

Shabnoor

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

WRIT PETITION NO.5611 OF 2025

Kalyan Hiranappa Patil & Ors. ... Petitioners
V/s.
Joint Charity Commissioner & Anr. ... Respondents

Mr. Patil Vishwanath, Ms. Nidhi Chauhan a/w Mr. Akshay N. for petitioners.

Mr. Pramod Patil a/w Shyamsundar Solanke a.w Pratik Irpatgire i/b PNP & Associates for respondent No.2 and 3.

Ms. S. S. Bhende, AGP for State – respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : APRIL 29, 2025

P.C.:

1. Challenge in this petition is to the order passed by the Charity Commissioner rejecting the preliminary objection raised by the petitioners regarding the maintainability of the proceedings filed under Section 41D of the Maharashtra Public Trusts Act, 1950 (hereinafter referred to as "the said Act"). The preliminary objection was to the effect that the application itself had become infructuous.

2. During the course of hearing, the learned Advocate appearing for the petitioners, upon taking instructions, makes a categorical statement before this Court that the petitioners are no

longer functioning as trustees of Musti Shikshan Prasarak Mandal (hereinafter referred to as "the said Trust"). Petitioner No.2 is personally present in Court and confirms the said statement. The statement is accepted and taken on record.

3. Respondent No.3 is also present in Court today.

4. Upon perusal of the application filed under Section 41D of the said Act, it is seen that the only relief sought therein is for the removal of respondent Nos.2 and 3 from the trusteeship of the said Trust. Once the petitioners themselves have stated, and it is accepted on record, that they are no longer trustees of the said Trust, the primary grievance raised in the application under Section 41D does not survive for adjudication. The issue has thus become academic and of no practical consequence. Courts do not decide academic or hypothetical questions. It is a well-settled principle of law that where the lis (dispute) between the parties has ceased to exist, no purpose would be served by proceeding further with the application.

5. At this stage, the learned Advocate appearing for respondent Nos.2 and 3 submits that, notwithstanding the petitioners having ceased to be trustees, the Charity Commissioner still has the jurisdiction under Section 41D of the said Act to inquire into allegations of misconduct or breach of trust committed during the tenure of trusteeship. It is submitted that an order under Section 41D not only results in suspension, removal, or dismissal from trusteeship but may also impact the eligibility of the concerned individuals to contest future elections for the trust. Such

contentions, in principle, are legally tenable. However, in the facts of the present case, the application under Section 41D merely sought the removal of petitioners as trustees and did not contain specific allegations or prayers concerning future disqualification or adjudication of alleged misconduct. Therefore, in the absence of appropriate pleadings and prayers, the application, as it stands, cannot be entertained further. The learned Advocate for respondent Nos.2 and 3, realizing this position, seeks permission to withdraw the present application with liberty to file a fresh application with appropriate pleadings and prayers, if so advised.

6. Permission, as prayed for, is granted in the interest of justice. No prejudice would be caused to any party if liberty is granted to file a properly constituted application, if necessary.

7. Accordingly, the application filed by respondent Nos.2 and 3 under Section 41D of the said Act is permitted to be withdrawn with liberty to file a fresh application making appropriate averments and seeking appropriate reliefs, in accordance with law. It is clarified that this Court has not made any observations on the merits of the controversy between the parties, and all contentions are kept open to be decided in the event a fresh application is filed.

8. The writ petition stands disposed of in above terms.

(AMIT BORKAR, J.)

Note:- This order is corrected as per the order dated 8 May 2025. Correction is shown italicize in cause title.