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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4685 OF 2025

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RAMESH
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Mahesh Tulsiram Patodiya ... Petitioner
V/s.
Ashish Subhashchandra Jhawar & Ors. ... Respondents

Mr. Narayan Bubna for the petitioner.

Mr. J. P. Patil, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 9, 2025

P.C.:

1. By this writ petition under Article 226 of the Constitution of India, the petitioner challenges the order dated 14 August 2022 passed by the Charity Commissioner, Nashik Region, Nashik, whereby the petitioner's application raising a preliminary objection as to the maintainability of the proceedings initiated by the respondents under Section 47 of the Maharashtra Public Trusts Act, 1950 ("the said Act") came to be rejected.

2. The principal contention of the petitioner is that the application filed by the respondents under Section 47 of the said Act is not maintainable in law inasmuch as the said provision contemplates appointment of a trustee only when there is a vacancy in the office of a trustee of a public trust. According to the

petitioner, in the facts of the present case, there exists no vacancy warranting invocation of Section 47 of the said Act. It is, therefore, submitted that the proceedings initiated by the respondents under Section 47 of the said Act are wholly without jurisdiction and ought to have been rejected at the threshold.

3. Having considered the rival contentions and perused the material on record, in my considered view, the inquiry contemplated under Section 47 of the Maharashtra Public Trusts Act, 1950 is a summary inquiry, wherein the Charity Commissioner exercises a limited jurisdiction to fill in the vacancy of a trustee. The nature of proceedings under Section 47 being summary, it is not permissible for a party to raise preliminary objections of such nature so as to stall the inquiry at the interlocutory stage. Entertaining such objections at an interlocutory stage would defeat the very purpose of the summary inquiry contemplated by the legislature.

4. It is well-settled that ordinarily, unless the lack of jurisdiction is patent and apparent on the face of the record, an inquiry authority should be permitted to proceed to its logical conclusion. Premature intervention by this Court at an interlocutory stage would not be justified merely on the basis of a disputed question such as existence or non-existence of vacancy, which can very well be adjudicated at the stage of final disposal of the application. The petitioner will have ample opportunity to raise all permissible contentions, including that of non-existence of vacancy, at the time of final hearing before the Charity Commissioner, who shall decide the same in accordance with law.

5. In view thereof, I am not inclined to interfere with the impugned order at this stage. However, it is clarified that all the contentions of the petitioner, including the issue of maintainability of the application under Section 47 of the said Act on the ground of absence of vacancy, are kept expressly open to be urged before the Charity Commissioner at the time of final hearing of the application.
6. Accordingly, the writ petition is disposed of in the above terms. There shall be no order as to costs.
7. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)