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

WRIT PETITION NO. 352 OF 2024

Vilas Pandurang Nihare & Ors. ... PETITIONERS

Versus

Surendra Shamsunder Shirbhate ... RESPONDENT

Mr. C. R. Sharma, Advocate for Petitioners.
Mr. C. A. Babrekar, Advocate for Respondent.

CORAM : R. M. JOSHI, J.
DATE : JUNE 27, 2025.

ORAL ORDER

. Heard Mr. C. R. Sharma, learned Counsel for the Petitioners and Mr. C. A. Babrekar, learned Counsel for the Respondent. By consent of both sides, Petition is heard finally at the stage of admission.

2. This Petition takes exception to the order dated 4/12/2023 passed by the Joint Charity Commissioner, Amravati in Appeal No. 33/2021 under Section 70 of the Maharashtra Public Trusts Act, 1950 *(for short, 'the Public Trust Act')*.

3. The facts which lead to the filing of the Petition are narrated in brief as under :

The Respondent/Trustee of Shri Shriram Mandir Sansthan Ichori (Veni), Tahsil Kalamb, District Yavatmal, a public Trust registered under the Maharashtra Public Trust Act bearing registration No. A-478/Yavatmal filed proceedings under Section 22 of the Public Trust Act for recording change in the constitution of the executive Committee of the Trustees. This proceeding was registered as Change Report Enquiry No. 137/2022. The Change Report was not objected by any one. The Assistant Charity Commissioner decided the said proceeding on 7/10/2020, accepting the Change reported. The Respondent who is also a Trustee of the Trust raised objection to the said order by preferring an appeal before the Joint Charity Commissioner. It was the contention of the said Trustee that the election of the executive Committee members in the meeting held on 7/6/2020 was in his absence and that he was not served with the notice of the said meeting. There is also allegation that there is fabrication of record in respect of the said meeting. On these grounds appeal came to be filed. The Joint Charity Commissioner accepted the contention of the Respondent and by passing impugned order dated 4/12/2023 allowed the appeal, setting aside order passed by the Assistant Charity Commissioner dated 7/10/2020. Change Report was also rejected. Apart from these directions, the Assistant Charity Commissioner was directed to frame scheme under Section 50-A(1) of the Public Trust Act.

4. The learned Counsel for Petitioners raises exception to this order on two counts; firstly, that it was not open for the Joint Charity Commissioner to pass any order under Section 50-A of the Public Trust Act directing framing of the scheme unless the Trustees of the scheme are heard; and secondly, it is his contention that though it is stated in the impugned order that the resolution of meeting dated 7/6/2020 is in contravention of the mode of succession to the trusteeship mentioned in Schedule-I of the Trust, but in fact there is no finding of facts recorded as to how there is such contravention.

5. The learned Counsel for Respondent supported the impugned order. According to him, in the interest of Trust if the directions are issued by invoking the powers under Section 50-A of the Public Trust Act, no interference is called in such direction. On merit it is submitted by drawing attention of the Court to the Schedule-I, which indicates that the mode of succession is heridatoryship and in the light of these facts it cannot be said that suo motu exercise of powers by the Joint Charity Commissioner is perverse. It is his submission that in view of the said fact, no interference is called in the order impugned.

6. There cannot be any dispute about the powers of the Joint Charity Commissioner under Section 50-A to settle a scheme or issue direction to that

effect to the Authority. Pertinently, this power can be exercised by the Charity Commissioner, if it is found so in the interest of administration of the Trust. Hence, before passing any order, it must be preceded by the finding that framing of scheme is in the interest of Trust. Perusal of impugned order does not show any such reason being recorded by the Joint Charity Commissioner. Moreover, this issue never arose for consideration of Joint Charity Commissioner for the reason that it was the order passed by Assistant Charity Commissioner under Section 22 under challenge before him. There is nothing brought on record to indicate that the Trust is not being administered properly for want of a scheme. Pertinently, at the time of passing of the final order, such directions are given, and thus, no opportunity was made available to the Petitioners to even make any submissions in this regard. For this reason itself the said directions cannot sustain.

7. On merits, though it is observed by the Joint Charity Commissioner that the resolution of the meeting dated 7/6/2020 is in contravention of the mode of succession to the trusteeship, as mentioned in Schedule-I of the Trust, it is, however, not said as to in which manner the said resolution contravenes the mode of succession. Unless such finding is recorded, it was not open for the Joint Charity Commissioner to set aside the order

passed by the Assistant Charity Commissioner. Here in this case, admittedly the notices were published by the Assistant Charity Commissioner before conducting an enquiry in a proceedings under Section 22 of the Public Trust Act. The Respondent/trustee never objected the said proceeding before the Assistant Charity Commissioner.

8. Moreover, this is not the case wherein no enquiry has been conducted by the Assistant Charity Commissioner before passing order in question and the order came to be passed on the basis of evidence led before him. All these aspects are ignored by the Joint Charity Commissioner and impugned order came to be passed mechanically. As a result of which, the order passed by the Joint Charity Commissioner allowing the appeal and setting aside order passed by the Assistant Charity Commissioner in Change Report No.137/2022 cannot sustain. For the reasons mentioned hereinabove, present Petition succeeds.

9. Impugned order dated 4/12/2023 passed by the Joint Charity Commissioner in Appeal No. 33/2021 is hereby set aside. The proceedings of Appeal No. 33/2021 is relegated back to the Joint Charity Commissioner, Amravati for decision afresh.

10. The Joint Charity Commissioner to decide the Appeal on its own merits without getting influenced by above observations.

11. Writ Petition stands allowed in above terms.

12. In view of disposal of present Petition, pending Civil Application (CAW) No. 310/2024 does not survive and stands disposed of accordingly.

(R. M. JOSHI, J.)

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