



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.845 OF 2024
WITH
CIVIL APPLICATION NO. 2932 OF 2024
IN FA/845/2024

1. Mr. Pravin S/o Indarchand Rathod,
Age : 41 Years, Occu. : Service,
R/o Bramhani Garada, Tq. Kannad,
Dist. Chhatrapati Sambhajinagar.
2. Mr. Sandip S/o Indarchand Rathod,
Age : 32 years, Occu. : Service,
R/o Bramhani Garada, Tq. Kannad,
Dist. Chhatrapati Sambhajinagar. ... **Appellants**
(Orig Applicants)

VERSUS

1. The Joint Charity Commissioner,
Chhatrapati Sambhajinagar Region,
Chhatrapati Sambhajinagar.
2. Mr. Punamchand S/o Gurudayalsing Rathod,
Age : 58 years, Occu.: Service,
R/o Bramhani Garada, Tq. Kannad.
Dist. Chhatrapati Sambhajinagar. ... **Respondents**
(Orig Respondents)

...
Advocate for Appellants : Mr. P. D. Bachate h/f Mr. Khot A. D.
AGP for Respondent/s-State : Mr. D. B. Bhange.
Advocate for Respondent No.2 : Mr. Amol D. Lipne.
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CORAM : SHAILESH P. BRAHME, J.
DATE : 13.06.2025

ORAL JUDGMENT :-

1. Learned counsel tenders on record affidavit-in-reply.

2. Heard both sides finally at the admission stage.
3. Appellants have approached this Court against order dated 02.02.2024 passed below Exh.4 in application No.18 of 2023 rejecting their application for temporary injunction restraining respondent No.2 from posing himself to be the Secretary of Trust in question. Parties have rival claims for the office and administration to the trust namely “Kai, Gurudayalsing Rathod Magasvargiya Shikshan Sanstha, Bramhani Garada, Taluka Kannad, District Chhatrapati Sambhajinagar. The substantive application No.18 of 2023 filed by the appellants under Section 41-E of Maharashtra Public Trusts Act (hereinafter referred to as “Act” for the sake of brevity and inconvenience) is still pending before Joint Charity Commissioner, Chhatrapati Sambhajinagar.
4. It’s a case of the appellants that they are office bearers of the trust in question. Respondent No.2 was member of the trust and Secretary. The last change report was for the period of 2021 to 2026 bearing Change Report No.159 of 2021 and it was approved on 13.08.2021. The activities of respondent No.2/Secretary were detrimental to the interest of the trust and appellants were constrained to take decision to remove

him from the membership as well as secretaryship. According to that, in pursuance of the requisition from the members of the trust, agenda was issued on 30.01.2023 and a meeting was conveyed on 11.02.2023. In the meeting, resolution was passed removing respondent No.2 from the membership as well as secretaryship. Thereafter, in general body meeting conveyed on 02.03.2023, new Secretary was appointed i.e. applicant No.1 Pravin Indarchand Rathod. A Change Report No.104 of 2023 is submitted which is subjudiced before the competent authority.

5. Learned counsel Mr. Bachate appearing for the appellants submits that respondent No.2 ceased to be member as well as secretary of the trust from 11.02.2023 and despite that he is making representations to the various authorities in the capacity of secretary. The representations placed on record to show that administration of the trust is hampered because of the misrepresentations and obstacles of the respondents. It is submitted by learned counsel that respondent No.2 did not challenge his removal before the competent authority. Unless his removal is quashed by the competent authority, it is not permissible for him to pose himself as a Secretary.

6. The trust runs two schools and hostels which are amenable to the grants and therefore there is surveillance and check of the Government authorities on the administration of the trust. Because of the conduct of respondent No.2, the administration is hampered which was a cause for approaching Joint Charity Commissioner by application No.18 of 2023 under Section 41-E of the Act.

7. Learned counsel would further submit that learned Joint Charity Commissioner committed error of jurisdiction in devoting impugned order mainly to the point of the validity of the removal of respondent No.2 which was not fact in issue. The findings recorded by Joint Charity Commissioner are extraneous for considering the relief sought by the appellants. He would further urge that finding recorded in paragraph No.17 is against law laid down by the High Court in the matter of Chembur Trombay Education Society and others Vs. D. K. Marathe and others.

8. Per contra, Mr. Amol Lipne appearing for respondent No.2 would repel the submissions of the appellants on the basis of the affidavit-in-reply. He would submit that respondent No.2 is actively administering the trust in the capacity of

members since 1991 and he was approved as a Secretary for the period of 2021 to 2026. It is submitted that appellants wanted to take over the management. To exclude respondent No.2 arbitrary action was shown to have been taken vide resolution dated 11.02.2023. It is submitted that there was no transparency in the administration that and appellants are responsible for that. They made illegal appointments. Respondent No.2 made complaint to the competent authority against the appointments. He would point out that agenda of the meeting dated 30.01.2023 does not spell out subject of removal of respondent No.2. The venue of the meeting was deliberately kept at the residence of the appellants. No opportunity was given to respondent No.2. He would further submit that respondent No.2 is performing his duty as per bye-law No.12.

9. I have considered rival submissions of the parties. Present appeal is directed against rejection of interim application for injunction. Substantive application under Section 41-E is pending before Joint Charity Commissioner.

10. A resolution was passed on 11.02.2023 preceded by agenda dated 30.01.2023, removing respondent No.2. The bye-

law pressed into service discloses provision for removals of member vide Rule No.16. Thereafter, appellant No.1 is appointed as a Secretary and change report is submitted which is pending. The removal of respondent No.2 has not been questioned before the competent Court. The contents of the affidavit-in-reply, submissions of the learned counsel for respondent and the findings recorded by the Joint Charity Commissioner are focused on arbitrariness and illegality committed by the appellants in terminating the membership or secretaryship. Unless the removal is challenged before the Competent Forum, neither this Court nor the Joint Charity Commissioner are competent to deal with the said issue. It would be open for respondent No.2 to challenge the removal. Unless and until his termination is either stayed or quashed by the competent authority, he cannot pose himself to be the Secretary of the trust.

11. Respondent No.2 has been terminated from the membership and new person has been appointed. A change report No.104 of 2023 is subjudiced. The change has already taken place, rightly or wrongly and that would be the subject to the decision of competent authority under Section 22 of the Act. Therefore, new Secretary has been in place and *prima*

facie respondent No.2 has no authority to pose himself to be the Secretary.

12. The correspondence placed on record by the appellants made by respondent No.2 to the Bank and various Authorities would be misrepresentation because he ceased to be the Secretary of the trust.

13. Respondent No.2 would be at liberty to approach competent authority and solicit appropriate orders challenging his termination. I do not propose to express any opinion regarding validity of his termination and that would be left to the discretion of the competent authority. However, it needs to be clarified that respondent No.2 cannot pose himself to be the Secretary of the trust unless and until effective orders are solicited from the competent authority.

14. First appeal is allowed partly.

15. Judgment and order dated 02.02.2024 passed by the Joint Charity Commissioner below Exh.4 in application No.18 of 2023 is quashed and set aside.

16. Respondent No.2 shall be at liberty to agitate removal/termination of his membership or secretaryship before the competent authority and all points are kept open.

17. Unless and until the termination/removal of respondent No.2 is stayed or quashed and set aside, respondent No.2 is restrained from claiming himself to be Secretary or the member of the trust and restrained from representing so.

18. Pending civil application stands disposed of accordingly.

(SHAILESH P. BRAHME, J.)

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