

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18759 OF 2024

Sandeep Bhagchandra Gawade & Anr.

....*Petitioners*

: *Versus* :

Pandurang Mahadu Pawale & Ors.

....*Respondents*

Mr. Anurag Mishra, i/by. *Ms. Pooja Kankariya*, for the *Petitioners*.

Ms. Raufa Shaikh, i/by. *Mr. Yuvaraj Narwankar*, for *Respondent Nos.1 and 2*.

Ms. A.A. Nadkarni, *AGP for Respondent No.3-State*.

CORAM : SANDEEP V. MARNE, J.

Dated : 2 January 2025.

P.C. :

1) The petition challenges order dated 6 November 2024 passed by the Joint Charity Commissioner, Pune Region, Pune allowing Appeal No.46/2021 filed by Respondent Nos.1 and 12 and setting aside the judgment and order dated 14 October 2021 passed by the Assistant Charity Commissioner, Pune in Scheme Application No.140/2021. The Joint Charity Commissioner as directed appointment of a caretaker to look after the day-to-day affairs of the Trust alongwith appointment of the new trustees and has granted liberty to the parties to take necessary steps for appointment of new trustees in accordance with law.

2) I have heard Mr. Mishra, the learned counsel appearing for the Petitioner and Ms. Shaikh for Respondent Nos.1 and 2 and Ms.

Nadkarni, learned AGP appearing for Respondent No.3-Joint Charity Commissioner.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the original trustees of the Trust have expired and apparently there were no trustees at the time when the Scheme Application No.140/2021 was filed by the Petitioners. What was required to be done in the present case was appointment of new trustees under the provisions of Section 47 of the Maharashtra Public Trusts Act, 1950. However, instead of seeking appointment of new trustees, Petitioners apparently took a route of filing a Scheme Application under the provisions of Section 50A of the Act for sanctioning of the Scheme and through such indirect mode, they sought appointment of new trustees on the Trust. Apart from the fact that the Assistant Charity Commissioner showed undue haste in allowing the Scheme Application by order dated 14 October 2021, it appears that exercise of power under Section 50A of the Act was clearly unwarranted in the facts and circumstances of the present case.

4) It appears that the Scheme Application was filed on 1 October 2021 and through a praeceipe, the same was sought to be taken on board before the Assistant Charity Commissioner on 13 October 2021 by citing a pretext that programme of the Trust was being organised. On the next day i.e. 14 October 2021, the Assistant Charity Commissioner proceeded to allow the Scheme Application.

5) Apart from the undue haste in which the Assistant Charity Commissioner proceeded to allow the Scheme Application, it appears that the Assistant Charity Commissioner did not take into consideration the provisions of Section 47 of the Act when infact the real purpose behind filing the Scheme Application was to get the new trustees

appointed in place of the dead trustees. Section 47 of the Act provides thus :

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 the 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.]

6) Thus, when the members of the Trust are dead, the Charity Commissioner can exercise power under Section 47 of the Act and appoint new trustees by conducting enquiry as envisaged under sub-section (2) on parameters enumerated in sub-section (3) of Section 47. Thus, while appointing new trustees to the Trust, the Charity Commissioner has to hear the parties and make an enquiry on parameters enumerated under Section 47(3).

7) On the other hand, the purpose behind enactment of Section 50A in the Act is entirely different. Under Section 50A, the Charity Commissioner is given power to frame, amalgamate or modify the Scheme. Therefore, ideally the power under Section 47 of the Act needs to be exercised first by replacing dead trustees with new trustees and when all the trustees are on the board, the Scheme can always be sanctioned under Section 50A of the Act. The Assistant Charity Commissioner did not take into consideration this statutory framework and proceeded to allow the Scheme which was clearly aimed at appointment of new trustees. While sanctioning the Scheme under Section 50A, the Assistant Charity Commissioner in fact appointed new

Trustees without conducting enquiry as envisaged under sub-sections (2) and (3) of Section 47.

8) In my view, therefore the Joint Charity Commissioner has rightly set aside the order passed by the Assistant Charity Commissioner. The impugned order passed by the Joint Charity Commissioner would ensure appointment of new trustees under Section 47 of the Act. Petitioners, Respondent Nos.1 and 2, as well as other interested persons can apply to the Charity Commissioner for their appointments as trustees of the Trust. Once all the trustees of the Trust are on board, necessary application under Section 50A of the Act can be filed for sanctioning the scheme of the Trust. I therefore do not find any palpable error in the impugned order passed by the Joint Charity Commissioner. The Writ Petition is devoid of merits. It is accordingly **dismissed** without any order as to costs.

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[SANDEEP V. MARNE, J.]