only in such cases can pass an order, that too only for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of such property. There is no case made out of any such contingency in the application. The pursis was given by the present Appellant Nos.1 and 2, order could have been passed on. He submits that the impugned order was passed on 24.11.2023. Just a day before

passing of the impugned order, the Appellants had filed an application before the learned authority specifically intimating that Respondent No.6 therein had issued a Circular directing students to deposit education fees etc. in the personal account of the said Dr. B. G. Patil. In spite of this complaint, the authority has passed the order and appointed said Dr. B. G. Patil and one Asif Shaikh to look after the accounts.

11. It is pointed out that immediately on passing of the impugned order an application was filed seeking stay to the impugned order. It is specifically stated in the application that orally the authority had expressed on 23rd November, 2023 that it will not pass any order immediately and still the order is passed next day. The stay was prayed to the impugned order, however, no stay was granted and the said application was kept pending for hearing of Respondent Nos.1 and 2.

12. In his submissions, that under Section 41A of the said Act, the Commissioner has the power to issue directions for proper administration of the Trust. Under Section 41B of the said Act, the Commissioner can institute inquiries on receipt of complaints. Section 41C of the said Act provides that no person shall collect money, subscription or donation without permission from the Assistant Charity Commissioner. Under Section 41D of the said Act, powers are given to the Charity Commissioner to suspend, remove and dismiss the trustees. He says that the prayers in the present

proceedings before the Joint Charity Commissioner were in the nature of proceedings under Section 41D of the said Act and those powers are exercised by the learned authority.

13. Learned senior advocate relied on the order passed by this Court at Aurangabad Bench in Civil Application No.9256 of 2018 in First Appeal No.2100 of 2018, wherein in paragraph 32, this Court has considered the purpose and scope of Section 41E. It is observed that the proceedings under Section 41E, do not contemplate exercise of the powers to restrain rival group from functioning. It does not authorize the Charity Commissioner to hand over the administration and affairs of the Trust to rival group under the garb of orders passed in exercise of powers under this Section. In that case, it was observed that from the allegation, it appears that there was dispute between rival groups and in that context, this observation was made. In that case also, Change Reports were filed by both the groups. In that view, the impugned order passed by the Joint Charity Commissioner was stayed. By way of interim arrangement, the Assistant Charity Commissioner was directed to consider to appoint any fit person or persons to look after the day to day affairs of the Trust and further orders were passed. It is lastly prayed that the impugned order needs to be set aside by allowing this Appeal.

14. Learned senior advocate Mr. A. Y. Sakhare submits that the action of the Appellants is totally against the interest of the

Trust. There are proceedings pending before the authorities. A clear case was made out to pass the order under Section 41E. He submitted a chart showing various proceedings pending between the parties. He submits that in the year 2019, in one of the proceedings before the District Judge, consent terms were filed. In view of the said compromise, a Scheme Application was filed bearing Scheme Application No.278 of 2021 and the same is pending. Pending that application, on 20.08.2023, the present Appellants shown that the meeting was held on 20.08.2023 which is totally illegal. He submitted that all the Appellants before this Court are closely related to each other. Appellant Nos.1 and 2 are husband and wife. Appellant Nos.5 and 7 are daughters of Appellant Nos.1 and 2. Appellant No.6 is brother of Appellant No.2. Thus all are closely related to each other and now they are trying to grab the Trust. Respondent No.4 is father-in-law of Appellant No.1.

15. He submits that all the powers under Section 41E are wide enough to take care of interest of the Trust. Dr. B. G. Patil is the Principal of the Engineering College run by the Trust and therefore is aware of the day to day functioning and therefore he is rightly appointed to look after the Trust. Mr. Asif Shaikh, is a person from the office of the Assistant Charity Commissioner, so he is also a right person to take care of interest of the Trust. He submits that ultimately the impugned order is passed on Interim Application, main proceeding is still pending. The observations are *prima-facie*. The Appellants can always argue the main proceedings finally. There

is no perversity in the order. It would not be proper to upset the interim order when the main proceeding is pending. At the most, the proceedings can be expedited. When there is serious allegation of withdrawal of amount of Rs.28,50,000/- at the hands of Appellant Nos.1 and 2, it would not be proper to allow them to operate the Bank accounts. If Appellant Nos.1 and 2 are allowed again to look after the accounts, then they will utilize the amount for their own purpose as already observed by the authority. Lastly, he submits that proper care can be taken by directing to operate the accounts only for the purpose of statutory payments etc.

16. On looking the Application, impugned order and the submissions, this Court firstly needs to see the powers of the Charity Commissioner under Section 41E of the said Act, which is reproduced below :-

> "**41E. Power to act for protection of Charities.**
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> (1) Where it is brought to the notice of the Charity Commissioner either by the Deputy or Assistant Charity Commissioner through his report or by an application by at least two persons having interest supported by affidavit:
>
> > (a) that any trust property **is in danger of being wasted, damaged or improperly alienated** by any trustee or any other person, or
> >
> > (b) that the trustee or such person **threatens, or intends to remove or dispose of that property,**
>
> the Charity Commissioner may by order grant a temporary

> injunction or make such other order for the purpose of staying and **preventing the wasting, damaging, alienation, sale, removal or disposition of such property,** on such terms as to the duration of injunction, keeping an account, giving security, production of the property or otherwise as he thinks fit."

17. The power under Section 41E of the said Act is to be exercised where case is made out that the trust property is in danger of being wasted or being damaged or improperly alienated by any trustee or any other person or that the trustee or such person threats or intends to remove or dispose of that property. Looking to the application under Section 41E of the said Act, the allegations are mainly in respect of the proceedings pending before the various authorities. The allegations are about the interference at the hands of the Appellants in the transactions of the Trust. The DRT proceedings are mentioned, wherein action is taken against the Trust for recovery of loan. Further there is allegation that the Appellant No.1 has used some amount for his own use. As per their own case, out of amount withdrawn amount of Rs.14,50,000/- is used for salary of the employees etc. There is no averment that the property of the Trust is likely to be wasted or is in danger or is likely to be disposed of at the hands of the Appellants. So far as other submissions are concerned that the relief granted in an order on application below Exh.5 is more than the prayer in the main application. From the order, it does not appear that the Commissioner has formed an opinion that the property of the Trust is in danger or is likely to be disposed or will be wasted. The

reasoning given in paragraphs 10 and 11 shows that in the pending Scheme Application and Change Reports, illegal meeting is shown to be held on 20.08.2023 and amount of Rs.28,50,000/- is misappropriated. *Prima-facie*, it is observed that there is possibility of misuse of the power. There is no any finding or conclusion arrived at that any of the property of the Trust is likely to be in danger or dispose of.

18. There is one more factor that needs to be considered that there is no dispute about the fact that a pursis was filed by the present Appellants on 23rd November, 2023, pointing out that students were directed to deposit amount of exam fee in the account of Dr. B. G. Patil. When this was pointed out, still the same person is chosen by the learned Joint Charity Commissioner for giving authority along with Mr. Asif Shaikh to look after the accounts. From the alleged withdrawal of Rs.28,50,000/-, amount of Rs.14,50,000/- was used for the payment of salary of the employees. There is no dispute about that and still, Appellant Nos.1 and 2 are restrained from operating accounts. At the most, learned Joint Charity Commissioner could have put certain restrictions on the use of Bank accounts. Appellants Nos.1 and 2 have also given pursis that they will not use accounts except for payment of statutory payments. Looking at the prayers in the application, it is seen that the relief granted is not prayed for. Prayer (a) in the Interim Application is same as prayer in the main application. The prayer clause (b) in the Interim Application is not prayed in the

main application and thus, in the Interim Application, prayer clause (b) is that the account be directed to be operated through the founder President, Secretary or Treasurer. This Court finds that before passing of the order, it is Appellant Nos.1 and 2 who were looking after Bank accounts, proper care could have been taken by putting certain restrictions on the present Appellants. Thus, this Court finds that the impugned order deserves to be quashed and set aside. However, the Respondent Nos.1 and 2 shall not withdraw any amount from any of the Bank accounts of the Trust. All the statutory payments such as salary, NAAC Committee fee etc. be made only through RTGS or by crossed cheque. They shall keep proper account would submit the accounts with the office of Ld. Joint Charity Commissioner till final disposal of main application under Section 41E. The Joint Charity Commissioner, Pune to decide and dispose of main application as early as possible. Parties to co-operate in the proceeding and shall not take unnecessary adjournments.

19. The Appeal stands allowed and disposed of.

20. Pending Interim Application also stands disposed of.

[KISHORE C. SANT, J.]

After Pronouncement of order

21. At this stage, a request is made for staying the operation of this order, as the Respondents intend to challenge this order.

22. Though the request is opposed, the position continued till today be continued for a period of two weeks from today.

[KISHORE C. SANT, J.]