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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14066 OF 2018

Martand Devsthan Trust, Karad & Ors. … Petitioners

V/s.

The State of Maharashtra & Ors. … Respondents

Mr. P.B. Shah i/by Mr. Kayval P. Shah for the petitioner.
Mr. M.S. Bane, AGP for respondent Nos.1 to 3/State.
Mr. Manoj Patil for respondent Nos.4 to 8.

CORAM : AMIT BORKAR, J.

DATED : MARCH 19, 2024

P.C.:

1. The challenge in this writ petition is to the order dated 20 November 2018 passed by the Joint Charity Commissioner in Miscellaneous Application No.60 of 2018 filed under Section *41D* of the Maharashtra Public Trusts Act, 1950 ("the said Act" for short).

2. The respondents who claim to be persons interested within the meaning of Section 2(10) of the said Act filed an application under Section *41D* before the Joint Charity Commissioner. By the impugned order, the Joint Charity Commissioner directed that before *taking an action* under Section *41D*, it is necessary to conduct audit of the petitioner No.1/Trust and, therefore, he directed audit of petitioner No.1/Trust. The said order is the subject matter of the present writ petition.

3. On perusal of the application under Section *41D* filed by the respondents, it appears that the principal allegations are based on a report of an Inspector appointed by the Office of the Assistant Charity Commissioner. Other allegations made in the application also need an inquiry under Section 41B.

4. The grievance of the petitioners is that while exercising power under Section *41D*, the Charity Commissioner need to ascertain whether ingredients of Section 41B have been prima facie complied with and necessary inquiry into the fulfillment of ingredients of Section 41B have been satisfied, or not. Such inquiry need to be based on either application of a Trust or any person interested in the Trust or on receipt of report under Section 41B or suo motu. Under Section 41B, the Charity Commissioner is conferred with power to institute inquiries.

5. The power to conduct special audit is independently conferred on the Charity Commissioner under Section 33(4) of the said Act. If the Charity Commissioner is satisfied in the facts of the case that special audit is necessary in the interest of the Trust, it is always open for the Charity Commissioner to direct special audit of the accounts of any Public Trust. *However, while taking an action under Section 41D, it is not necessary for the Charity Commissioner to conduct audit and then proceed to take action under Section 41D of the said Act.*

6. In the facts of the case, considering the allegations made by the *respondent Nos.4 to 8* based on report of the Inspector, it was necessary for the Charity Commissioner to hold an inquiry as per the allegations made in the application. The direction to conduct audit deserves to be set aside. Hence, following order:

a) *The impugned order is modified to the extent it directs conducting audit before taking an action under Section 41D*;

b) The Charity Commissioner shall conduct inquiry under Section 41B on the allegations and material stated in the application;

c) It is made clear that it shall be open for the Charity Commissioner to conduct audit in exercise of power under Section 33(4) of the said Act, if circumstances so required.

7. With this clarification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 2 April 2024. The corrections are shown in italicize.