

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10253 OF 2023

Prakash Kashiram Kadam & Anr. ... Petitioners
V/s.
The State of Maharashtra & Ors. ... Respondents

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Mr. Bhushan Walimbe with Mr. Mayank Tripathi for the
petitioners.

Mr. S.L. Babar, AGP for respondent Nos.1 to 3-State.

Mr. Sunil G. Karandikar i/by Mr. S.C. Mangle for
respondent Nos.4 and 5.

CORAM : AMIT BORKAR, J.

DATED : MARCH 4, 2025

P.C.:

1. This writ petition, invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, assails the legality and propriety of the order dated 16th November 2022, passed by the learned Joint Charity Commissioner, Kolhapur Division, Kolhapur in Appeal No. 28 of 2021. By the impugned order, the learned Joint Charity Commissioner has remanded the proceedings initiated under Section 50A of the Maharashtra Public Trusts Act, 1950, to the Assistant Charity Commissioner, Ratnagiri, for reconsideration and fresh adjudication.

2. A perusal of the impugned order reveals that the learned

Joint Charity Commissioner has recorded a finding that the majority of the Trustees of the Trust in question ought to be from the Shinde family. However, in the same paragraph, the learned Joint Charity Commissioner has simultaneously observed that the transmission of Trusteeship by way of inheritance may not be legally sustainable. The said observations, being mutually contradictory, render the finding recorded by the learned Joint Charity Commissioner unsustainable in law. The conclusion that the majority of Trustees shall be from the Shinde family appears to be without a cogent legal foundation and is, therefore, not justified.

3. The principal ground which weighed with the learned Joint Charity Commissioner in directing a remand of the proceedings to the Assistant Charity Commissioner appears to be the non-issuance of notice to the residents of Payar Wadi village. Upon a scrutiny of the order passed by the Assistant Charity Commissioner, it becomes evident that the aspect of non-issuance of notice to the villagers of Payar Wadi is not a matter of serious contest. In view of the fact that an opportunity of participation in the proceedings is to be afforded to the villagers of Payar Wadi, the order of remand does not call for interference by this Court. The remand serves the broader interest of justice and ensures that all stakeholders are duly heard before a final decision is rendered on the framing of a Scheme under Section 50A of the Maharashtra Public Trusts Act, 1950.

4. In light of the aforesaid discussion, the following order is passed:

- a) The impugned order dated 16th November 2022, passed by the learned Joint Charity Commissioner, Kolhapur Division, Kolhapur in Appeal No. 28 of 2021, to the extent that it mandates that the majority of Trustees shall be from the Shinde family, is quashed and set aside;
 - b) The direction for remand of the proceedings to the Assistant Charity Commissioner is upheld;
 - c) It is, however, clarified that while deciding the application under Section 50A of the Maharashtra Public Trusts Act, 1950, the Assistant Charity Commissioner shall not be influenced by the observations made in the orders passed by the Assistant Charity Commissioner and the Joint Charity Commissioner in the earlier round of litigation. The adjudication shall be carried out in strict accordance with law and after affording a full and fair opportunity of hearing to all concerned parties, particularly the villagers of Payar Wadi;
 - d) The Assistant Charity Commissioner shall endeavor to dispose of the proceedings expeditiously and, in any event, within a reasonable period.
5. With the above clarifications and directions, the writ petition stands disposed of. There shall be no order as to costs.

(AMIT BORKAR, J.)