IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3479 OF 2023
IN
FIRST APPEAL (ST) NO. 7621 OF 2023

JAYDEV KRISHNARAM DIVECHA AND ORS. .. APPLICANTS

VERSUS

JOINT CHARITY COMMISSIONER, GREATER MUMBAI .. RESPONDENTS

Mr.Vishwajit Kapase with Mr. Kshijit Kadam, Mr. B.N. Jadhav i/b. Rustamji & Ginwala, Advocate for the applicants.
Dr. Abhinav Chandrachud a/w. Mr. Amol Joshi, Advocate for respondent Nos. 2 to 5.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 23.02.2024
PRONOUNCED ON : 20.03.2024

PC :-

01. This application is filed seeking stay to the impugned judgment and order dated 28.10.2022 passed by the learned Joint Charity Commissioner, Greater Mumbai in Application No.412 of 2017. The learned Joint Charity Commissioner by way of impugned order allowed the application filed by present respondent Nos. 2 to 5 under section 41-D of the Maharashtra Public Trusts Act. By way of impugned order, the applicant trustees who were charged under section 41-D(1)(a)(b)(c) are suspended, removed and dismissed from the trust with immediate effect. The concerned

Inspector from the Office of the Joint Charity Commissioner came to be appointed as a “Fit Person” to look after the day-to-day administration of the Trust. The Inspector was directed to immediately take charge and to inform the concerned bank, financial institution and the concerned authorities of the order. The applicants were directed not to operate bank account or to do any financial transactions including administration of the trust with immediate effect.

02. The order was passed on the application filed by respondent Nos. 2 to 5 with the allegations that the present applicants are not looking after the affairs of the trust. They are not maintaining the accounts regularly. The property of the trust is likely to be wasted. They are not carrying out object of the trust of granting scholarship to the poor children belonging to the community ect. The learned Jt. Charity Commissioner framed the charges. So far as charge No.1 is concerned, the charge is that the applicants did not follow the provisions of the scheme settled by the High Court in the order passed on 09.08.1912 in Suit No.263 of 1910. They are not allowing the respondents to perform daily *pooja archa* and religious rituals. There is no proof to show that they are carrying out regular maintenance of the temple.

03. On enquiry the learned Jt. Charity Commissioner held that the charges are proved holding that the trustees have persistently failed to submit account details up to date as per provisions of Section 32, 33(1), 34 of the Maharashtra Public Trusts Act and rules thereunder. No accounts are submitted for the period 2017-18. As regards charge No.2, it is held to be proved holding that the trustees have not obeyed the provisions of the scheme especially clause 4,5,9,10 and other clauses, which are specifically discussed in the judgment. The finding was recorded stating that the trustees could not show that the scheme framed by this Court is strictly followed. As regards charge No.3, it is held that the trustees have continuously neglected to perform their duties as trustees and they failed to maintain the trust properly and administer the property of the trust. About Charge No.4, it is held that the respondents could not prove the charges. The finding is recorded that the respondents are interested persons and devotees. So far as audit is concerned, it is recorded that the audit reports are not supplied.

04. The learned Advocate Mr. Kapse for the applicants vehemently submits that in-fact the respondents had no *locus* to approach the Jt. Charity Commissioner. It is only shown that the respondents happen to be *pujaris* and

devotees and that could not give them *locus standi*. The first charge that was framed was beyond the scope of enquiry under section 41-D. The finding is without material on record. He invited attention to para 3 of the written statement showing that already the trust had filed audit reports in the office of the Joint Charity Commissioner. Only there was some delay, however, same was not condoned. They submit that the observations of the learned Joint Charity Commissioner is against the material on record. Before coming to the conclusion about audit, it was necessary to get the special audit done as required under section 33(4) of the Act. While taking charge No.2 as proved, there is no sufficient discussion by the learned authority. As far as charge No.3 is concerned, it is submitted that there is no notice given specifically to the trustees. No structural audit is done to come to a conclusion that the properly is not properly maintained. The learned authority has recorded finding only on the basis of the photographs produced before it. The authority failed to consider that the respondents are not interested persons. Various documents were produced along with written statement, however, the same are not considered. It is submitted that *prima facie* enquiry appears to be conducted without proper procedure. The order is passed without considering the material on record. The learned Advocate, thus vehemently prayed for stay to the effect, execution and operation of the impugned order.

05. The learned Advocate for the respondents Dr. Abhinav Chandrachud opposes the application and submits that the scheme was framed by this Court in the year 1912. There are various properties of the trust. There are many tenants in the properties which require regular maintenance & the same was not done. For this reason, the present respondents approached the authority as they happen to be devotees they are interested persons. Specific allegations are made in the application. The authority has rightly considered all these allegations on the basis of material produced before it. The applicants could not produce any material to show that they are regularly maintaining the property. They have also failed to submit audit report regularly. The collection of rent from the tenants is not properly accounted for. No scholarship is given to the poor children belonging to the community. From the audit report it is pointed out that the auditor himself clearly states that the proper accounts are not given. He further submits that the impugned order has already taken effect & the inspector has already taken charge. Directing stay of the order would be granting *status-quo ante*. *Prima facie* it is clear that the authority has applied its mind and has

considered the material on record and it is only thereupon the impugned order is passed and prays to reject the application.

06. This Court has considered the submissions of both the parties. The order *prima facie* shows that the authority has considered the material before it and has considered all the aspects. No case is made out *prima facie* to show that the impugned order is illegal or is based upon no material. The impugned order has already taken effect. Inspector appointed has already taken charge of the trust. Another factor is that the applicants themselves have approached the Court after the appeal period is over and after delay of 47 days. Relief claimed is in the nature of equitable relief & for that the applicants need to show due diligence. When the application is filed after delay of 47 days, such application need not be considered. Hence, the application deserves to be dismissed and same is hereby dismissed.

[KISHORE C. SANT,J.]

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