



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1679 OF 2022 WITH
CIVIL APPLICATION NO. 11494 OF 2022
WITH CIVIL APPLICATION NO. 11163 OF 2023
WITH CIVIL APPLICATION NO. 11857 OF 2024

Raosaheb Haribhau Bhosale And Others

VERSUS

Shivaji Baburao Shinde And Others

WITH

WRIT PETITION NO. 14871 OF 2021

Kalyan S/o Shripati Sawant And Another

VERSUS

Shivajirao S/o Baburao Shinde And Others

- Mr. V. D. Sapkal, Senior Advocate i/by Ms. S. T. Jadhav, Advocate for the Petitioners in both Petitions
- Mr. N. L. Jadhav, Advocate for Respondent No. 1
- Mr. N. P. Patil Jamlpurkar, Advocate for Respondent No. 2 in WP/1679/2022
- Mr. R. C. Bramhankar, Advocate for Respondent No. 2 in WP/14871/2021 & for Respondent No. 3 in WP/1679/2022
- Mr. D. J. Choudhari, Advocate for Respondent No. 4
- Mr. d. B. Bhange, AGP for the Respondent Nos. 5 to 7/State

CORAM : R. M. JOSHI, J
RESERVED ON : MARCH 28, 2025
PRONOUNCED ON : APRIL 07, 2025

ORDER:

1. These Petitions take exception to the order dated 04.03.2016 passed by the Assistant Charity Commissioner, Beed (for short 'ACC') in Miscellaneous

Enquiry No. 924/2019 and order passed by the Joint Charity Commissioner, Latur (for short '**JCC**') dated 04.04.2019 in an application filed under Section 47 of the Maharashtra Public Trusts Act, 1950 (for short '**the Act**') being Enquiry No. 44/2016 and order dated 10.01.2022 passed in Revision Application No. 69/2021 taking exception to the order dated 04.03.2016 passed by the ACC.

2. The parties herein have checkered history of enormous litigation between them in respect of achieving control over Shri. Bankat Swami Shikshan Sanstha Khadki Ghat, Tq and Dist. Beed (for short '**the Trust**'), a public trust registered under the provisions of the Act. Without getting into the details in respect of previous proceedings, it would be necessary to take note of certain relevant proceedings and orders passed therein in order to appreciate the submissions of rival sides.

3. From dispute arising out of the proceedings under Section 41-D of the Act, LPA bearing No. 188/2009 came up before the Division Bench of this Court. This Court by order dated 02.08.2014 had issued following

directions:

- [i] LPA stands disposed of with directions to the Joint Charity Commissioner to decide the pending proceedings under Section 41-D of the Act, expeditiously, and preferably within nine months.*
- [ii] Interim orders passed in the LPA and the writ petitions/civil applications shall be continued till the disposal of the proceedings under Section 41-D of the Act.*
- [iii] The concerned Assistant Charity Commissioner shall verify the veracity of the list of members and then shall take further steps to hold elections of Bankatswami Shikshan Sanstha, Khadki Ghat, Taluka & District Beed, expeditiously, after considering the objections to the said list, if any.*
- [iv] The list of members is filed by the appellant in LPA. Said list be submitted to the Assistant Charity Commissioner, Beed, within a period of 3 weeks from today. The respective parties are entitled to file their objections, if any. After considering the said objection, the Assistant Charity Commissioner shall decide the about the validity of members, within six months and take steps to hold the elections of the trust.*
- [v] Writ petition No. 10170 of 2012 stands disposed of. All civil*

applications stand disposed of.

Thus, this Court has issued directions to the ACC to verify the veracity of list of members and direction was given to take further steps to hold elections of the Trust after considering the objection to the said list. Pursuant to the said directions, Miscellaneous Enquiry No. 924/2014 came to be undertaken by ACC. Both sides appeared before the said Authority. ACC by order dated 04.03.2016 has held as under:

- 1. Only 8 members are valid.*
- 2. The objection petitioners are directed that*
 - A)After seeking permission from competent authority, enroll the new members from the interested persons of the trust.*
 - B)By appointing election officer, election be conducted from the valid members of the trust within two months and file the respective change before this authority within stipulated period.*
- 3. No order as to costs.*
- 4. Entries be made in schedule 1 accordingly.*

ACC, therefore, has held that there are only 8 valid members of the Trust. There is a finding recorded in paragraph 21 of the said order to the effect that as

per the scheme of the Trust, the managing trustees consist 9 members and as 4 members are suspended, it is not possible to hold elections with 4 valid members only unless the enrollment of new members of the Trust is done. In the light of these observations, further direction was issued to seek appropriate permission from the competent Authority for enrollment of new members from the interested persons of the Trust. Consequently direction was given for appointing Election Officer and election to be conducted from the valid members of the Trust.

4. This order passed by the ACC was challenged before the JCC by filing Revision Application No. 69/2021. Respondent therein raised objection with regard to the maintainability of the Revision against the order impugned. JCC framed preliminary issue with regard to the maintainability of the said application by order dated 21.12.2021. The parties were heard on this preliminary issue. This Authority by order dated 10.01.2022 rejected the Revision Application by holding that the same is not maintainable under the provision of Section 70-A of the Act. The said authority recorded

the finding to arrive at the said conclusion by referring to provisions of Section 70-A of the Act, which contemplates maintainability of the Revision against the orders passed under Sections 20, 22, 22A, 28, 30A, 50A and 54 of the Act. It was held that the order passed by ACC dated 04.03.2016 is not an order as contemplated by Section 22A of the Act. With these findings, Revision Application came to be dismissed.

5. In this Petition, Petitioner is taking exception not only to the order passed by Revisional Authority but also in case this Court comes to the conclusion that the Revision is not maintainable, the order dated 04.03.2016 passed in Miscellaneous Enquiry No. 924/2019 is assailed in this Petition. Similarly, exception is taken to the order passed by the JCC in Miscellaneous Application No. 44/2016 filed pursuant to the order dated 04.03.2016 passed by ACC for seeking permission to enroll new trustees by invoking the provision of Section 47 of the Act.

6. Heard learned Counsels for both sides. Carefully considered the submissions as well as the case-laws cited.

7. At the outset, this Court would like to deal with the challenge to the order dated 10.01.2022 passed by the JCC in Revision Application No. 69/2021. This proceeding is filed under Section 70-A of the Act. The power of revision is statutorily provided in the Act and Section 70-A indicates that the said power of Revision can be exercised only in respect of the orders as covered by Section 70 of the Act. Thus, in order to maintain a revision against any order, said order must be finding and order under Sections 20, 22, 22A, 28, 30A, 50A and 54 of the Act and similarly, order under Section 41-E, 50-A, 54, 79(1) and 79-AA of the Act. Thus, in order to maintain a revision, the order passed by the ACC in Miscellaneous Enquiry No. 924/2019 must be any of these orders and no other order.

8. It would be relevant to consider the backdrop in which Miscellaneous Enquiry No. 924/2019 came to be initiated. There is no denial of the fact that under the provisions of the Act, there is no separate enquiry contemplated for determining the status of a member/membership of the Trust. Here in this case, however, Division Bench of this Court in its discretion

by order dated 02.08.2014 considering the peculiarity of the facts of the case has issued directions to the ACC to determine the validity of the membership of the Trust. This order has not been taken exception to by any party, as such it has attained finality. The same, therefore, is binding on all concerned.

9. It is thus clear that the Miscellaneous Enquiry No. 924/2019 came to be initiated on the basis of directions issued by this Court and not on invocation of any provisions under the Act. Apart from this, perusal of the provisions of the Section 20, 22, 22A, 28, 30A, 50A and 54 of the Act indicate that except for Section 22A, the exercise done by ACC can never be said to have been covered by these provisions.

10. It is, therefore, necessary to take into consideration the provisions of Section 22-A of the Act, which reads thus:

22A - Further inquiry by Deputy or Assistant Charity Commissioner

If at any time after the entries are made in the register under section 21, 22 or 28 it appears to the Deputy or Assistant Charity Commissioner that any particular relating to any public trust, which was not

the subject-matter of the inquiry under section 19, or sub-section (3) of section 22 or section 28, as the case may be, has remained to be enquired into, the Deputy or Assistant Charity Commissioner, as the case may be, may make, further inquiry in the prescribed manner, record his findings and make entries in the register in accordance with the decision arrived at or if appeals or applications are made as provided by this Act, in accordance with the decision of the competent authority provided by this Act. The provisions of sections 19, 20, 21 and 22 shall, so far as may be, apply to the inquiry, the recording of findings and the making of entries in the register under this section.

A bare perusal of this provision indicates that the pre-condition for exercise of the powers under this Section is that any particular fact relating to public trust have been remained to be enquired into, then it must be enquired. It is thus clear that provision of Section 22-A cannot be invoked as a original jurisdiction. Thus, by no stretch of imagination it can be said that the order passed by ACC in Miscellaneous Enquiry No. 924/2019 is an order covered by Sections 70 or 70A of the Act. The Revision filed before the JCC against this order, therefore, was not tenable and hence, JCC has rightly rejected the

same. This Court, therefore, finds no reason to cause interference in the order dated 10.01.2022 passed in Revision Application No. 69/2021.

11. Since it is held that Revision is not maintainable, so also in view of the provision of Section 70 of the Act even no appeal would lie against the order passed by the ACC in Miscellaneous Enquiry No. 924/2019, the only remedy available for the party aggrieved by said order is to challenge the same in Writ Petition before this Court. The Writ Petitions, therefore, are entertained in order to consider challenge to the said order.

12. As recorded earlier, the ACC was directed by the Division Bench of this Court to verify the veracity of the list of members and then shall take further steps to hold elections of the Trust. The only requirement for the ACC before ascertaining the validity of the membership was that an opportunity was to be given to the parties and objection to the said list, if any, were to be considered. There is no dispute about the fact that the ACC has taken into consideration the entire relevant record and has dealt

with the same minutely.

13. It is sought to be argued on behalf of Petitioner that it was not open for the ACC to disqualify the members who were appointed at the time of registration of the Trust. This submission sans merit in view of the order passed by the Division Bench. The Division Bench in no uncertain terms has issued direction to ACC to verify the veracity of the list of members and then to hold election. This direction would not have permitted ACC to exclude any member from verification thereof. Since the Petitioner nor any party had challenged the said order before Supreme Court, the parties are bound by the said order. Thus, it is now cannot be permitted to be said that the membership of the originally enrolled members could not have been gone by the ACC. Coming back to the order passed by ACC, perusal of the said order indicates that ACC has not only taken into consideration the scheme of the Trust but also has dealt with the resolutions passed for the purpose of enrollment of the members from time to time. The order in detail deals with each such meeting and resolution and membership of each

person. Petitioners were not in position to point out that findings recorded by the ACC are contrary to the material placed before him. This Court in exercise of writ jurisdiction, in absence of any perversity being shown in respect of said findings, finds that no interference is called therein.

14. Exception was also taken to the order impugned passed by ACC with regard to the direction of appointment of Election Officer and conducting of election. This is said to be contrary to the order passed by the Division Bench. At the cost of repetition if the order of Division Bench is considered, then Clause 3 of the operative part indicates that a direction was given to the ACC to take further steps to hold election. This direction cannot be constructed as conducting election by ACC himself. This Court, therefore, finds no substance in the contention of Petitioner in this regard.

15. In so far as the direction issued by the ACC for moving the concerned authority for enrollment of the new member from the interested persons of the trust is concerned, paragraphs 20 and 21 deals with the issue

and records findings thereon. The said observations are reproduced for ready reference as under:

20. From the perusal of the record, it reveals that, out of 8 valid members, the members namely Shree Raosaheb Haribhau Bhosle, Kundalik Ramrao Bhosle, Ramdas Haribhau Khose, Ashok Rambhau Bhosle are suspended by the Honourable Joint Charity Commissioner, Latur by order dated 02/07/2009 and their suspension is confirmed by the Honourable High Court in W.P. No.4971/2009 by order dated 04/09/2009. As well as the Honourable High Court passed order in Civil Application No.9986/2009 in LPA No.188/2009 on 30/09/2009 as "in the meantime parties to maintain status quo as on today", so also Honourable High Court has passed an order in Civil Application No. 12179/2009, on 22/01/2010 as we are of the clear view that as the present applicant has been appointed as a fit person for the management of the trust, he would be not only a proper party but also a necessary party". As well as the Honourable High Court has passed the order on 2/8/2014 in the above LPA and other Civil proceedings in para no.2, as "interim orders have been passed from time to time and interim arrangements are made", from which it is clear that the fit person which is appointed by the Honourable Joint Charity Commissioner Latur is actually administering the management of the trust, hence though the present applicant no.1 to 4 are valid members of the trust, they have no concern with the management of the trust till the final proceeding under section 41-

D of the BPT Act, 1950 which is pending before the Honourable Joint Charity Commissioner, Latur. So also it reveals from the record that the members namely Amit Laxman Bhosle and Dr. Prakash Eknath Bhosle are shown as trustees in the schedule 1 who are not suspended by the Joint Charity Commissioner, Latur but as per the above reasoning these members are not valid members of the trust eventhough their name shown in the schedule 1 of the trust, hence these persons are also not concerned with the management of the trust.

21. The Honourable High Court has directed to this authority for taking steps in respect of holding the election to the trust, therefore, from the above facts it seems that, there are only 4 valid members to the trust who can take steps to hold the election of the trust. From the observations of the bye laws of the scheme of the trust, it shows that the managing committee of the trust consists of 9 members, therefore, I am of the view that the election of the trust is not possible from 4 valid members of the trust unless enrollment of new members to the trust. Hence I am of the opinion that to complete the quorum of the managing committee by holding the election, it is required to enroll the new members from the interested persons of the trust. Hence, I have come to the conclusion that, for conducting the election it is necessary to issue the direction to the objection petitioners for seeking the permission from the competent authority to enroll the new members from the interested persons of the trust and

then by appointing election officer, the election process be performed with a view that the new managing committee will come into existence to manage the administration of the trust.

16. In order to ascertain whether the said findings are in consonance with the scheme, it would be necessary to take note of provision with regard to the Executive Committee of the Trust. Clause Nos. 15 and 16 of the scheme reads thus:

१५. कार्यकारी मंडळाची रचना: कार्यकारी मंडळ ९ जणांचे राहिल त्या मध्ये अध्यक्ष, उपाध्यक्ष, सचिव, सहसचिव, कोषाध्यक्ष, व ४ सभासद राहतील.

१६. कार्यकारी मंडळाची निवड : कार्यकारी मंडळाच्या ९ सभासदांची निवड दर ५ वर्षांनी सर्वसाधारण सभेमध्ये होईल. निवडूण आलेले सभासद आपल्यामधून पदाधिकारी निवडतील.

17. This indicates that there cannot be Executive Committee of the trust but for 9 members. Once ACC has held that there are only 8 valid members, necessity has arisen for appointment of the minimum required number of members in this regard. Here, however, this Court would like to take note of subsequent events occurred after order passed by ACC, which is reflected from the order dated 04.04.2019 passed in Enquiry No. 44/2016. The relevant portion of the said order is reproduced as

under:

12) Learned counsel for the respondents further argued that the previous enquiry application filed at applicant No.1 under section 47 of the said Act bearing No.40/2016 is withdrawn and enquiry No.7/2009 filed under section 41-D of the said Act filed against the respondents is dismissed and no any trustee is suspended. It is true to say that application No.40/2016 is withdrawn and it is disposed of by this authority on 15.02.2019. It is needless to say that enquiry No.7/2009 under section 41-D of the said Act is also dismissed by this authority by judgment dated 07.01.2019 and temporary suspension order dated 02.07.2009 passed against some of the respondents is vacated. That means, the respondents, who were trustees of the trust, are still members of the trust and it is not safely said that there is no any body to look after the day to day affairs of the trust though the issue of membership is still pending and under adjudication. Therefore, this argument also cannot be ignored here.

18. This indicates that the issue of suspension of 4 members, which was subjudice at the relevant time, is no more an issue in view of the dismissal of the proceeding under Section 41-D of the Act or withdrawal thereof. Suffice it to say that after the order passed by ACC instead of 4 valid members available for

conducting elections, 8 valid members for conducting elections needs to be considered. Thus, in any case the total required membership fall short by at least 1 member. In the light of these facts, it is necessary to consider the order passed by JCC in proceedings under Section 47 of the Act being Enquiry No. 44/2016.

19. In Enquiry No. 44/2016 the contesting Respondents therein had moved an application for dismissal of the proceedings. JCC, by order passed below Exh. 1 and 42 dated 04.04.2019, dismissed the application. It is held by JCC that Section 47 of the Act is not a proper remedy for appointment of the Trustees. Similarly, it is held that Section 47 provides for powers of Charity Commissioner to appoint new Trustees in the eventuality those are provided in Section 47. At this stage, it is necessary to take note of Section 47, which reads thus:

Section 47 - Power of Charity Commissioner to appoint, suspend, remove or discharge trustees and to vest property to new trustees

(1) Any person interested in a public trust may apply to the Charity Commissioner for the appointment of a new trustee, where there is no trustee for such trust or the

trust cannot be administered until the vacancy is filled, or for the suspension, removal or discharge of a trustee, when a trustee of such trust,-

(a) disclaims or dies;

(b) is for a continuous period of six months absent from India without the leave of the Charity Commissioner or the Deputy or Assistant Charity Commissioner or the officer authorised by the State Government in this behalf;

(c) leaves India for the purpose of residing abroad;

(d) is declared as insolvent;

(e) desires to be discharged from the trust;

(f) refuses to act as a trustee;

(g) becomes in the opinion of the Charity Commissioner unfit or physically incapable to act in the trust or accepts a position which is inconsistent with his position as trustee;

(h) in any of the cases mentioned in Chapter III, is not available to administer the trust; or

(i) is convicted of an offence punishable under this Act or an offence involving moral turpitude.

(2) The Charity Commissioner may, after hearing the parties and making such enquiry as he may deem fit, by order appoint any person as a trustee or may also remove or discharge any trustee for any of the reasons specified in sub-section (1).

(3) In appointing a trustee under sub-

section (2), the Charity Commissioner shall have regard--

(a) to the wishes of the author of that trust;

(b) to the wishes of the persons, if any, empowered to appoint a new trustee;

(c) to the question whether the appointment will promote or impede the execution of the trust;

(d) to the interest of the public or the section of the public who have interest in the trust; and

(e) to the custom and usage of the trust.

(4) It shall be lawful for the Charity Commissioner upon making any order appointing a new trustee under sub-section (2) either by the same or by any subsequent order to direct that any property subject to the trust shall vest in the person so appointed and thereupon it shall so vest.

(5) An appeal shall lie to the Court against the order of Charity Commissioner under sub-section (2), as if such order was a decree of a district court as a court of original jurisdiction from which an appeal lies, within sixty days from the date of the order, which shall otherwise be final.

20. This provision is an independent provision which is not subject to any other provision. Purpose behind enacting the said provision is to ensure that the Trust is not allowed to go without being administered. Similarly, in order to exercise the said

powers, any person interested in a public trust may apply to the Charity Commissioner for appointment of a new Trust. Said application can be entertained in case where there is no trustees for such trust or the trust cannot be administered until vacancy is filled. This provision, therefore, enables the Charity Commissioner to appoint new trustees once it is brought to the notice of the Charity Commissioner that trust cannot be administered where there is no trustees or until the vacancy is filled.

21. As observed herein above, the scheme of the trust indicates that there needs minimum 9 members in order to constitute a valid Executive Committee of the Trust which can manage affairs thereof. ACC has held that there are only 8 valid members. Though at the relevant time 4 member were suspended and, therefore, only 4 members were available for conduct of elections, but now there is no impediment for those 4 suspended members to participate in the elections in view of dismissal/withdrawal of proceedings under Section 41-D of the Act. Thus, question now remains as to whether 8 members can administer the trust. Clauses 15 and 16 of

the Trust requires 9 members and as said number falls short by 1, the said contingency is covered by Section 47 of the Act.

22. JCC while passing the order dated 04.04.2019 has failed to take into consideration the said aspect and has proceeded to hold that filing an application under Section 47 of the Act is not a proper remedy for appointment of new trustees. This order is passed also with observations that the Authority himself can appoint new trustees and no permission can be granted to appoint trustees. Once an application was moved by person interested and it is brought to the notice of the Charity Commissioner that appointment of the new trustees is necessary without which trust cannot be administered, it is obligatory on the part of the Charity Commissioner to make such appointment in accordance with law. Thus, the order passed by the JCC dated 04.04.2019 in Enquiry No. 44/2016 is not sustainable.

23. As a result of above discussion, following order is passed:

O R D E R

- a) Petitions stand partly allowed.
- b) Orders dated 04.03.2016 passed in Miscellaneous Enquiry No. 924/2019 passed by ACC as well as order passed by JCC in Revision Application No. 69/2021 dated 10.01.2022 stand confirmed.
- c) Order dated 04.04.2019 passed in Enquiry No. 44/2016 by JCC is set aside. Proceeding of Enquiry No. 44/2016 is relegated back to JCC for appointment of new Trustees in accordance with law.
- d) Considering the long pendency of dispute, JCC is directed to decide the said enquiry within a period of three months from today.
- e) Pending civil application(s), if any, stand disposed of.

(R. M. JOSHI, J.)