IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18119 OF 2024
WITH
WRIT PETITION NO. 18121 OF 2024
WITH
WRIT PETITION NO. 18122 OF 2024

Charu Mehta **... Petitioner**
Versus
Sushila Mehta and Ors **... Respondents**

WITH
WRIT PETITION NO. 18120 OF 2024

Charu Mehta **... Petitioner**
Versus
Niket V. Mehta and Ors **... Respondents**

WITH
WRIT PETITION NO. 18605 OF 2024

Prashant Mehta and Ors **... Petitioners**
Versus
Sushila Mehta and Ors **... Respondents**

Mr. Aspi Chinoy Senior Advocate, & Mr. Anil Singh Senior Advocate, *with Ms. Minal Chandnani, Mr. Monish Bhatia and Mr. Adarsh Vyas, for the Petitioners in WP 18605/2024.*

Mr. Aabad Ponda Senior Advocate, *with Mr. Dakshsah Vyas, Mr. Abhishek Prabhu, Mr. Tarun Mehra, Mr. H. N. Thakore, Ms. Jyoti Ghag, Mr. Chitesh Dalmia, Mr. Monish Bhatia, Mr. Shailesh Prajapati and Ms. Yashashree Raut i/by Dua Associates, for the Petitioner in WP 18119/2024, 18120/2024, 18121/2024 and 18122/2024.*

Mr. Dinyar Madon Senior Advocate*, with Mr. Jamsheed Master and Mr. Aniket Worlikar, for Respondent No. 1 in WP 18120/2024.*

Mr. Jamsheed Master *i/b Ms. Natasha Bhot, for Respondent No. 1 in WP/18119/2024, 18121/2024,18122/2024 and 18605/2024.*

Mr. S.D. Rayrikar*, AGP for Respondent/State in WP/18119 /2024.*

Ms. Kavita Solunke, *AGP for Respondent/State in WP/18121/2024.*

Ms. V. S. Nimbalkar*, AGP for Respondent No. 2/State in WP/ 18120/2024,18122/2024 and 18605/2024.*

CORAM : SANDEEP V. MARNE, J.

DATE : 3 JANUARY 2025.

Oral Order :

1) These five Petitions are filed challenging Order dated 4 December 2024 passed by the Charity Commissioner, Maharashtra State, Mumbai, by which the Charity Commissioner while deferring the hearing of Appeal Nos. 249 of 2023 to 252 of 2023 for a period of one week, has stayed the execution, effect, operation and implementation of the orders passed by the Assistant Charity Commissioner dated 14 December 2023 in Change Report Nos. 4453 of 2011, 6078 of 2016, 795 of 2020 and 4832 of 2003 till the Petitioners submit their final arguments in the Appeals. In Writ Petition No. 18605 of 2024, there is an additional challenge to the order dated 2 December 2024 passed by the Charity Commissioner, which is perceived to be adverse by the Petitioner therein as the Charity Commissioner while directed hearing of the main Appeals on specified dates, did not make any provision for hearing and deciding Miscellaneous Application No. 37 of 2024.

2) The grievance of the Petitioners in these Petitions is essentially twofold viz. (i) that the Charity Commissioner has decided to proceed ahead with hearing of the Appeals without taking up Miscellaneous Application No. 37 of 2024 filed by the Petitioners and (ii) That the Charity Commissioner has stayed the order of the Assistant Charity Commissioner dated 14 December 2023.

3) I have heard Mr. Chinoy and Mr. Ponda the learned senior advocates appearing for Petitioners and Mr. Madon, the learned senior advocate appearing for the contesting Respondents and have considered the submissions canvassed by them.

4) So far as the first grievance of the Petitioners about the Charity Commissioner proceeding to decide Appeal Nos. 249 of 2023 to 252 of 2023 without making any provision for decision of Miscellaneous Application No. 37 of 2024 is concerned, it appears that the Petitioners have already filed Miscellaneous Application Nos. 2632-2635 of 2024 in Civil Appeal No. 7300-7303 of 2024 before the Supreme Court and those Miscellaneous Applications are directed to be listed for hearing on 17 January 2025. Since Petitioners' grievance with regard to the Charity Commissioner not deciding Miscellaneous Application No. 37 of 2024 is already raised before the Supreme Court in Miscellaneous Application Nos. 2632-2635 of 2024, proprietary demands that this Court would not take any decision with regard to the said grievance and it would be appropriate that the Petitioners seek appropriate directions from the Supreme Court in those pending Miscellaneous Applications.

5) So far as the second grievance of the Petitioners about the Charity Commissioner staying the order of the Assistant Charity

Commissioner dated 14 December 2023 is concerned, it appears that the Joint Charity Commissioner had initially granted stay to the order of the Assistant Charity Commissioner dated 14 December 2023 vide orders dated 15-22 December 2023. This Court set aside the stay order passed by the Joint Charity Commissioner by its order dated 30 January 2024. The order passed by this Court on 30 January 2024 was challenged before the Supreme Court and by Order dated 19 February 2024, the Supreme Court set aside the stay orders passed by the Joint Charity Commissioner (15-22 December 2023) as well as order passed by this Court on 30 January 2024 and instead directed as under:

> " the parties are relegated to the stage of rejection of the change reports on 14.12.2023 by the Assistant Charity Commissioner. The later order of the Joint Charity Commissioner and of the High Court are set aside. The Appeal filed by the Petitioner to challenge the order of the Asst Charity Commissioner on 14.12.2023, should now be considered by the Charity Commissioner, as was directed in the impugned order. During such consideration, the appellate authority needless to say, is empowered to also pass appropriate interim order. However interim order should be passed only after response of the contesting parties is placed on record and all are afforded hearing."

6) It appears that the Appellants before the Charity Commissioner (Mrs. Sushila Mehta and Mr. Niket Mehta) were advised not to press for any interim reliefs and accordingly filed a pursis before the Charity Commissioner on 30 April 2024. Mr. Madon, would submit that the pursis was filed on account of the Supreme Court expediting hearing of the Appeals and under a hope that the Appeals themselves were likely to be decided in in a short time. Be that as it may. Once a quietus to the issue of interim stay was given by the Supreme Court by order dated 19 February 2024, Respondents (Mrs. Sushila Mehta and Mr. Niket Mehta) did not make any further attempts to seek stay of the order of the Assistant

Charity Commissioner and instead proceeded to participate in the final hearing of Appeals. However, it appears that the one of the co-Appellants before the Charity Commissioner (Mr. Chetan Mehta) continued pressing application for interim order in his independent Appeal and accordingly order dated 23 September 2024 was passed by the Charity Commissioner in the Appeal preferred by Mr. Chetan Mehta thereby staying the order of the Assistant Charity Commissioner dated 14 December 2023. The Charity Commissioner further directed conduct of suo-moto enquiry under provisions of Section 41(d) of the Maharashtra Public Trusts Act, 1950 and he suspended all the existing trustees from the board of the trust except Mrs. Charu Mehta and further directed provisional acceptance of change report in favour of Mr. Chetan Mehta by directing his appointment to the board of the trust. By order dated 25 September 2024, this Court has stayed order dated 23 September 2024 passed by the Charity Commissioner in Mr. Chetan Mehta's Appeal. Special Leave Petition preferred by Mr. Chetan Mehta challenging this Court's order dated 25 September 2024 has been dismissed by the Supreme Court on 4 October 2024.

7) The conspectus of the above discussion is that during pendency of the Appeals before the Charity Commissioner there is no stay to the order passed by the Assistant Charity Commissioner.

8) It appears that on account of time limit fixed by the Supreme Court for decision of the Appeals, the Appellants before the Charity Commissioner have been pressing for hearing of the Appeals. It appears that the arguments on behalf of the Appellants have been concluded on 26 September 2024. The Petitioners who are Respondents before the Charity Commissioner are desirous of

having their Miscellaneous Application No. 37 of 2024 decided along with the main Appeals and on that ground, have repeatedly pressed before the Charity Commissioner for adjournment of proceedings of the Appeal so that the Charity Commissioner can take up even Miscellaneous Application No. 37 of 2024 for hearing and decision. Mr. Madon would clarify that after conclusion of arguments by the Appellants on 26 September 2024 various adjournments are sought by the Petitioners on different grounds and not on the count of decision of Miscellaneous Application No. 37 of 2024. Be that as it may. It appears that Petitioners filed application dated 3 December 2024 before the Charity Commissioner seeking postponement of hearing of the Appeals on the ground that Miscellaneous Application Nos. 2632-2635 of 2024 were filed before the Supreme Court (for hearing of Miscellaneous Application No. 37 of 2024 along with the Appeals) and the Charity Commissioner was urged to defer hearing of the Appeals till the said Miscellaneous Applications are decided by the Supreme Court. It is on this application dated 3 December 2024 that the Charity Commissioner has passed detailed order dated 4 December 2024, which is subject matter of challenge in the present Petitions.

9) While making adverse observations against the Petitioners about delay caused in hearing of the Appeals and also not accepting the request of the Petitioners to have Miscellaneous Application No. 37 of 2024 decided alongwith the main Appeals, the Charity Commissioner has also proceeded to stay the execution effect, operation and implementation of the orders passed by the Assistant Charity Commissioner on 14 December 2023.

10) Perusal of the impugned order dated 4 December 2024 would indicate that following broad reasonings are recorded by the Charity Commissioner for granting stay to the order of the Assistant Commissioner:

> “**44.** Appellants preferred appeals immediately after rejection of their change reports vide order dated 14-12-2023 passed by the ld. A.C.C. The impugned order was stayed by the ld. Jt.C.C. However, the stay order was set aside by Hon'ble High Court. Subsequently, Hon'ble Supreme Court on 15-04-2024 ordered expeditious disposal of appeals. In the hope of getting expeditious hearing and decision in the appeals, appellants not pressed their prayer for grant of interim relief. Arguments on behalf of appellants got concluded on 26-09-2024. More than two months have elapsed since then. However, respondents have not even commenced their arguments, and they appear to be unwilling to submit their arguments. If this continues, the appeals would never be decided despite Hon'ble Supreme Court's specific directions. In these peculiar facts and circumstances, whether this Authority should simply postpone the hearing on the mere asking of respondents or should also consider doing some justice to the appellants by exercising powers available under the M.P.T. Act/Rules and CPC?
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> **49.** On overall consideration, it would not be just and proper rather it would be iniquitous to simply adjourn the hearing of these appeals without considering the fact that doing so would cause injustice to the appellants. In my opinion, this Authority must strike a balance between respondents' continuous avoidance in submitting final arguments, and appellants' effort to get the appeal decided in a time bound manner, as ordered by Hon'ble Supreme Court. In these facts and circumstances, it would be just, proper and equitable to grant stay to execution, implementation, operation and effect of the impugned orders while deferring final hearing in the appeals at the instance of the respondents.”

11) Admittedly after filing of *purshis* by the Appellants-Mrs. Sushila Mehta and Niket Mehta on 30 April 2024 before the Charity Commissioner for not pressing any interim reliefs in the pending Appeals, no further application is filed by them seeking stay on the order of the Assistant Charity Commissioner. Thus, the Charity Commissioner did not have any occasion to consider any prayer for grant of stay to the order of the Assistant Charity Commissioner.

Mr. Madon would submit that while opposing the application for deferment of hearing of the Appeals filed by the Petitioners on 3 December 2024, the counsel for the Appellants made oral application before the Charity Commissioner for granting stay to the order of the Assistant Charity Commissioner so that the Petitioners do not indefinitely delay hearing of the Appeals. This position is disputed by the Mr. Chinoy and Mr. Ponda. In my view, in absence of any written application praying for stay on the orders passed by the Assistant Charity Commissioner on 14 December 2023, it was improper on the part of the Charity Commissioner to stay the said orders. This is particularly true considering the background of the case where the initial stay order granted by the then Joint Charity Commissioner on 15-22 December 2023 was set aside by the Supreme Court by its order dated 19 February 2024. Additionally in an independent Appeal preferred by Mr. Chetan Mehta, where the Charity Commissioner had stayed the order of the Assistant Charity Commissioner on 23 September 2024, this Court has stayed the said order dated 23 September 2024, and SLP preferred by Mr. Chetan Mehta against the order passed by this Court on 25 September 2024 has been dismissed by the Supreme Court. Thus, when the Supreme Court has twice refused to stay the order of the Assistant Charity Commissioner passed on 14 December 2023, it was improper for the Charity Commissioner to stay the said orders while deciding the application preferred by the Petitioners for deferment of hearing of the Appeals. Once the Appellants before the Charity Commissioner (Mrs. Sushila Mehta and Mr. Niket Mehta) filed specific *purshis* not pressing any interim reliefs in the pending Appeals, it was not permissible for the Charity Commissioner to entertain any oral application made on their behalf for stay of the order of the Assistant Charity Commissioner. In my view, therefore, the order dated 4 December 2024 granting stay to the orders passed by the Assistant Charity Commissioner on 14 December 2023 is clearly unsustainable and liable to be set aside.

12) So far as the first grievance of the Petitioners about refusal by the Assistant Charity Commissioner to decide Miscellaneous Application No. 37 of 2024 alongwith the pending Appeals, Petitioners have already preferred Miscellaneous Application Nos. 2632-2635 of 2024 before the Supreme Court and it would be for the Petitioners to seek appropriate directions from the Supreme Court in that regard. No opinion is expressed with regard to this grievance raised by the Petitioners and accordingly challenge to the order dated 2 December 2024 as well as that part of the order dated 4 December 2024, directing that Miscellaneous Application No. 37 of 2024 needs to be considered and decided separately, is kept open.

13) I accordingly proceed to pass the following order:

a) Order dated 4 December 2024 passed by Charity Commissioner, to the limited extent of staying the orders passed by the Assistant Charity Commissioner dated 14 December 2023 is set aside.

b) The challenge raised by the Petitioners with regard to the opinion expressed by the Charity Commissioner for independently hearing and deciding Miscellaneous Application No. 37 of 2024 is kept open to be agitated before the Supreme Court in Miscellaneous Application Nos. 2632-2635 of 2024.

14) With the above directions, the Writ Petitions are partly allowed and disposed of.

[SANDEEP V. MARNE, J.]