

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO.55 OF 2024

Ananda Maruti Patil ... Petitioner
V/s.
Joint Charity Commissioner,
Kolhapur Division, Kolhapur & Ors. ... Respondents

Mr. Nimesh Mehta, Ms. Neera Chauhan for the Petitioner.

Mr. P. P. Kakade, GP, Mr. O. A. Chandurkar, Addl. GP, Ms. A. A. Nadkarni, AGP for the Respondent-State.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : 10th APRIL 2024

P.C. :

This Public Interest Litigation Petition, under Article 226 of the Constitution of India, has ostensibly been filed in public interest by the Petitioner with the following prayers :-

- "a. *Direction may be given to the state Government to appoint SIT (Special Investigating Team) for cheating, criminal breach of trust conducted by the Respondent no.3 to 13 while performing the functions of the Respondent no.2 in the interest of principle of natural justice;*

- b. *Be pleased to pass suitable order by transferring the Application bearing No. 1 of 2022 pending before the Respondent No.1-Joint Charity Commissioner before any other Joint Charity Commissioner to get the fair trial to the complainant and the devotees of **Sadguru Shree Balumama Devalaya Aadmapur Trust” PTR. No. A-4541 (Kolhapur)** to get justice in the interest of principle of natural justice;*
 - c. *Pending the hearing and final disposal of the present petition, the Respondents, and/or its servants and agents may be restrained from acting as the trustee of the said trust i.e. **Sadguru Shree Balumama Devalaya Aadmapur Trust” PTR. No. A-4541 (Kolhapur)** in the interest of devotees of the said temple;*
 - d. *Ad-interim reliefs in terms of prayer clause (c) above;*
 - e. *Costs of the present petition; and*
 - f. *Such further and other reliefs as this Hon’ble Court deems fit.”*
2. We have heard the learned counsel for the Petitioner.
3. So far as prayer clause (a) is concerned, it has been stated by the learned counsel for the Petitioner that Respondent Nos.3 to 13, who are the trustees of a Charitable Trust, which has been arrayed as Respondent No.2 in this Petition, have committed various criminal acts such as cheating and criminal

breach of trust and as such a Special Investigating Team ("*SIT*") be directed to be constituted for investigating such criminal acts.

4. However, what we notice is that no First Information Report ("*FIR*") in relation to the alleged criminal acts has been lodged and, accordingly the question of constitution of the SIT for investigating any such alleged criminal act does not arise.

5. The machinery of criminal law is put to motion either by way of filing FIR or by filing a private complaint under the relevant provisions of the Code of Criminal Procedure, 1908. However, in the present matter, in absence of any FIR or criminal complaint, the question of investigation of any crime does not arise. The prayer made for issuance of direction to the State Government to constitute a SIT is, therefore, highly misconceived.

6. The other prayer made in this Public Interest Litigation that a direction be issued to transfer the Application

No.1 of 2022 pending before the Joint Charity Commissioner, Kolhapur to any other Joint Charity Commissioner, to ensure a fair trial of the complaint and to protect the interest of the devotees of the Charitable Trust.

7. On a query, learned counsel for the Petitioner has submitted that the proceedings under Section 41D of the Maharashtra Public Trust Act, 1950 ("*the said Act*") have been instituted by certain trustees against Respondent Nos.3 to 13, however, the Petitioner is not a party to the said proceedings. Thus, seeking a prayer by the Petitioner for transfer of any proceedings, when Petitioner is not a party to such proceedings, in our opinion, will not be tenable.

8. As regards prayer clause (c), we may observe that in case trustees of the Charitable Trust are found to be acting unlawfully, various statutory measures are available to prevent such trustees from acting unlawfully under the provisions of the Maharashtra Public Trust Act, 1950. The proceedings under Section 41D of the said Act have already been instituted. The

learned counsel for the Petitioner however states that the Petitioner will have no locus to institute such proceedings under Section 41D of the said Act for the reason that such proceedings can be instituted only on the application of trustees or any person interested in the Trust and since it is difficult for the Petitioner to establish that he is person interested in the Trust, if he makes any application under Section 41D of the said Act, the same may not be entertained.

9. The aforesaid submission of the learned counsel for the Petitioner is also highly misconceived for the reason that the proceedings under Section 41D of the said Act can be initiated by four modes, (a) on an application of a trustee, (b) on an application by any person interested in the trust, (c) suo motu by the Charity Commissioner himself and (d) on receipt of a report under Section 41B of the said Act. Section 41B of the said Act provides for institution of inquiry, which can be instituted by the Charity Commissioner on receipt of a complaint having interest in respect of Public Trust. The Petition states that this Petition has been filed by the devotee of the Charitable

Trust/Respondent No.2 and accordingly if he has any grievance regarding functioning of the Trust, he can always take recourse to under Section 41B of the said Act.

10. For the aforesaid reasons, we are not inclined to entertain the present Public Interest Litigation Petition, which is, accordingly, dismissed. No order as to costs.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)