IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2922 OF 2023

1. Dara H. Satpatiwala
Age : 65 years Occupation : Service

2. Nevil M. Billimoria
Age : 59 years Occupation : Service
Both of Mumbai Indian inhabitants
the Trustees of Pinnacle Global
Foundation a Public Charitable
Trust, registered under the
Maharashtra Public Trust Act, 1980
bearing Registration No. E-7182
(Pune) and having its registered
office at Flat No. 805, “Ratna”,
Sujay Garden
Complex, Mukund Nagar, Near
Swargate, Pune-411 037

… Petitioners

vs.

1. Joint Charity Commissioner Pune
Region, Pune having his address at
1, Dhole Patil Road,
Sangamvadi, Pune
Maharashtra 411 001

2. Darayus K. Palia
Age : 62 years, Occupation :
Service of Mumbai Indian inhabitant,

residing at G-23, Cusrow Baug,
Colaba,Mumbai-400 001

3. Neville Sam Patel
Age : 59 years, Occupation :
Service of Mumbai Indian inhabitant,
residing at M-5, 2nd Floor, Cusrow
Baug, S. B. Singh Road, next to
Electric House, Colaba, Mumbai-
400 001. … Respondents

Mr. Bhavik Lalan, a/w. Fateme T. i/b. LJ Law, for Petitioners.
Mr. B.B. Dahiphale, AGP for the State.

CORAM : GAURI GODSE, J.
DATED : 11th MARCH, 2024

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Taken up for final disposal.

2. This petition is filed for challenging order dated 15th July 2022, passed by the Learned Joint Charity Commissioner, Pune region, Pune in Application No. 27 of 2022, filed by the petitioners under sub-section (3A) of Section 36A of the Maharashtra Public Trust Act, 1950 (**'Trust Act'**). The said application is rejected for want of jurisdiction.

3. Learned counsel for the petitioners submitted that the application has been erroneously dismissed on the ground that the learned Joint Charity Commissioner has no jurisdiction to decide the application filed under sub-section (3A) of Section 36A of the Trust Act. He submits that the Joint Charity Commissioner is empowered to exercise all the powers of the Charity Commissioner and hence has jurisdiction to decide the application filed by the petitioners. Learned counsel submitted that even though sub-section 3A of Section 36A provides for the grant of *ex post facto* sanction by the Charity Commissioner, even the Joint Charity Commissioner has jurisdiction of the Charity Commissioner to decide the said application.

4. Learned counsel for the petitioners relied upon the provision of Section 3A of the said Act under which the State Government appoints one or more officers to be called as Joint Charity Commissioners who shall subject to the control of the Charity Commissioner exercise all or any of the powers and perform all or any of the duties and functions of the Charity Commissioner. He further submits that sub-section (2) of

Section 3A provides that the State Government can declare a Joint Charity Commissioner to be the Regional Head to Superintend, subject to the control of the Charity Commissioner. Learned counsel also relied upon the definition of ‘Joint Charity Commissioner’ under sub-section (7B) of Section 2 of the said Act, which states that the Joint Charity Commissioner means the Joint Charity Commissioner appointed under Section 3A.

5. The learned counsel for the petitioners thus, submitted that a plain reading of Section 3A read with sub-section (7B) of Section 2 of the Trust Act, clearly indicates that the Joint Charity Commissioner would exercise the power of Charity Commissioner under sub-section (3A) of Section 36A of the Trust Act. In support of his submissions, learned counsel relied upon the decision of this Court in the case of ***State of Maharashtra Vs D. D. Khobragade***[1]***.*** He particularly relied upon paragraphs 7 and 9 of the said decision which read as under:-

> “7. It appears to me that section 3A of the Act has been so drafted by the Legislature as to avoid repeated reference to ‘Joint Charity Commissioner’ as

1 1969 MhLJ 910

and where the words 'Charity Commissioner' appear in the Act. The Charity Commissioner is authorised to perform several functions and is vested with powers in that behalf. The Joint Charity Commissioner is created for the purpose of performing all those functions and for the purpose of exercising all those powers. However, as there could be only one Charity Commissioner's Office, the Joint Charity Commissioner could not be created as another parallel officer without any control by the Charity Commissioner. So far as the exercise of all powers and performing of all duties and functions under the Act, is concerned, the Joint Charity Commissioner has the same authority and status in this Act. However, he is subject to the general control of the Charity Commissioner and also to the control of the State Government, if any orders in that behalf are passed whether general or special. The real meaning of this clause is that unless the Charity Commissioner directs otherwise where a matter has been entrusted to the Joint Charity Commissioner, he has all the powers of the Charity Commissioner under the Act, and his order is the order of the Charity Commissioner himself.

9. This, to my mind, being the real meaning and the purpose of section 3A of the Act, the Joint Charity

Commissioner who is authorised to exercise all or any of the powers or to perform any of the duties of the Charity Commissioner is entitled to award sanction for prosecution under section 83 of the Bombay Public Trusts Act. By enacting section 3A of the Act, in the manner it is done, the Legislature has avoided a repeated reference at each place in the Act where 'Charity Commissioner' is mentioned. Otherwise, wherever the Charity Commissioner's powers, duties and functions are enumerated, it would have been necessary to add the expression "or the Joint Charity Commissioner, subject to the control of the Charity Commissioner, and to such general or special orders as the State Government may pass". To avoid such a clumsy drafting at each place, by a separate section, it is pointed out that the Joint Charity Commissioner will have all the powers and will perform all the duties and functions of the Charity Commissioner, subject to the general control of the Charity Commissioner as also subject to the control of the State Government to the extent of general or special orders that may be passed from time to time. In this way, I am satisfied that the sanction awarded by the Joint Charity Commissioner is a valid sanction under section 83 of the Act.”

6. The learned counsel for the petitioners thus submitted that this Court in the said decision has interpreted the real meaning and purpose of Section 3A of the Trust Act and held that the Joint Charity Commissioner shall have all the powers and will perform all the duties and functions of the Charity Commissioner subject to general control of the Charity Commissioner and subject to the control of the State Government to the extent of general or special orders that may be passed from time to time. He thus, submitted that the impugned order be set aside and the matter be remitted back to the Joint Charity Commissioner for deciding the application on merits.

7. Learned AGP supports the impugned order and submits that Section 36A gives jurisdiction only to the Charity Commissioner to decide the application for grant of *ex-post facto* sanction in as much as the said provision refers to the powers of only the Charity Commissioner. He thus, submits that the application of the petitioners is rightly rejected by the learned Joint Charity Commissioner for want of jurisdiction.

8. I have considered the submissions of the parties. Perused the record. For examining the aforesaid submissions, it is necessary to refer to the relevant provisions of the Trust Act. The definition of the 'Joint Charity Commissioner' is provided under sub-section (7B) of Section 2 of the Trust Act, which reads as under:-

> "(7B) "Joint Charity Commissioner" means a Joint Charity Commissioner appointed under section 3A."

9. The meaning of the Joint Charity Commissioner is defined as Joint Charity Commissioner appointed under section 3A. Section 3A of the Trust Act reads as under:

> "3A. Joint Charity Commissioners
>
> (1) the State Government may, by notification in the Official Gazette, appoint one or more Officers to be called Joint Charity Commissioners who shall, subject to the control of the Charity Commissioner and to such general or special orders as the State Government may pass, exercise all or any of the powers and perform all or any of the duties and functions, of the Charity Commissioner.

> (2) The State Government may, by general or special order declare a Joint Charity Commissioner to be the regional head to superintend, subject to the control of the Charity Commissioner, the administration in one or more regions or sub-regions, as may be specified in such order.”

10. The plain reading of section 3A means that the Joint Charity Commissioner appointed under the notification by the State Government shall subject to the control of the Charity Commissioner exercise all or any of the powers and perform all or any of the duties of the Charity Commissioner. Sub-section (1) of Section 3A thus, indicates that subject to the control of the Charity Commissioner and to such general or special orders as the State Government may pass, the Joint Charity Commissioner shall exercise all or any of powers and perform all or any of the duties of the Charity Commissioner. It is not the case of the State Government that there are any general or special orders passed by the State Government indicating that the powers to grant *ex-post facto* sanction under sub-section 3A of Section 36A are vested only with the Charity

Commissioner and that the Joint Charity Commissioner will have no jurisdiction to exercise powers under the said provision. The Joint Charity Commissioner appointed under Section 3A is empowered to exercise the powers and perform the duties of the Charity Commissioner. Thus, it is clear that even the Joint Charity Commissioner, has the jurisdiction to decide the application under sub-section (3A) of Section 36A.

11. In the impugned order, the Joint Charity Commissioner in paragraph 14 has observed that the petitioners have not brought on record any urgency with the help of documents to show the compelling circumstances under which the Trust has obtained a loan without prior sanction of the authority. However, the learned Joint Charity Commissioner has rejected the application only on the ground of want of jurisdiction to decide the application. Learned Joint Charity Commissioner in paragraph 15 has observed that under section 36A(3A) only the term ‘Charity Commissioner’ is used and the said section does not include the term ‘Joint Charity Commissioner’, hence he shall have no jurisdiction to decide the application for grant *ex-post facto* sanction as prayed by the petitioners.

12. Learned Joint Charity Commissioner has observed that the term “Charity Commissioner” under Section 36A (3A) and Section 36A(3) is not contemplated in the same manner. He has further observed that under section 36A(3A) the term “Charity Commissioner” does not make bifurcation of the word “Charity Commissioner” or “Joint Charity Commissioner” as stated in Section 36A(3). Thus, the learned Joint Charity Commissioner has held that the word “Charity Commissioner” under Section 36(3A) nowhere includes the term “Joint Charity Commissioner” and thus, the intention of the legislature is clearly depicted in the difference made in sub-section (3) and (3A) of Section 36. Thus, with such observations, learned Joint Charity Commissioner has held that he has no jurisdiction to grant *ex post facto* sanction.

13. To understand the true and correct meaning of the provision of Section 36A, it is necessary to refer to sub-section (3) of Section 36A and its proviso, which reads as under:

> “(3) No trustee shall borrow moneys (whether by way of mortgage or otherwise) for the purpose of or on

behalf of the trust of which he is a trustee, except with the previous sanction of the Charity Commissioner, and subject to such conditions and limitations as may be imposed by him in the interest or protection of the trust:

Provided that, the Charity Commissioner or the Joint Charity Commissioner, as the case may be, shall decide the application for borrowing money from the Bank or Financial Institution forthwith and preferably within a period of fifteen days, if the Bank or the Financial Institution has provisionally sanctioned the loan."

14. Sub-section (3A) of Section 36A reads as under:

"(3A) Notwithstanding anything contained in sub-section (3),in exceptional and extraordinary situations where the absence of previous sanction contemplated under sub-section (3) results in hardship to the trust, beneficiary or bona fide third party, the Charity Commissioner may grant ex-post facto sanction to borrow moneys from any nationalized bank or the Scheduled Bank, by the trustees."

15. Thus, sub-section (3) of Section 36A provides that the powers to grant previous sanction is with the Charity

Commissioner. Sub-section (3A) also states that the Charity Commissioner may grant *ex post facto* sanction. However, the proviso to sub-section (3) of Section 36A states that the Charity Commissioner or the Joint Charity Commissioner as the case may be shall decide the application within the timeline stated in the said proviso. A perusal of the proviso thus indicates that the said proviso was added for fixing the timeline to decide the application under sub-section (3) of Section 36A. The terms “Charity Commissioner” or the “Joint Charity Commissioner” used in the said proviso, follows with the words “as the case may be”. Thus, the said words “as the case may be” would mean that the application as would be pending before the Charity Commissioner or the Joint Charity Commissioner shall be decided within the timeline specified in the said proviso.

16. Thus, sub-section (3) of Section 36A for previous sanction and sub-section (3A) of Section 36A for grant of *ex post facto* sanction are both the basic powers that refer to only the term “Charity Commissioner” in both the substantive provisions. Only the proviso to sub-section (3) refers to the terms “Charity Commissioner” or “Joint Charity Commissioner”,

however, both terms are followed by the words “as the case may be” which indicates that it is only a reference to the application if pending before the Charity Commissioner or the Joint Charity Commissioner is to be decided within the specific timeline as stated in the proviso. Thus, it is clear that only because both the terms i.e. “Charity Commissioner” or the “Joint Charity Commissioner” are used in the proviso to sub-section (3) cannot be interpreted to mean that only the Charity Commissioner is empowered to decide the application under sub-section (3A) of Section 36A.

17. As held by this Court in the decision of ***State of Maharashtra Vs. B. D. Khobhragade*** only to avoid repeated reference at each place in the Act where the Charity Commissioner is mentioned, the legislature enacted Section 3A for the appointment of Joint Charity Commissioner which provides that the Joint Charity Commissioner shall subject to control of the Charity Commissioner and to such general or special orders as the State Government may pass, exercise all or any of the powers and perform all or any of the duties and functions of the Charity Commissioner. Thus, the interpretation

done by the Joint Charity Commissioner by referring to the difference in the use of the terms Charity Commissioner and Joint Charity Commissioner in sub-section (3) and use of the term Charity Commissioner in sub-section (3A) of Section 36 is incorrect in as much as the terms Charity Commissioner and Joint Charity Commissioner are only in the proviso to sub-section (3) specifying a timeline for deciding application under sub-section (3); however, both the substantive provisions of sub-sections (3) and (3A) for grant of previous sanction and *ex post facto* sanction respectively, uses only the term Charity Commissioner. Thus, there is no difference between the two basic provisions. Therefore, the Joint Charity Commissioner is also vested with the powers of the Charity Commissioner to decide the application under sub-section (3A).

18. The decision of this court relied upon by the learned counsel for the petitioners has interpreted the real meaning and purpose of Section 3A and held that the Joint Charity Commissioner is authorized to exercise all or any of the powers and perform all or any of the duties of the Charity Commissioner. It is not the case of the State Government that

there are any General or Special orders passed otherwise than as contemplated under Section 3A of the said Act. Hence, considering, the definition under section 2(7B) read with Section 3A of the said Act, it is clear that the Joint Charity Commissioner exercises the power of the Charity Commissioner and thus has jurisdiction to decide the application under Section 36A(3A) of the Trust Act. Only because the term 'Joint Charity Commissioner' is not included in the said provision it cannot be said that the Joint Charity Commissioner shall have no jurisdiction to decide the application under section 36A(3A). The interpretation of Section 3A and powers conferred upon the Joint Charity Commissioner and Charity Commissioner as held by this Court in the aforesaid decision squarely applies to the present case.

19. Thus, I am of the view that the reasons recorded by the Joint Charity Commissioner that he has no jurisdiction to decide the application under section 36(3A) are erroneous and contrary to the provisions of the Trust Act. Since, by the impugned order, the application of the petitioners is rejected only on the ground of want of jurisdiction, the matter is required

to be remitted back to the Joint Charity Commissioner for deciding the application on merits.

20. For the reasons recorded above, the writ petition is partly allowed by passing the following order:

(i) Order dated 15th July 2022 passed by the Joint Charity Commissioner, Pune region, Pune in Application No. 27 of 2022 is quashed and set aside.

(ii) Application No. 27 of 2022 is restored to the file of the Joint Charity Commissioner, Pune region, Pune for deciding the application afresh on merits and in accordance with law uninfluenced by the reasons recorded in the impugned order.

(iii) Petitioners shall appear before the Joint Charity Commissioner, Pune Region, Pune on 2nd April 2024, and thereafter, the learned Joint Charity Commissioner shall fix further schedule of hearing.

(iv) Writ Petition is disposed of in the above terms.

(GAURI GODSE)