IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1722 OF 2024.

Shri Raosaheb Virappa Konkeri, Age-65yrs.]
Secretary, Sadguru Shri Balumama Devalaya]
Opponent No.3]
Admapur, Tal. Bhdargad, Dist. Kolhapur.] **...Appellant.**

Versus

1) Sadguru Shri Balumam Devalaya]
Admapur, Tal: Bhudargad,]
Dist.Kolhapur,]
P.T.R.No. KA4541/Kolhapur]

2) Smt. Ragini Khadke]
Inspector, At Charity Organization]
At Kolhapur and permitted to act as]
Karyadhyaksha]

3) The Charity Commissioner]
State of Maharashtra,]
Woroli, Mumbai]

4) The Government of Maharashtra Law]
and Judiciary Department, Mantralaya,]
Mumbai (Deleted)]

5) The Joint Charity Commissioner]
Kolhapur Region] \
Kolhapur Near Bagal Chowk,]
ICICI Bank Building, Kolhapur]

6) Shri Dhairyasheel Shivajirao Bhosale]
Honarary President, A/P Admapur,]
Tal. Bhudargad, Dist.Kolhapur]

7) Shri Rajaram Bapusaheb Magdum]
Karyadhyaksha of the Trust]
(Dead on 19/02/2023)]
A/P Nartavade, Tal.Bhudargad, Dist. Kolhapur]

8) Shri Govind Dattu Patil (Deleted)]
A/P Metake, Tal. Kagal, Dist. Kolhapur]

9)	Shri Pundlik Hanmappa Hosmani A/P Lingnur, Tal.Mudhol, Dist. Bagalkot (Karnataka)	]]]	
10)	Shri Shivaji Laxman More A/P Aurnal, Tal. Gadhinglaj, Dist.Kolhapur	]]	
11)	Shri Laxman Baburao Hedage A/P Jarali, Tal. Gadhinglaj. Dist. Kolhapur	]]]	
12)	Shri Tamanna Tamanna Masareddi A/P Metagud, Tal. Mudhol, Dist. Bagalkot (Karnataka)	]]]	
13)	Shri Bhikaji Bapu Shingare A/P Rukadi, Tal.Hatkanangale, Dist. Kolhapur	]]]	
14)	Shri Ramanna Timappa Maregudri A/P Halki, Tal. Mudhol, Dist. Bagalkot (Karnataka)	]]]	
15)	Shri Appasaheb Bapurao Pujari A/P Appachiwadi, Tal. Chikodi, Dist. Belgaum (Karnataka)	]]]	
16)	The Sarpanch Grampanchayat of village Admapur, Tal. Bhudargad, Dist. Kolhapur	]]]	
17)	The Police Patil of village Admapur Tal. Bhudargad, Dist. Kolhapur	]]	
18)	Shri Pravin Shamrao Patil A/P Bidri, Tal. Kagal, Dist. Kolhapur	]]	
19)	Shri Ravindra Narayan Patil At Phaye, Post Shengaon, Tal. Gargoti Dist. Kolhapur	]]]	
20)	Shri Hanmant Dattatraya Patil A/P Akurde, Tal. Bhudargad Dist. Kolhapur	]]	**...Respondents**

Mr. Chetan Patil i/b. Mr. Mandar Bagkar, for the Appellant.
Mr. A.R. Patil, AGP for the State/Respondent No.2 to 5.
Mr. Sukand Kulkarni, for the Respondent No.6.
Ms. Seema Chettri A/W. Mr.Mohammed Khalik i/b.
Mr. Nimesh Mehta For Respondent Nos. 18 to 20.

Coram : **Sharmila U. Deshmukh, J.**
Reserved on: April 4, 2025
Pronounced On: May 5 , 2025.

JUDGMENT

1. The present First Appeal impugns the Judgment and Order dated 26th April 2024, passed by the Joint Charity Commissioner in an application filed under Section 41D of the Maharashtra Public Trusts Act (for short "**MPT Act"**) exonerating all trustees except the present Appellant Trustee.

FACTUAL MATRIX:

2. A complaint dated 9th August, 2021 was filed by the Respondent Nos 17 to 19 herein claiming to be devotees and person interested in the Trust, with the Charity Commissioner alleging irregularities and illegalities in the functioning of the Trust. The gist of the complaint is that regular meetings were not being held, new trustees were not being appointed upon vacancy arising due to death or resignation, proper register of donations, properties of Trust are not maintained, the Trust properties are leased/licensed beyond the prescribed period without prior permission of Charity Commissioner, there is misappropriation of Trust property and loss is being caused to the Trust. Upon receipt of complaint, the Charity Commissioner directed the Deputy/Assistant Charity Commissioner assisted by Inspector, to conduct an inquiry into the allegations. Accordingly inquiry was held after following the prescribed procedure and recording statements of all concerned. The Inquiry Committee found substance in the allegations and Inquiry Report was submitted on 16th November, 2021. Direction was issued to Assistant Charity Commissioner to propose action, who proposed proceeding to be registered under Section 41-D of MPT Act and *suo-motu* proceeding was initiated against the Trustees of Respondent No 1 Trust including present Appellant.

3. The present Appellant, who is the trustee and Secretary of Respondent No 1 Trust filed his say on 21st March 2022, apart from other Trustees. The charges which came to be proposed and approved are as under:

a) That you being trustees of Sadguru Shri. Balumama Devalay Admapur, Tal. Bhudargad, Dist. Kolhapur (P.T.R.No-4-4541/Kolhapur) made persistent default in the submission of account reports or return in respect of the said trust.

b) That you being trustees of the aforesaid trust, willfully disobey and lawful orders issued by the Charity Commissioner under the provisions of this Act or rules made there under by the State Government.

c) That you being trustees of the aforesaid trust during the above mentioned period continuously neglected your duty and committed malfeasance or misfeasance or breach of trust in respect of the trust.

d) That you being trustees of aforesaid trust misappropriated or deals improperly with the properties of the trust of which he is a trustee.

4. Vide Order dated 24th April 2023, the trustees were suspended pending adjudication and administrative committee was appointed to manage the Trust affairs. Neither the Complainants nor the Trustees led any evidence. By the impugned Judgment and Order dated 26th April, 2024, the Joint Charity Commissioner, exonerated all trustees, except the present Appellant holding him guilty of Charge No.3 and 4, of negligence and misappropriation of Trust property.

SUBMISSIONS:

5. Mr. Chetan Patil, Learned counsel appearing for the Appellant submits that the Appellant has been held guilty of default in conduct of Panchanama and execution of lease deeds by the Appellant on behalf of the trust, in respect of one trust property. He would further submit that the impugned judgment confirms the suspension order which is an interim measure and despite the final decision, the order of suspension is continued without any time frame. He would submit that only the Appellant, who is the Secretary, has been held guilty while exonerating all other trustees. He submits that the Constitution of the trust does not assign any particular role to any Trustee and points out the procedure set out in Clause 20(2) of the Constitution for opening of donation boxes. He submits that the finding of the Charity Commissioner on the panchanama is that at some places the donation boxes or Baggha Number etc. seems to be blank and at some places two trustees names are written and on some places, there is signature of only witness and clerk. He submits that the impugned judgment holds that there is violation of Clause 20(2) by the Trustees by not remaining present which amounts to irregularity. He submits that once it is held that irregularities occurred on part of all the trustees, only Secretary cannot be held guilty. He submits that the finding is of negligence on part of Secretary is without any reasons or discussion.

6. He would further point out that the other ground on which the Secretary has been held guilty, is the execution of agreements in respect of the Trust property. He submits as far as the first lease deed is concerned, the same was executed on 7th January 2016, in respect of the Trust property admeasuring 198 sq.ft. for a period of more than 5 years, for starting medical store. He submits that second document was leave and license agreement executed on 27th February 2019. He submits that as far as first deed is concerned it is an admitted position that before the expiry of the term of the lease deed, the lessee had left the premises and therefore, second document in respect of the same property which was a Leave and License came to be executed. He submits that the leave and license agreement did not create any interest in the property and therefore the same did not require the sanction of the Charity Commissioner under the provisions of Section 36 of the MPT Act. He would submit that the Joint Charity Commissioner has failed to notice that the present Appellant has executed the documents pursuant to the resolution passed in the managing body Meeting held on 19th February 2019. He submits that the Joint Charity Commissioner held that the proposer and the second proposer who are Respondent Nos 4 and 6 have denied their presence at the meeting and therefore authenticity of meeting was in question. He submits that there was no evidence by Respondent No.4 and 6 and the said stand was taken only in the written submissions. He submits that the Joint Charity Commissioner has further held that the present Appellant could not establish that the funds collected against the rented premises is accounted which amounts to breach of trust which was not part of the Charge nor any inquiry was held into that aspect.

7. He would further point out that the charges are generic in nature. He would further submit that a detailed response was filed by the present Appellant, pointing out that before expiry of term, the lessee had left the suit premises which has not been considered. He would further submit that the Joint Charity Commissioner has ignored the cross examination of Inquiry Officer admitting that Gala was given on rent only on basis of the approval by the committee. He would further point out that in the cross-examination of the inquiry officer, a specific question was put as to any loss caused to Trust by execution of first lease deed, which was answered in the negative. He submits that once the Joint Charity Commissioner has held that the exact loss cannot be established and charge No.3 could not be sustained, the same issue could not have been re-visited in respect of the lease deed to hold the Appellant responsible. He would further point out that as far as the test of proportionality of punishment is concerned, the Joint Charity Commissioner was aware of the test, and despite thereof harsh action of suspension of trustee has been taken. He submits that in the present case there is no finding of the Joint Charity Commissioner that by reason of irregularities in conduct of Panchnama or by execution of the lease deed without obtaining permission there is loss to the trust or that the said action is actuated by dishonesty and therefore the present judgment is unsustainable.

8. *Per contra* Mr. Patil, learned AGP would submit that the Appellant has been held guilty on two charges, first is of drawing up of panchnama and second is as regards the agreements executed. He submits that there is a specific finding as far as the panchnama is concerned that there is a violation of clause 20(2) by the opponent trustees and therefore there is irregularity. He submits that it was Appellant's duty as Secretary to ensure that the panchnama has been conducted properly and therefore, the Secretary has been held responsible. He would further point out that both the lease deeds were executed in respect of the Trust property by the present Appellant, and it was duty of the Secretary to take prior permission. He submits further it is the specific finding that the funds collected against the rented premises are unaccounted, which amounts to breach of trust. He submits that it is specific finding of the Joint Charity Commissioner that the present Appellant did not defend the allegation of executing the agreement for rent without permission, for more than 3 years nor justified that the rented amount was appropriately accounted to the trust account and therefore, the charge No.4 has been answered against the Appellant. He would further point out that Joint Charity Commissioner has held that since the charge for panchanama and misappropriation of property is proved against him, his suspension is continued.

REASONS AND ANALYSIS:

9. The issues which would arise for determination:

(a) Whether the Appellant is solely guilty of negligence of duty and mis-appropriation or improper dealing with the property of the Trust ?

(b) Whether the suspension of a Trustee which is in nature of interim measure can be continued even after final adjudication under Section 41-D of MPT Act ?

(c) Assuming that Charge No 3 and 4 are proved against the Appellant, whether the charges are sufficient to warrant harsh action under Section 41D of the MPT Act?"

10. The issues which were framed by the Joint Charity Commissioner are as follows:

Sr. No.	Issues	Answer
1	Whether it is proved that, the Opponent Trustees made Persistent default in the submission of Account reports or return in respect of the said Trust ?	Disapproved
2	Whether it is proved that, the Opponent Trustees wilfully disobeyed any lawful orders issued by the Charity Commissioner under the Provisions of this Act or Rules made there Under by the State Government?	Disapproved
3	Whether it is proved that, the Opponent Trustees has continuously neglected their duty and committed mal-feasance or mis-feasance or breach of trust in respect of the trust?	Partly Allowed
4	Whether it is proved that, the Opponent Trustees mis-appropriated or dealt improperly with the properties of the Trust of which he is a Trustee?	Approved for Opponent No.03
5	Whether the suspension of the Opponent Trustees shall confirm?	Approved for Opponent No.03
6	Whether the appointment of Administrator at the board of trustees shall continue?	Approved till further order
7	What Order?	As per final order

11. The charges noted above shows the generic nature are the specific acts of default are conspicuously absent. The whole purpose of framing of charge is to make the Trustees aware of the case they have to meet and the framing of charges is nothing but paying lip service to the ingredients of Section 41-D of MPT. The *suo motu* proceedings were initiated based on an Inquiry Report and the alleged acts of negligence, misfeasance or misappropriation were to the knowledge of the Joint Charity Commissioner and it was possible to frame the specific charges so that an informed decision could have been taken.

12. The Appellant has been held partly guilty of Charge No. 3 of negligence and Charge No. 4 of misappropriation of Trust Property. Dealing first with the finding of negligence under Charge No 3, though the charge of negligence included several acts of defaults, what found favour with the Joint Charity Commissioner was the default as regards the drawing of Panchnama of live stock and donation boxes by not following the procedure prescribed under Clause 20(2) of the Constitution of Trust. Clause 20(2) of the Constitution of the Trust which deals with the donation and donation boxes provides that the donation boxes have to be sealed by the Trustees and once in every month the donation boxes have to be opened by three trustees and after inventory of the contents, panchanama has to be conducted and the donations have to be shown in the account books and thereafter deposited in the bank account.

13. As far as the live stock is concerned, the default alleged was that live stock is not maintained in the Trust Audit. The finding of Joint Charity Commissioner in respect of live stock is as under:

"70. Thus the inquiry officer admitted the fact that maintaining the record of live stock is practically difficult. However, register to that effect was maintained by the trust though not in standard format. ….."

14. The finding on the default in drawing of panchanama of donation boxes is :

"70. ….As far as Panchnama is concerned, prima facie it seems that it is filled up very casually. However, ill intention could not be gatehr as misappropriation is not established. It was the duty of the Office bearers that the Panchnama are complied by as per the provision of the Scheme and the trustees abide by their duties. Therefore, to the extent of non-maintaining of Panchanama dn violation of Clause 20 can be gathered. Therefore the Charge is framed to extent of non maintaining of Panchanama as per the Scheme.

88. The Panchanama reveals that the Opponent Trustess violated Clause 20(2) by not remaining present while opening the Donation Box. It is equally true that the Panchanama could not reveal as to which Donation Box is opened against the said Panchanama. ….However, every Panchanama is signed by witness, is signed by the Clerk and eithe rone of the Trustee, at some places all the Trustees. So this amounts to be *irregularities on the part of the trustees and the Active Office bearers could have taken action on this issue as the act is related to maintaining of Funds of the Turst. Therefore negligence on part of Secretary is established and attracts Section 41-D. Therefore the charge is approed to the extent of maintaining Panchnama."*

15. The specific finding of the Joint Charity Commissioner is that the Opponent Trustees have violated Clause 20(2) by not remaining present while opening the donation box and there is irregularity on part of all the Trustees. Having arrived at this finding of violation on part of all the Trustees, the Joint Charity Commissioner *sans* any reasons or discussion has held the Appellant, who is the Secretary solely guilty of negligence. The finding of negligence of duty must be pre-faced with the discussion on the duties of the Secretary as per the Constitution of the Trust. Upon reading of Clause 20(2), it is evident that the said Clause does not impose any specific duty on the Secretary to ensure compliance with the said Clause. The general duty of the Secretary is to ensure smooth administration of Trust, but in order to fix a liability of negligence, it must be established that it was the bounden duty of the Secretary to ensure compliance with Clause 20(2). When examined against the finding of violation and irregularity on part of all the Trustees, the fixing of charge of negligence solely upon the Appellant is clearly unsustainable.

16. Dealing next with Charge No 4 i.e. misappropriation or dealing improperly with the properties of the Trust, the said charge was approved against Appellant on the finding of execution of two agreements by the Appellant. The first agreement is the lease deed executed for period of five years from 7/1/2016 to 6/7/2021, which was for running of a Medical store and second document was a Leave and license agreement in respect of the same shop as the earlier lessee had exited before the completion of the term. The finding of Joint Charity Commissioner is that as the documents have been executed for period of more than three years without prior permission of Joint Charity Commissioner, there is violation of Section 36 of MPT Act and as these documents were executed by Appellant, the Appellant is guilty of violation of statutory provisions.

17. Section 36 of MPT Act prohibits alienation of immovable property and provides that no lease for the period exceeding 3 years in case of a non-agricultural land or a building belonging to the public trust shall be valid without previous sanction of the Charity Commissioner. While examining the evidence on Charge No 3 , the issue of execution of the lease agreement for period exceeding three years without prior permission was examined by the Joint Charity Commissioner. After considering the fact that the lessee exited before expiry of the term, the finding of Joint Charity Commissioner is that

Agreement could not be worked out therefore also no violation is established. It was specifically held that neither malafide intention could be proved nor violation of Section 36(b). It was held that exact loss to the trust in monetary term could not be established by the Inquiry Officer and charge could not be sustained.

18. The issue was re-visited by the Joint Charity Commissioner while deciding Charge No 4 and it held that the execution of the lease agreement for period exceeding three years constitutes violation of Section 36 of MPT Act. After having held that the execution of the lease agreement would not constitute violation of the statutory provision while examining Charge No 3 , there cannot be inconsistent finding about the same document and same statutory provision while considering charge No 4. Irrespective of inconsistent findings, it needs to be noted that the charge was of committing mal-feasance, mis-feasance or breach of trust or misappropriation of trust properties. There is clear admission of Inquiry Officer that there was no allegation of causing loss to the Trust. The Joint Charity Commissioner had therefore rightly held that neither malafide intention was established nor exact monetary loss to the Trust. The contrary finding while examining Charge No 4 is therefore clearly unsustainable in the context of the lease agreement.

19. The second document which was executed was leave and license agreement for period exceeding three years after the lessee exited before expiry of term. Charge No 4 was mis-appropriation or dealing improperly with Trust Property. The Joint Charity Commissioner held the Appellant, who was executant of the agreement, guilty on two grounds firstly that the proposer and seconder of the resolution in their written statement have denied their presence at the meeting in which resolution was passed raising a question about the authenticity of the resolution and secondly that in absence of any evidence by Appellant, he could not establish that the funds collected against the rented premises is accounted which amounts to breach of trust.

20. The defense of Appellant was that the execution of the agreement was pursuant to resolution passed by the Managing body of the trust and the extract was produced. The said extract of resolution has been discarded by the Joint Charity Commissioner in view of denial of their presence by the Respondent No.4 and 6 in the said meeting. The contention of Advocate Chetan Patil, that there was no evidence led by the Respondent No.4 and 6 in support of their denial and only on the basis of the written say, the Joint Charity Commissioner has held that there is no valid resolution has not been disputed by Mr.A.R.Patil, learned Assistant Government Pleader for the Respondent-State. The extract of the Resolution cannot be excluded from consideration without any cogent evidence of their absence from the relevant meeting being presented by Respondent Nos. 4 and 6.

21. Perusal of Charge No.4 does not indicate any specific charge of unaccounted rent received from the licensee under the leave and license agreement. In the absence of a specific charge of misappropriation of the rent amount, it was not possible for the present Appellant to meet the charge. The importance of framing specific charges cannot be undermined. Without any specific charge being framed, the absence of any evidence being led by the Appellant cannot be held to his detriment. Further, in response to specific question in cross examination, the Inquiry Officer has held that there was no complaint about financial loss to the Trust.

22. The sum and substance of the findings of Joint Charity Commissioner to support the suspension of Appellant is that manner of conducting panchanama amounts to irregularity on part of the Trustees and the Appellant who is Secretary is negligent and secondly that the leave and license agreement has been executed without resolution of the Trust and rent amount has not been accounted, which amounts to breach of trust. There is no complaint by any of the Trustees that there is misappropriation of Trust property.

23. Mr. Chetan Patil, appearing for the Appellant is right in relying upon the decision in the ***Mukund Waman Thatte Vs. Sudhir***

Parshuram Chitale and others [1], in which the Co-ordinate Bench has held that unless and until the lapse on the part of the trustee is proved to be actuated by dishonesty, a drastic action under Section 41D is not warranted. In the present case upon the perusal of the entire Judgment there is no finding that the lapse, if any, on the part of the present Appellant is actuated by dishonesty or has resulted in financial loss to the Trust. The Joint Charity Commissioner had ample powers to issue necessary directions to regulate the affairs of the Trust and the facts of the case do not warrant harsh action of suspension. It is well settled that the proof required to sustain the charges is of high standard and more than what is normally required in cases covered by preponderance of probabilities and somewhat less than required in trial of criminal cases.

24. From the evidence on record, it is not demonstrated that the allegations of misappropriation of funds for non deposit of the rental amount into the trust account has been proved. The finding is based on the assumption that the leave and license agreement is executed without resolution of the Trust and it could not be established that the rent amount was deposited in the Trust. The specific admission of the inquiry officer is that there is no allegation of financial loss to the Trust. In the conclusion remarks of Inquiry Report, in context of the

1 2012(3) Mh.L.J.322

agreements, the conclusion is that the agreements have been executed without obtaining prior permission of the Charity Commissioner. The Inquiry Officer has not come to a conclusion that the leave and license agreement was executed without the same being approved by the Trust or that the license compensation was unaccounted.

25. The Joint Charity Commissioner though rightly noting the test of proportionality of punishment did not consider the aspect of proportionality of punishment proposed to be imposed. In ordinary course, in absence of such consideration, the matter would have been remanded to consider the said aspect, however, as the parties have been heard at length by this Court, remand would be useless formality. In the present case, the manner in conducting the panchanama when held to be an irregularity cannot result is suspension of the Appellant. The second aspect of unaccounted rent amount is without a specific charge being framed and is not supported by any evidence. The findings when considered against the background of the accepted test of proportionality of punishment, it is clear that in absence of any financial loss having been proved to be caused by the Appellant by an act actuated by dishonesty, the punishment imposed is disproportionate. In light of the material on record, the suspension of only the present Appellant while exonerating the other Trustees is grossly disproportionate to the gravity of the charges.

26. The punishment imposed is continued suspension of the Appellant, which is contrary to the provisions of Section 41D of the MPT Act which provides for an order of suspension as an interim measure. As the *suo motu* proceeding under Section 41D of the MPT Act was finally adjudicated the interim measure of suspension could not be continued for an indefinite period.

27. In light of the above discussion, Clause 5 and 6 of the impugned Judgment to the extent that it confirms the suspension order for a indefinite period and directs Appellant to hand over the charge of the affairs of the Trust is unsustainable in law. Hence, the following order is passed:

ORDER

a) The First Appeal is allowed.

b) Clauses 5 and 6 of the impugned Judgment and Order dated 26th April 2024, passed by the Joint Charity Commissioner in Application No.1 of 2022 under Section 41D of the MPT Act, 1950 are hereby quashed and set aside .

[Sharmila U. Deshmukh, J.]

JYOTI RAJESH MANE

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