
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17303 OF 2024
WITH
WRIT PETITION NO.17305 OF 2024

Radhabai Vithabai Yashwantrao Holkar Trust
Thr. Its Trustee & Anr.

....Petitioners

Versus

Ayodhyabai Jyotirao Suryavanshi & Ors.

....Respondents

Mr. Shrivallabh S. Panchpor, *for Petitioners.*

Mr. Prathamesh Bhargude a/w. *Mr. Sumit Sonare, for Respondent No.2.*

Ms. Savina R. Crasto, *AGP for State in WP/17303/2024.*

Mr. M.S. Srivastava, *AGP for State in WP/17305/2024.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : NOVEMBER 27, 2025

ORDER:

1. Rule. Rule is made returnable forthwith by consent of the parties and the Petition is heard finally.
2. Learned Counsel for the parties, at the threshold, submit that Petition No.17305 of 2024 may be treated as the lead Petition in these proceedings.

3. The challenge in this Petition is to an Order dated August 13, 2024 by which the Learned Joint Charity Commissioner, Pune has held that an application filed by the Petitioners seeking dismissal (“*Dismissal Application*”) of an application under Section 41D of the Maharashtra Public Trusts Act, 1950 (“*the Act*”) filed by the Respondents (“*41D Application*”), would be considered along with the final hearing of the 41D Application and will not be dealt with upfront as as a preliminary issue.

4. Respondent Nos. 1 to 5 (“*Tenants*”) are tenants of the property owned by Petitioner No.1, Radhabai Vithabai Yashwantrao Holkar Trust (“*Trust*”). The Tenants had filed the 41D Application seeking removal of Petitioner No.2, Bhupendra Purushottam Shroff (“*Shroff*”), who was by then, the then Sole Trustee of the Trust.

5. Learned Advocate for the Petitioners places reliance on Section 2(10)(e) of the Act to contend that the Tenants would never fall within the ambit of the term “*beneficiary*” for them to be deemed as “*persons having interest in the trust*” and therefore, the Tenants have no *locus standi* to bring an application under Section 41D of the Act. It is contended that the Charity Commissioner has erred in deferring the consideration of the lack of locus to the stage of the final hearing of the 41D Application.

6. Learned Advocate for the Respondents resists the Petition on the premise that the Respondents have alluded to the premises in question which are trust property not being attended to by the trustees, with just one trustee running the show. It is his contention that the Respondents have merely sought to put Section 41D of the Act into motion and the said provision enables even a *suo moto* action that may be taken by the Charity Commissioner in respect of the various defaults set out therein. According to him, the Trust Deed requires seven Trustees to occupy office and just one trustee running the show, the premises are dilapidated and even encroachment on the trust property is not being dealt with.

7. Learned Advocate for the Petitioners has relied on a judgement of an Aurangabad Division Bench of this Court in ***Gajanan Waman Mulay & Ors.***¹. In my opinion, this judgement is not really relevant inasmuch as in the facts of that case, the tenants in question were demanding that the Trust should be directed to lease certain lands to them. It is in this context that their interest in the trust property had been examined. That apart, it would not be appropriate to state that, regardless of the facts and circumstances of the case, when mixed questions of fact and law are involved, the Writ Court must interfere

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with the manner of conduct of proceedings by the Charity Commissioner.

8. In the facts of this case, the decision of the Charity Commissioner to take a holistic view of all facets, including the issue of maintainability of the process under Section 41D of the Act and the examination of the interest of the Tenants, cannot be found fault with. In any case, the Charity Commissioner is also entitled to take up *suo moto* action on the basis of the information made available by the Tenants, who point to a sole trustee managing the trust property and allegedly ignoring complaints about encroachment of the trust property not being dealt with, and non-maintenance of the trust property, which is getting dilapidated. These are issues of fact that would need to be gone into and the Charity Commissioner could well take a view that regardless of the Tenants, the issues raised warrant assessment of the 41D Application. Therefore, in my opinion, reliance on the aforesaid judgment does not have a bearing on the case in hand.

9. In the factual backdrop of the case outlined above, I am not inclined to exercise the extraordinary jurisdiction of this Court to interfere with the Impugned Order. The Learned Joint Charity Commissioner has merely stated that the Dismissal Application would be considered at a later stage.

10. The pendency of this Petition is said to have grossly delayed in processing the underlying proceedings. It is made clear that there have been no interlocutory reliefs and the Charity Commissioner must process both the 41D Application as well as the question of whether the applicants under Section 41D are persons interested in the Trust, as expeditiously as the roster permits. *Prima facie*, it is apparent that answering the question as to whether the Respondents are persons interesting in a Trust, in the facts of this case, presents a mixed question of fact and law, which is open to the Charity Commissioner to answer after examining evidence in the matter.

11. In these circumstances, both the Writ Petitions are hereby ***finally disposed of*** without any interference with the interim order.

12. Rule is accordingly discharged.

13. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]