



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.77 OF 2002

Appellant
No.1 is deleted
as per court's
order dated
16/04/03.

- (1) ~~Shri Bhagwatrao s/o Bhaiyyaji Jane,~~
~~Aged about 72 years,~~
~~Occupation Agriculturist,~~
~~R/o. Belora, Tq. Ashti,~~
~~Distt. Wardha.~~

Appellant
Nos.2, 3, 6, 7,
10, 11, 14 is
deleted as per
Court's order
dt.13.6.17.

- (2) ~~Shri Narsingrao s/o Mahadeorao Landge,~~
~~Aged about 69 years,~~
~~R/o. Kinhala, Tq. Ashti,~~
~~Distt. Wardha.~~

- (3) ~~Smt. Mainabai w/o Uttamrao Kankale,~~
~~Aged : Adult,~~
~~R/o. At Sirsoli, Post-Khadki,~~
~~Tah. Ashti, Distt. Wardha.~~

- (4) ~~Shri Vasudeorao s/o Ramchandraji Mohod,~~
~~Aged : Adult,~~
~~R/o. Antora, Tq. Ashti,~~
~~Distt. Wardha.~~

- (5) ~~Shri Pramod s/o Sukhdeorao Burange,~~
~~Aged : Adult, R/o. Antora, Tq. Ashti,~~
~~Dist. Wardha.~~

- (6) ~~Shri Narayanrao s/o Hanumantrao Jane,~~
~~Aged : Adult,~~
~~R/o. Belora, Tq. Ashti,~~
~~Distt. Wardha.~~

- (7) ~~Shri Bapurao s/o Manikrao Keche,~~
~~Aged : Adult,~~
~~R/o. Ambikapur, Post. Delwadi,~~
~~Distt. Wardha.~~

- (8) Dr. Annasaheb s/o Sadashiorao Jane,
Aged : Adult, R/o. Jolwadi,
Post-Delwadi, Distt. Wardha.
- (9) Shri Narayandas s/o Sundarlal Chandak,
Aged : Adult, R/o. Antora, Tah. Ashti,
Distt. Wardha.
- (10) ~~Shri Wasudeorao s/o Laxmanrao Kapure,~~
~~Aged : Adult, R/o. Antora, Tq. Ashti,~~
~~Distt. Wardha.~~
- (11) ~~Shri Rajendra s/o Nanaji Wagh,~~
~~Aged : Adult, R/o. Antora, Tq. Ashti,~~
~~Distt. Wardha.~~
- (12) Dr. Narendra s/o Champatrao Deshmukh,
Aged : Adult, R/o. Antora, Tq. Ashti,
Distt. Wardha.
- (13) Shri Prakash s/o Marotrao Mungse,
Aged : Adult, R/o. Antora, Tq. Ashti,
Distt. Wardha.
- (14) ~~Shri Natthuji s/o Shioramji Holey,~~
~~Aged : Adult, R/o. Lahan Arvi,~~
~~Distt. Wardha.~~ ..

Appellants..Versus..

Respondent
No.1,2,3,6 is
deleted as per
court order
dt.13.6.17.

- (1) ~~Vishwanathrao s/o Yadaorao Mohod,~~
~~Aged about 79 years,~~
~~R/o. Antora, Tq. Ashti,~~
~~Distt. Wardha.~~
- (2) ~~Punjabrao s/o Ganpatrao Mankar,~~
~~Aged about 82 years,~~
~~R/o. Chincholi, Post-Antora,~~
~~Tq. Ashti, Distt. Wardha.~~

- (3) ~~Mahadeorao s/o Ganpatrao Wagh,~~
~~Aged about 81 years,~~
~~R/o. Sirsoli, Tq. Ashti,~~
~~Distt. Wardha.~~
- (4) Vasantrao s/o Krishnarao Mungase,
 Aged : Adult, R/o. Antora, Tq. Ashti,
 Distt. Wardha.
- (5) Sahebrao s/o Anandrao Keche,
 Aged : Adult, R/o Antora, Tq. Ashti,
 Distt. Wardha.
- (6) ~~Madhaorao s/o Kesharao Kohale,~~
~~Aged : Adult, R/o. At Post & Tq. Ashti,~~
~~Distt. Wardha.~~
- (7) Prakash Natthuji Kathale,
 R/o. At Post -Talegaon, Tah. Ashti,
 District-Wardha.
- (8) Anant Vishwanathrao Mohod.
- (9) Chandrashekhar Sahebrao Jore.
- (10) Rameshrao Panjabrao Mankar.
- (11) Narendra Ambadasji Wankhede.
- R. No.8 to 11 R/o. At Post-Khadka,
 Tah. Ashti, District-Wardha.
- (12) Assistant Charity Commissioner,
 Chandrapur Sub-Region,
 Wardha, Tq. & Distt. Wardha. ..

Respondents

Shri R.L. Khapre, Senior Advocate assisted by Shri A.P. Chorghade, Advocate for Appellants.

Shri S.V. Manohar, Senior Advocate assisted by Shri N.D. Khamborkar, Advocate for Respondent No.1.

Shri S.C. Joshi, Assistant Government Pleader for Respondent No.12.

.....

CORAM : PRAVIN S. PATIL, J.
RESERVED ON : 12.09.2025.
PRONOUNCED ON : 30.09.2025.

JUDGMENT

1. The appellants made an exception to challenge the judgment and order dated 5.12.2001 passed by the learned Additional District Judge, Wardha in Trust Application No.3/1999 whereby he has confirmed the order passed by the Joint Charity Commissioner.

2. To consider the grievance raised by the appellants in the matter, it will be necessary to state the certain facts which is a matter of record in the present appeal.

3. The Assistant Charity Commissioner in a Change Report Enquiry Case No.84/1994, by its judgment dated

27.1.1995 by recording the finding that the trust being established long back with its own rules and regulations, are inadequate to manage better and proper administration of the trust. Accordingly, the trust is facing several difficulties for want of proper extensive and intensive clauses in the constitution of the trust. It is further recorded that all powers are vested in President of the Trust as monopoly system and thereby constitution is not democratic pattern. Accordingly, the parties were directed to file a scheme application under Section 50 (a)(1) of the Bombay Public Trust Act, 1950 for better and proper management and administration of the trust within a period of three months from the date of order.

4. The present appellants, being aggrieved by the said order, preferred the appeal before the Joint Charity Commissioner, Nagpur bearing Appeal No.12/1995. It is the submission of the present appellants that the constitution of Trust is self sufficient to run the affairs of the trust and therefore findings recorded by the Assistant Charity Commissioner are not justified in the matter.

5. In the meantime, as per the order of Assistant Charity Commissioner, dated 27.1.1995, the respondents filed scheme application as per Section 50 of the Bombay Public Trust Act in the matter.

6. The present appellants prosecuted the Appeal No.12/1995 filed by them before the Joint Charity Commissioner. The learned Joint Charity Commissioner, while deciding the appeal by its judgment dated 29.9.1995, held that observations of the learned Assistant Charity Commissioner of directing to prepare scheme proceeding are not correct and justified in the matter. It is held that existing rules and regulations framed by the trust are sufficient to run the trust. It is also recorded that the trust was/is functioning within the purport of it, it is not proper to say that scheme application is necessary. It is held by learned Joint Charity Commissioner that the constitution of the trust is already there and if at all the trust needs some changes, governing body or general body can do so. Hence, the finding recorded by the learned Assistant Charity Commissioner directing to frame the scheme was held to be illegal. However, the other part of the order to hold

election was not disturbed. Accordingly, Appeal No.12/1995 was partly accepted and the persons, who were recorded in Schedule-I, were directed to conduct the fresh election within a period of three months as per the constitution by considering the membership of then existing members as mentioned in the membership register.

7. The present respondents, being aggrieved by his observation recorded by the learned Joint Charity Commissioner, preferred statutory appeal before the learned District Judge, vide Appeal Nos.4/1995 and 5/1995. They requested for grant of stay to the order of the Joint Charity Commissioner to the extent of directing to not frame scheme application. The learned District Judge, by his order dated 30.11.1995 granted stay to the order of Joint Charity Commissioner. As such order of Assistant Charity Commissioner was revived to the extent of framing a scheme for Trust.

8. The present appellants against the order of granting stay by the learned District Judge in Appeal Nos.4/1995 and 5/1995, preferred Writ Petition No.149/1996 before this court.

In the said petition both the parties jointly submitted their terms and conditions for disposal of the petition. Accordingly the writ petition was disposed of by order dated 29.1.1996. It will be necessary to reproduce the terms on which the writ petition was disposed of by this court and same are reproduced as under :

(i) That, the 2nd Addl. District Judge, Wardha shall hear and decide the Trust Application No.4/95 and 5/95 as expeditiously as possible and in no case later than three months from the date of appearance of the parties.

(ii) during the time the aforesaid trust application No.4/95 and 5/95 are disposed off by the 2nd Addl. District Judge, Wardha, the present Committee Managing the Shri Gurudeo Hutatma Gramrajya Samiti, Antora shall continue as it is, subject to the final decision in the aforesaid applications.

(iii) The proceedings for framing of scheme pending before respondent no.4 shall continue but no scheme shall be finally framed till the trust application no.4/95 and 5/95 are disposed of by the 2nd Addl. District Judge, Wardha.

9. In view of the terms agreed between the parties, condition was that application nos.4/1995 and 5/1995 pending on the file of Additional District Judge, Wardha shall be heard and decided as expeditiously as possible and learned Assistant Charity Commissioner was at liberty to frame the scheme as per direction. Only restriction was that, same should not be finalized by him till the final disposal of pending Application Nos.4/1995 and 5/1995.

10. The learned District Judge by recording the findings that the learned Joint Charity Commissioner was justified in holding that there were no reasons for the Assistant Charity Commissioner to direct to frame the scheme, dismissed the appeal filed by the respondents and uphold the order passed by the Joint Charity Commissioner vide its judgment and order dated 30.4.1996.

11. The respondents, against the said order of Additional District Judge, Wardha passed in Application Nos.4/1995 and 5/1995 preferred First Appeal bearing No.514/1996 with 515/1996 and others. This Court has taken up all the appeals

together and decided the same by common order dated 16.4.1998. It is observed that in view of the order passed in the First Appeals, it follows that finalization of the scheme may be proceeded with subject to any further matters operating in the field pertaining to the said issue. For convenience, the last para of the order is reproduced as under :

“The learned counsel for the appellant states that framing of scheme was initiated as a result of decision in the applications. However, this Court by order dated 29.1.96 had permitted the said proceedings to continue but directed that no scheme shall be finalised. The learned counsel jointly submitted that this order is operative as on today. In view of the order passed in the First Appeals, it follows that finalisation of the scheme may be proceeded with subject to any further orders operating in the field pertaining to the said issue. Needless to say that the finalisation of the scheme shall be completed in accordance with law. Appeals are disposed of accordingly.”

12. In view of adjudication of the first appeal by this court, the pending scheme application on the file of Assistant Charity Commissioner was reopened to decide it finally on its own merits. The record shows that in the said proceeding the appellants participated and recorded their objection dated 27.3.1996. Accordingly after the decision of this court in First Appeal, appellants filed their additional statement to the

objection which they have raised. Hence, it is clear that Appellant in terms of order of this court dated 16.4.1998 participated in the matter. The order dated 16.4.1998 accordingly attended finality in the matter.

13. In the background of above said factual position, the learned Assistant Charity Commissioner decided the Application No.14/1995 filed by respondent under Section 50 (a)(1) of the Bombay Public Trust Act for settlement of scheme. The learned Charity Commissioner by recording the objection and submission made by the appellants in the matter framed the scheme. While deciding the application it is held that “eventually the authority is required to see the administration of the public trust should be run properly and regulated by the rules. However, for that purpose, the rules needs to be updated in a proper manner”. Thus it is clear that keeping in mind the welfare of Public Trust, scheme was framed.

14. The appellants being aggrieved by the order of the Assistant Charity Commissioner dated 14.10.1999, preferred the Appeal before the learned District Judge bearing Trust

Application No.3/1999. The prime submission of the present appellants before the learned District Judge was that this court in writ petition has directed that no scheme shall be finally framed till the Trust Application Nos.4/1995 and 5/1995 are disposed of by the 2nd Additional District Judge, Wardha. Therefore, according to the appellants, the impugned order passed by the learned Assistant Charity Commissioner being bad in law, is liable to be quashed and set aside.

15. The learned District Judge by the impugned judgment and order dated 5.12.2001 considered the entire material placed before him including the order of High Court in Writ Petition No.149/1996 and First Appeal No.515/1996 held that the submission of the appellants is misconceived because the order dated 29.6.1996 passed in Writ Petition No.149/1996 is misinterpreted by the appellants. The learned District Judge has relied upon the subsequent order passed by this Court in First Appeal No.515/1996 decided on 16.4.1998. Accordingly rejected the application.

16. In the backdrop of above said factual position, the present appeal came to be filed before this court by the appellants. I have heard the learned senior counsels for the appellants as well as the respondents. I have perused the entire record and the case laws relied upon by the parties in the matter.

17. In the present appeal though various aspects were shown to be involved by giving the numbers of the pending change reports and appeals thereof, however, looking the controversy involved in the matter, the only issue which is required to be considered, whether the proceeding decided by the Assistant Charity Commissioner in Application No.14/1995 under Section 50(a)(1) of the Bombay Public Trust Act was in conformity of order of this court in First Appeal No.515/2016 decided on 16.4.1998 or he was restrained to frame final scheme as per the consent terms while disposing the Writ Petition No.149/1996 on 29.1.1996.

18. From the facts narrated above, it is crystal clear that this court, while disposing Writ Petition No.149/1996, was

considering the legality and validity of the interim order passed by the learned District Judge in pending application Nos.4/1995 and 5/1995. It is further important to note that this order came to be passed with the consent of all the parties and as per their joint submission. From the tenor of the order dated 29.1.1996, it is clear that this court is of the opinion that as there is an interim order operating in Application Nos.4/1995 and 5/1995, the said application should be decided as expeditiously as possible and, therefore, till the disposal of the said trust application, directed that the proceeding for framing of scheme pending before Assistant Charity Commissioner shall continue but no scheme should be finally framed.

19. The bare perusal of this order clearly means that the said embargo was directed to be remain in operation till the final decision of the Trust Application nos.4/1995 and 5/1995. Therefore, according to me, the reliance placed by the appellants on judgment in Writ Petition No.149/1996, dated 29.1.1996, particularly when the proceedings of Trust Application Nos.4/1995 and 5/1995 are finally decided is totally misplaced.

20. It is pertinent to note that after the decision of the Trust Application Nos.4/1995 and 5/1995 whereby the learned District Judge confirmed the order of Joint Charity Commissioner i.e. in favour of appellants, the order passed by this court dated 29.1.1996 loose its effect and, therefore, after the decision it is not expected from the appellants to rely upon the same. More particularly when Trust Application Nos.4/1995 and 5/1995 were decided in favour of Appellants.

21. It is pertinent to note that the present respondents against the judgment of learned District Judge in Trust Application Nos.4/1995 and 5/1995 decided on 26.4.1996 preferred first appeal before this Hon'ble Court bearing First Appeal No.514/1996 with 515/1996. The said appeals were decided along with pending appeals by common order dated 16.4.1998. This court, in the said appeal, clearly indicated that in view of the order passed in the first appeal indicated above specifically observed "in view of order passed in the first appeals, it follows that finalization of the scheme may be proceeded with subject to any further orders operating in the

field pertaining to the said issue. Needless to say that finalization of the same shall be completed in accordance with law and appeals are disposed of accordingly.” As such there was no impediment to Assistant Charity Commissioner to proceed with the matter.

22. In the present appeal, from the record, it is also clear that after the judgment of this court in First Appeal No.514/1996 decided along with other appeals, the appellants participated in the proceedings for framing of scheme application and after hearing all the parties, the scheme was framed by the learned Assistant Charity Commissioner. Therefore, once the appellant has participated in the scheme proceedings, it is wrong on the part of appellant to state that the learned Assistant Charity Commissioner should not have finalized the scheme of the trust.

23. It is admitted fact in the present appeal that this litigation is going on since year 1994. Almost 30 years has been elapsed and the parties are litigating in the matter. In this background, respondents placed on record the affidavit of

respondent no.8 dated 7.1.2022 stating thereby that all the original parties before the learned Assistant Charity Commissioner, Wardha are dead. The trust is smoothly working with no litigation after the framing of the scheme and there is no complaints or litigation pending in the matter. It is further pointed out that the last elections of the trust were held on 16.4.2017 and the Change Report bearing C.R. No.505/2017 being accepted by the learned Assistant Charity Commissioner, the managing committee is duly carrying out the administration of the trust. It is stated that at present the Schedule-I of the trust is amended and the present managing committee is recorded as a duly constituted managing committee of the Trust.

24. The present appellants filed counter affidavit to the same and denied that all the trustees are expired in the matter. The appellants have given the list of the persons who are the party to the proceeding stating that they are still in existence. It is further pointed out that the trustees shown in the change report are already on record and, therefore, the present appeal can be decided on its own merits. However, I do not want to go

into the controversy because this is not a subject matter of challenge in the present appeal.

25. In the present appeal, I am of the opinion that the order of the learned District Judge is under challenge on the ground that this court in Writ Petition No.149/1996 has restrained the Assistant Charity Commissioner from finalizing any scheme of the trust. As I observed above that the ground of challenge raised by the appellants is not actually correct, I see no reason to interfere in the present appeal. Hence, for the reasons stated above, the **appeal is dismissed.**

(Pravin S. Patil, J.)