

VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2557 OF 2023

VAIBHAV
RAMESH
JADHAV
Digitally signed by
VAIBHAV RAMESH
JADHAV
Date: 2025.02.24
18:42:22 +05:30

Vijaykumar Hiralal Mangwade & Ors. ... Petitioners

V/s.

Hanuman Shikshan Prasarak Mandal,
Nagaj & Ors. ... Respondents

WITH
INTERIM APPLICATION NO.1872 OF 2025
IN
WRIT PETITION NO.2557 OF 2023

Audumbar Vasant Patil ... Applicant

Vijaykumar Hiralal Mangwade & Ors. ... Petitioners

V/s.

Hanuman Shikshan Prasarak Mandal,
Nagaj & Ors. ... Respondents

Mr. Machhindra Patil for the petitioners.

Mr. Dilip Shinde for the applicant.

Mr. Abhijit Adagule for the respondents.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 24, 2025

P.C.:

1. The present writ petition, instituted under Article 227 of the Constitution of India, impugns the legality and correctness of an

order passed by the learned Joint Charity Commissioner, whereby the Petitioners' application—purportedly under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (“the Code”)—came to be rejected. The challenge centers upon the rejection of the plea that the pending Application No. 5 of 2021 filed by Respondent No.1-Trust under Section 47 of the Maharashtra Public Trusts Act, 1950 (“the Act of 1950”) was liable to be dismissed at the threshold.

2. The factual substratum, as pleaded by the Petitioners, is that the said Application No.5 of 2021 has been preferred in the name of Respondent No.1-Trust by a power-of-attorney holder representing the in-charge trustee. According to the Petitioners, however, all trustees of Respondent No.1-Trust—encompassing the in-charge trustee—have passed away, and consequently, the authority vested in the power-of-attorney holder has also abated. Placing reliance on the provisions of Order VII Rule 11(d) of the Code, the Petitioners urge that since the in-charge trustee no longer survives and the trust has purportedly lost all its trustees, the proceedings under Section 47 of the Act of 1950 cannot be sustained. It is the specific contention of the Petitioners that, being barred by law or lacking a valid applicant, the said application should be rejected in limine.

3. By the impugned order, the learned Joint Charity Commissioner has negated the application under Order VII Rule 11(d) of the Code, holding that there is no apparent statement in the main pleading—Application No.5 of 2021—which is inherently barred by any law within the meaning of Clause (d) of Rule 11.

The learned Joint Charity Commissioner has observed that Order VII Rule 11(d) of the Code contemplates rejection of a plaint, or by analogy an application, only if the cause of action or any material statement in the pleading is *ex facie* barred by any statute. Moreover, there is no explicit assertion by the Petitioners indicating which specific part of the application under Section 47 of the Act of 1950 runs afoul of any statutory bar.

4. The principle underlying Order VII Rule 11(d) of the Code has been clearly elucidated by the Hon'ble Supreme Court in *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467, wherein the Court held that while exercising powers under Rule 11, the Court must look to the averments in the plaint (or application) as a whole to determine whether it is manifestly barred by law. Similarly, in *ITC Ltd. v. Debts Recovery Appellate Tribunal*, (1998) 2 SCC 70, the Supreme Court reiterated that a plaint cannot be rejected merely on a contestable plea of lack of locus or authority unless it is plainly and unambiguously barred by a statutory provision. These pronouncements underscore that the threshold for invoking Rule 11(d) demands the statement in the pleading to be patently outside the pale of legal sustainability.

5. The principal grievance raised by the Petitioners is twofold: (i) the in-charge trustee who granted the power of attorney has expired, rendering the power-of-attorney holder's locus questionable; and (ii) all the trustees of Respondent No.1-Trust are stated to be deceased. The Petitioners, therefore, submit that these facts ought to result in a rejection of the application under Section 47 of the Act of 1950 at the outset. However, as pointed out by the

learned Joint Charity Commissioner, these are matters which go to the root of the competence and suitability of the purported trustees or the persons representing the trust, and thus form a legitimate subject of inquiry under Section 47 of the Act of 1950.

6. The nature of an inquiry under Section 47 of the Act of 1950 is sufficiently broad-based and contemplates examining diverse factors such as the fitness and eligibility of trustees, their appointment, and any concurrent legal disabilities. To compartmentalize these objections into preliminary and final issues may lead to protracted litigation. A summary or truncated analysis under Order VII Rule 11(d) is inappropriate when factual investigations are necessitated. Therefore, when the existence or validity of trusteeship calls for a factual inquiry, the remedy is to permit the statutory forum to consider these questions on merits rather than to reject the application in limine.

7. In the backdrop of the foregoing, and in view of the settled legal position that Order VII Rule 11(d) of the Code can be invoked only where the pleading is intrinsically barred by law, the conclusion arrived at by the learned Joint Charity Commissioner warrants no interference. The learned Joint Charity Commissioner has, in accordance with established principles, held that the question of whether the in-charge trustee's demise or the extinction of trusteeship altogether renders the application untenable is a matter to be scrutinized upon a fuller examination of evidence and merits under Section 47 of the Act of 1950. Consequently, this Court is of the opinion that no ground is made out for invoking its supervisory jurisdiction under Article 227 of

the Constitution to upset the impugned order. The writ petition accordingly fails and stands dismissed. There shall be no order as to costs.

8. In consequence of the dismissal of the writ petition, any interim application that has been filed and is pending in this proceeding does not survive and stands disposed of.

9. It is further directed that the learned Joint Charity Commissioner shall proceed to decide Inquiry Application No.7 of 2021 together with Inquiry Application No.5 of 2021 in accordance with law and on their own merits. The Joint Charity Commissioner shall duly consider all contentions of the parties in the course of conducting the inquiry, without being influenced by the observations made herein.

(AMIT BORKAR, J.)