2024:BHC-NAG:8761

IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 340 OF 2024

1) Smt. Ushakiran Arun Thute,
aged about 69 years,

2) Shri Pandurang Dadaji Dakhore (Dead)

3) Shri Janrao Chandrabhanji Raut (Dead)

4) Baba Chandrabhan Shegaonkar,
aged about 73 years,

5) Vitthal Govindrao Awachat,
aged about 71 years,

6) Rajaram Ganpati Kumbhalkar,
aged about 69 years,
R/o. Madgaon, Samudrapur,
Tah. Samudrapur, Dist. Wardha.

7) Smt. Suman Manohar Patil,
aged about 83 years,
R/o. Ramnagar, Hinganghat,
Tah. Hinganghat, Dist. Wardha.

8) Ajay Babarao Rithe,
aged about 55 years,
R/o. Matamandir Ward, Hinganghat,
Dist. Wardha.

9) Aashirwad Arun Thute,
aged about 48 years,

10) Smt. Vanita Vasantrao Tadas (Dead).

Nos. 1, 4, 5 to 10 R/o. Shri Sant
Tukdoji Ward, Hinganghat,
Dist. Wardha. .... **APPELLANTS**

// **VERSUS //**

1) Joint Charity Commissioner,
Near G.P.O., Civil Line, Nagpur-01.

2) Shobhatai Krishnarao Zoting (Dead)

3) Sau. Asha Prakash Raut,
aged about 67 years.

4) Vinayakrao Suryabhanji Bonde,
aged about 86 years,
R/o. Hinganghat, Dist. Wardha.

5) Dr. Nisha Krishnarao Zoting,
aged about 64 years,

Nos.3, 5 R/o. New Malika Apartment,
Flat No.201, IInd Floor, Cement Road,
Shivaji Nagar, Nagpur-440010.

6) Dr. Sudha Sanjay Sakhare,
aged about years.
R/o. Ramnagar, Hinganghat,
Tah. Hinganghat, Dist. Wardha.

.... **RESPONDENTS**

Mr. R. L. Khapre, Senior Advocate a/b Mr. Vijaykumar Paliwal, Advocate for Appellants.
Mr. P. P. Pendke, Assistant Government Pleader for respondent No.1.
Mr. S.V. Manohar, Senior Advocate a/b Mr. S.D. Abhyankar, Advocate for Respondent Nos.3 to 5.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 25.06.2024.
DATE OF PRONOUNCING THE JUDGMENT : 26.07.2024.

JUDGMENT.

1. This appeal is preferred against the judgment and order passed by Joint Charity Commissioner, Nagpur in Application No.214 of 2016, dated 27.02.2024. It was an application under Section 41-D of the Maharashtra Public Trust Act, 1950 (for short, the "MPT Act"). The parties are referred to their original status as per Application.

2. The brief facts of the application are as follows :

(a) The applicants and respondents are the Members of Public Trust viz. 'Gramin Vikas Sanstha, Hingangh, District Wardha' having P.T.R. No. F-72 (Wardha) (for short, the "Trust"). It is alleged that though, there was no permission of the Trust authority under Section 36 (1)(a) of the MPT Act, they have changed the immovable properties of Trust by constructing commercial shops committing breach of the order of the Joint Charity Commissioner (for short the "JCC") dated 25.06.2003, who rejected an application for permission for development of the Khasra No.167 and 168 situated at Wardha, which belongs to Trust. Said acts of the respondents were malfeasance and misfeasance misusing their power and property of the said Trust.

(b) The applicants further contended that an Application No.1/1990 was filed against the respondents for their removal/dismissal of trusteeship and during pendency of inquiry, appointment of body of fit persons under Section 41-D of the MPT Act. The Authority allowed the said application on 11.03.2004. The respondents were removed from the trusteeship of the said Trust and appointed Body of 'Fit Persons'. It was challenged by Writ Petition No.1768 of 2004. The said writ petition was dismissed. Thereafter, they challenged that judgment of writ petition by filing L.P.A. No.19 of 2004, before the Hon'ble Supreme Court. It was also dismissed.

(c) The Trust authority appointed five members Committee for looking after the affairs of the Trust. Thereafter, respondents conducted the election of Trust. They filed change report before the Assistant Charity Commissioner, Wardha that they won the election. The said change report was rejected. Said order was challenged by filing an appeal, it was allowed. The respondents took charge of the administration of the Trust. They were not administering Trust properly. They are not filing audit reports and budgets to the office of the Public Trust, Wardha with an intention to misappropriate the funds of the said Trust.

(d) The applicant No. 4 was appointed as a 'fit person' by the Trust authority, who filed an application bearing No.32/2002 for granting permission to develop the commercial complex in the property of the Trust bearing Khasara No.167 and 168 under Section 36 (1)(a) of the MPT Act. The respondents 1 and 4 filed objection to it and took stand that the said land was donated for the purpose of school's building, play ground and for welfare of the students and there is no need to develop the said properties of Trust by building commercial complex. Therefore, permission was refused by the Trust authority. The respondents were having knowledge about the refusal of the permission from the Trust Authority. However, they illegally constructed 20 shops in the said property, which are leased out without permission. The rent is misappropriated and only formal entries have been shown in the credit of the Trust. The respondents are not managing the said Trust properly. They have failed to administer the affairs of Trust honestly. It is lastly prayed to dismiss their trusteeships of the said Trust.

3. On the basis of above allegations, Article of Charge was served and charge was framed against the respondents as follows :

> *"You Non-applicant No.1 to 10 severally and jointly disobeyed the lawful order passed by the then Joint*

> *Charity Commissioner, Nagpur on 25.06.2003 in Application No. 32/2002 under Section 36 (1) (a) (c) of the Bombay Public Trust Act, 1950 by constructing shops blocks on the trust property in spite of the prohibition and thereby, committed default as contemplated under Section 41-D (1) (b) of Maharashtra Public Trusts Act, 1950."*

4.(a) Respondent Nos.1, 3, 5, 6, 7 and 10 denied the charge and material contentions raised in the application. They contended that applicant No.4 is not a member of the Trust as per Section 2 (10) of the MPT Act. She cannot filed such application. The applicant Nos.1, 2 and 3 are the members of General Body of the Trust. The respondents are properly administering and managing the day to day transaction of the Trust. The schools are properly and smoothly working. The applicants were not elected in the election of Trust, therefore, they made false allegations and application against the them. The *ad-hoc* body appointed by the then Trust Authority did not manage the affairs of the said Trust properly. The respondents have submitted audit statements regularly in the office of Public Trusts, Wardha. The audit report up to 31.03.2016 are filed in the said office. There is no any mismanagement in the administration, as alleged, in the said Trust.

(b) The respondents contended that the applicants were *ad-hoc* trustees in the Trust for some period, but they have not given any account or vouchers of expenditure for the said period. When the action was taken against the concerned Clerk by issuing show cause notice dated 24.06.2003, for delay in filing audit, thereafter the audit report for the year 2008-09 to 2014-15 are submitted in the said office.

(c) The respondents lastly contended that in the year 2013, the Resolution was passed in the meeting of executive committee for construction of shops/blocks for the income of the said Trust in order to fulfill the objects of the Trust. After passing of the another Resolution, the shops/blocks are leased out for 11 months. The Minutes of the Meeting were confirmed in the General Body meeting dated 11.06.2014. The elected Committee of respondents is managing day to day affairs of the Trust since 2005 onwards. Therefore, the respondents prayed to dismiss the application.

5. The respondent Nos.1 and 4 to 10 are held liable for their alleged illegal acts. The learned JCC allowed the application and thereby respondent No.1 and 4 to 10 are dismissed permanently from the post of trusteeships of the said Trust and appointed Smt. Shital

Kavalkar as a fit person for looking after and managing day to day affairs of the said Trust.

6. The grounds of objection of this appeal are that the learned JCC erred in law and facts. False charges is framed against the respondents. The impugned judgment is illegal, perverse and against the Rules and Regulations of the Trust. The impugned judgment is illegal because applicant No.4 is not a member of the Trust as per Section 2 (10) of the MPT Act. The learned JCC did not consider the fact that audit statements are filed in the office of Public Trusts Registration Office, Wardha. The learned JCC also failed to consider that applicant No.4 was *ad-hoc* trustee i.e. appointed for time being and she has no legal right to file complaint because she is stranger. The judgment and order passed by the learned JCC is illegal and not sustainable. The order dated 25.06.2003 at Exhibit 78 was result of the application filed by applicant No.4 when she was also an *ad-hoc* trustee for development of the Trust property. The said order was not passed against these respondents, therefore, no question of violation of it arises. For the purchasing of some equipment for laboratory etc., the Government is not providing money, therefore said Trust raised funds. Thus, for raising funds, they have constructed shops/blocks and given it on rent. There is no any

illegality on the part of respondents and, therefore, the action for wrongful gain and not following the directions of the Charity Commissioner under Section 41-D of the MPT Act, is not sustainable and it is out of jurisdiction of the JCC. The reasons and findings in the impugned judgment are not legal and correct. The learned JCC failed to appreciate the evidence as well as rules and regulation of the said Trust. It is lastly prayed to quash and set aside the impugned judgment and reject the Application No.214/2016 filed by applicants.

7. The learned Senior Advocate Mr. Khapre for the respondents/appellants, pointed out the above raised grounds of objections along with case laws relied upon by him. He submitted that impugned judgment and order is harsh having serious consequences. He prayed to allow the appeal by setting aside the impugned judgment.

8. The learned Advocate for the appellants is relying upon the following authorities :

(i) ***Shri Dhanraj Natthuji Kale & Ors. Vs. Shri Govindrao Laxmanrao Choudhary & Ors.***, reported in ***2012(7) ALL M.R. 294***, in which para No.6 reads as under :

*"**6**. The charge regarding sale of land without the permission of Joint Charity Commissioner is said to have been proved. Ignoring the contention raised by Shri Thakre, the learned counsel for the appellants, that the trust had in fact purchased equal area of land after sale of the land of the trust for convenience, in my opinion, it was the duty of the Joint Charity Commissioner to make an investigation about the sale and purchases, if any, of the land either by sending inspector of the trust or by some other mode to find out the correct position. Whether the sale price of the land sold was accounted for or not was again a matter of investigation since it is contended before me that with the said amount some other land was purchased. In the absence of any investigation, merely relying on the copies of the sale deeds filed on record before him and straightway holding that the charge about sale of land of the trust was proved, the Joint Charity Commissioner could not have made the impugned order. It is true that the charge that the land of the trust was sold without permission of the Joint Charity Commissioner, is a serious charge. But then upon investigation if it is found that some other land has been purchased, which is convenient for the management by the trust, the gravity of the charge would certainly differ and some workable arrangement could have been made by the Joint Charity Commissioner in that situation by issuing direction under section 41-A of the Bombay Public Trust Act. Further, it is settled legal position that sale of the land without prior permission of the Joint Charity Commissioner becomes void-ab-initio and does not bind the trust. That being so, in the absence of any proper investigation and taking into consideration all the above factors, I do not think that it could be said that the Joint Charity*

> *Commissioner followed the required procedure before making the order of removal of trustees.*"

(ii) ***Vijubhai Patel & Anr. Vs. The Charity Commissioner, Maharashtra State & Ors.***, reported in ***1990 SCC OnLine Bom 94***, in which in para No.71, it is held as under :

> *"……..In the case of removal of a trustee the Court should be guided by considerations of the welfare of the trust estate, and before a removal of the trustee is directed, a clear necessity for the intervention of the Court to save the trust property must be established. It is not every mismanagement or neglect of duty which will induce the Court to remove a trustee. There must be such gross negligence or misconduct as to evidence a want either of capacity or of fidelity which is calculated to put the trust in jeopardy. Failure in the discharge of duty on account of mistake or misunderstanding is not a ground for removal unless such failure shows want of capacity to manage the trust. A trustee may be removed if he fraudulently misapplies the revenues of the trust property and grossly misbehaves himself in the execution of the trust for example, if he renews a lease for his personal benefit, purchase the trust property, concurs in a breach of trust, asserts a hostile title with knowledge that it was unfounded, fails to keep accounts, wrongfully alienates trust property, obstructs the management and wanted only to waste the estate."*

(iii) ***Mallikarjunappa S/o Sidramappa Bidve & Ors. Vs. Joint Charity Commissioner, Maharashtra State, Mumbai & Ors.***, reported in ***2008(1) Mh.L.J. 148***, in which it is held that unless the lapse on part of the trustee is proved to be actuated by dishonesty or active connivance with other trustees, who are guilty of misfeasance or malfeasance, the drastic action under Section 41-D of the Bombay Public Trust Act, may not be warranted.

(iv) ***Shyamlal Vs. State of U.P. & Anr.***, reported in ***AIR 1954 SC 369***, in which it is held that the word "removal" which is used in the rules is also used in this clause and it may safely be taken for reasons stated above, that under the Constitution removal and dismissal stand on the same footing except as to future employment. In this sense removal is but a species of dismissal. Indeed, in our recent decision in – '*Satischandra Anand v. Union of India, AIR 1953 SC 250* at page *252 (D)* it has been said that these terms have been used in the same sense in Article 311.

(v) ***Mukund Waman Thatte Vs. Sudhir Parshuram Chitale & Ors.***, reported in ***2012(5) Bom.C.R. 545***, in which para 27 reads as under :

> *"**27**. It is thus clear that imputation reflecting on the integrity of the trustees have to be fortified by proof of high degree which will have to be higher than the standard of proof required in the civil proceedings. Unless and until the lapse on the part of the trustee is*

> *proved to be actuated by dishonesty, a drastic action under Section 41-D is not warranted. In my opinion, the Charity Commissioner has considered the entire evidence available on record and has, thereafter, reached an appropriate decision that the case for drastic action for removal of the trustees had not been made out. No fault can be found with the reasoning of the Charity Commissioner in the impugned order. I entirely agree with the view expressed by the Charity Commissioner that the errors committed by the trustees were not so severe so as to warrant their removal. There is no merit in the writ petition and the same will have to be dismissed."*

(vi) ***The Bombay Diocesan Trust Association Pvt. Ltd. & Ors. Vs. Rev. Dr. P. B. Amolik & Ors.***, reported in ***2017 SCC OnLine Bom 2559***, in which it is held that the Legislature, was perhaps conscious of the absence of such provision and with a view to remedy such mischief, the Bombay Public Trust (Amendment) Ordinance 1997 (1997 Ordinance) was promulgated in order to insert sub-sections 7 and 8 in section 41D of the MPT Act.

9. Nobody will dispute the *ratio* laid down in the above authorities submitted on behalf of the appellants. However, it is well settled that each case has to be decided on its own merit and facts of the particular case are always decisive.

10. The learned Senior Advocate for the applicants (respondents in this appeal) submitted that a Writ Petition No.982 of 2020 was filed by the respondents against applicant No.4 alleging that she has no *locus standi* to file said proceedings under Section 41-D of the MPT Act. However, it was dismissed on merit. Admittedly, said decision is not challenged in the higher Court by the respondents, thus it has reached to finality. Thus, there is no question of *locus standi* of the applicant No.4 arise for determination. The respondents have not denied alleged illegal construction in the properties of Trust. They have no any legal justification for the said illegal construction. It is lastly prayed to dismiss this appeal.

11. The following point arises for determination :

(i) Is the impugned judgment illegal and require interference?

12. Perused the judgment of the trial Court as well as oral and documentary evidence of both sides submitted on record.

13. To prove the Article of Charge, the applicants have examined two witnesses. Dr. Nisha Zoting (A.W.1) proved an order at Exhibit 78, by which the permission to construct the blocks/shops under Section 36 (1)(a) of the MPT Act was rejected by the authority.

She was mainly cross-examined on the point that she is not member of the Trust. She contended that she was appointed as 'fit person' by the learned JCC, that time the respondents were elected as managing committee members.

14. The applicants also examined Smt. Asha Raut (A.W.2), applicant No.2, who is not cross-examined by the respondents as 'no evidence' order is passed against her. She has specifically alleged that respondents constructed shops in the properties of the said Trust without permission of the JCC.

15. To disprove the evidence of the applicants, respondent No.1 Smt. Ushakiran Arun Thute (R.W.1) adduced her evidence by filing an affidavit of chief-examination. She denied all the allegations raised against the respondents. In her cross-examination, she admitted that shops are constructed in the Khasara Nos.167 and 168, which were belonging to the Trust without taking prior permission of the Trust Authority as per Section 36 of the MPT Act. It is further admitted that the said shops are given on rent, for that also permission of Trust Authority is not taken. She admitted that rent-agreement (Article-B) dated 06.05.2016, which is signed by her as a President. She further admitted that by an order below Exhibit-26,

the respondents were directed to file quarterly statements regarding withdrawal of non-grant salary and payments made out it to the Trust authority. But no such directions were followed. The learned JCC in its reason observed that applicant No.4 is not a member of the Trust, however, applicant Nos.1 to 3 are the members of the Trust, which is not denied by the respondents. The evidence on record particularly Exhibit 78, the application for permission to develop the Trust properties bearing Khasara Nos.167 and 168 was rejected. However, admittedly, the permission of the Trust authority as per Section 36 (1)(a) of the MPT Act was not taken. It is not disputed by the respondents that they constructed the shops in the said properties of Trust without permission of the Trust Authority. The rent-agreement at Exhibit-87 shows that shops were leased on rent, which shows that they admitted the charge against them. The respondents have not followed the procedure prescribed by law for taking permission of JCC, Wardha. However, when the application for permission was rejected, it was duty of the respondents to file a writ petition against the said order as provided by law or they would have applied freshly for the permission for development and construction. On the contrary, they illegally proceeded to construct the shops in the said property without permission of the Trust Authority. Their said act and conduct certainly establishes that it was their serious misconduct i.e. malfeasance and misfeasance.

16. The overt act of respondents is that they changed the nature of Khasara Nos.167 and 168 by raising 20 shops is not disputed by the respondents. On the contrary, they have tried to justify it. They have not taken necessary permission as per Section 36 (1)(a) of the MPT Act of the Charity Commissioner for development of the said property of Trust. Even, *ex post facto* permission is also not taken after filing of application against them for taking action under Section 41-D of the MPT Act. They have not explained as to how the amount required for construction was raised. If such illegal activities are permitted to be continued and the respondents are exonerated from the legal liability provided under Section 41-D of the MPT Act for their mischief, then there will be no any fear in the mind of the trustees like respondents to do such illegal acts without following the law, particularly Section 36(1)(a) of the MPT Act. Their actions of raising the construction in the properties of the Trust are illegal and there is no any legal justification for their said illegal acts. They have admitted that they made the said construction without permission of JCC, Wardha. Therefore, their defence cannot be accepted that an order at Exhibit 78 rejecting the application of

applicant No.4 Nisha Zoting, who was *ad-hoc* trustee appointed by the Court, which was not passed against them and not known to them. It is not ground to exonerate them from the liability of their misconduct. Their joint misconduct is thus sufficiently proved and there is no legal reason for interference in the impugned judgment and order. There is absolutely no justifiable reasons to discharge them from their legal liability for their misconduct. They failed to follow the object of Trust. On the contrary, they have acted against the object and principles of Trust. They have not also followed an order of the learned JCC to submit the three monthly report in the office of the Charity Commissioner during hearing of said proceeding. Therefore, the case laws cited *supra* on behalf of respondents/appellants are not useful for them to discharge them from the liability of misconduct. The judgment and order passed by the learned JCC dismissing them permanently from the post of trusteeship of the Trust of 'Gramin Vikas Sanstha, Hingangh, District Wardha' having P.T.R. No. F-72 is found just and reasonable. No lenient view can be taken against them as submitted by their learned Senior Advocate.

17. The appointment of 'fit person' is also legally justified. There is no substance in the grounds of objections of this appeal.

Hence, the point No.(i) is answered 'negative'. For the reasons stated above, the argument of the learned Senior Advocate is not acceptable. The appeal deserves to be dismissed. Hence, the following order :

(i) The appeal is **dismissed**.

(ii) No order as to costs.

18. The appeal is **disposed of** accordingly.

(SANJAY A. DESHMUKH, J.)

Learned Senior Advocate Mr. R. L. Khapre for the appellants seeks eight weeks time for preferring the appeal before the Hon'ble Supreme Court of India. Learned Advocate for the respondents has strongly objected.

Considering the peculiar set of facts, it would be proper to stay the execution and operation of the impugned judgment. Therefore, stay granted by this Court is continued for further eight weeks.

(SANJAY A. DESHMUKH, J.)