

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4511 OF 2025

Vikas Krishna Repale

..Petitioner

Versus

The State of Maharashtra Through The Ld
Assistant Charity Commissioner III, Thane & Anr

...Respondents

Mr. Sunil Karandikar, for the Petitioner.

Smt. Savita Prabhune, AGP, for Respondent No.1-State.

Mr. Vishal Kanade, with Akash Warang, Ashwini Bhalerao, Amer
Shaikh and Dilip Dhumal, for Respondent No.2.

CORAM: N. J. JAMADAR, J.

DATED : 31st JULY 2025

ORAL ORDER:

- 1.** Heard the learned Counsel for the parties.
- 2.** The challenge in this Petition is to an order dated 4th February 2025 passed by the Assistant Charity Commissioner-III, Thane Region, Thane, on the strength of a Report submitted by the Inspector, appointed by the Assistant Charity Commissioner, pursuant to an order dated 11th September 2023 in MA No. 40 of 2022.
- 3.** The said order dated 11th September 2023 was passed on the Application preferred by the Petitioner alleging acts of commission and omission in breach of the objects of the Trust.

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4. Mr. Karandikar, the learned Counsel for the Petitioner, submitted that the Inspector submitted the Report on 27th January 2025. On 28th January 2025, the learned Assistant Charity Commissioner passed an order that an order would be passed on the MA No. 40 of 2022 and on 4th February 2025, the learned Assistant Charity Commissioner straightaway proceeded to pass the impugned order without furnishing a copy of the inquiry report to the Petitioner or providing an opportunity of hearing.

5. Mr. Karandikar further submitted that, in view of the provisions contained in Section 39 of the Maharashtra Public Trust Act, 1950 (“the Act of 1950”), the Assistant Charity Commissioner was to simply record his findings and submit a report to the Charity Commissioner. Instead by the impugned order, MA No. 40 of 2022 came to be rejected while issuing certain directions. It is, therefore, necessary to set aside the order and remit the matter back to the Assistant Charity Commissioner for appropriate consideration after providing an effective opportunity of hearing to the parties.

6. Mr. Kanade, the learned Counsel for the Respondent-Trust, resisted the submission on behalf of the Petitioner. It was urged that submission of the Report to the Charity Commissioner would be necessary only when the Assistant Charity Commissioner forms an opinion that on account of the acts, omission and conduct of the

Trustees, there was a loss to the Trust. Attention of the Court was invited to the provisions contained in Section 40 of the Act of 1950, which regulate the manner in which the Charity Commissioner shall deal with the Report submitted by the Assistant Charity Commissioner.

7. Having heard the learned Counsel for the parties, this Court finds that the recourse to the consideration of the justifiability of the order passed by the Assistant Charity Commissioner on merits, is not warranted as the Assistant Charity Commissioner did not comply with the requirements of hearing as mandated by Section 38 of the Act of 1950. Section 38 reads as under:

“38. Explanation on report of auditor or on complaint.

On receipt of a report of the auditor under Section 34 or of a report, if any, made by an officer authorised under Section 37 or on receipt of a complaint in respect of any trust the Deputy or Assistant Charity Commissioner to whom the report is submitted or complaint is made shall require the trustee or any other person concerned to submit an explanation thereon within such period as he thinks fit.”

8. On its plain reading, Section 38 implies that after receipt of the Report from the Inspector, the Assistant Charity Commissioner is enjoined to furnish a copy of the Report to the Trustees or any other person concerned, and, thereafter pass an order after providing an effective opportunity of hearing. Rule 25 of the Maharashtra Public

Trusts Rules provides the manner in which an inquiry envisaged by Section 39 of the Act of 1950 is required to be conducted. The provisions contained in Rule 25 envisage service of notice on the concerned party and an opportunity of hearing on the Report, before passing the order.

9. In the case at hand, since, the Inspector was appointed to conduct an inquiry on the basis of the complaint of the Petitioner, the dictates of principle of natural justice demanded that the Petitioner ought to have been provided a copy of the inquiry report and, after hearing the parties, including the Trustees, the Assistant Charity Commissioner ought to have passed a reasoned order.

10. From the perusal of the impugned order, especially, paragraph 5, it becomes evident that the learned Assistant Charity Commissioner, proceeded to pass the impugned order on the basis of the consideration of the Inquiry Report only. Therefore, the impugned order passed in violation of the principle of natural justice and express statutory prescription, cannot be sustained.

11. Hence the following order:

: O R D E R :

- (i) The Petition stands allowed.
- (ii) The impugned order stands quashed and set aside.

(iii) MA No. 40 of 2022 stands remitted back to the learned Assistant Charity Commissioner, Thane.

(iv) The Assistant Charity Commissioner is requested to decide the said Application afresh, as expeditiously as possible, in the light of the Inquiry Report submitted by the Inspector after conducting an inquiry as mandated by the provisions of the Act and the Rules, thereunder.

(v) It is clarified that, this Court has not entered into the merits of the matter and all contentions of all the parties, are kept open for consideration by the learned Assistant Charity Commissioner.

(vi) The parties shall appear before the learned Assistant Charity Commissioner on 11th August 2025 at 11.00 am.

[N. J. JAMADAR, J.]