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

WRIT PETITION NO. 5527 OF 2024

Ramesh Ramrao Bhagat,
Managing Trustee of Shri Wakaji Sansthan,
Umra,
Aged about 72 yrs, Occ. Agriculturist,
R/o Umra, Tq. Akot, Dist Akola …… **PETITIONER**

...V E R S U S...

1. The Assistant Charity Commissioner – 1,
Akola Division, Akola

2. Shri Gajanan Narayan Kadu,
Age adult, Occ. Agriculturist,

3. Shri Sopan Manohar Khawale,
Age Adult, Occ. Agriculturist,

4. Shri Suresh Ramrao Bhagat,
Age adult, Occ. Agriculturist,

5. Shri Purushottam Vishwanath Joshi,
Age Adult, Occ. Agriculturist,

Respondent Nos. 2 to 5/R/o Umra,
Tq. Akot, Dist. Akol **.....RESPONDENTS**

Mr. Y.N. Sambre, Advocate for Petitioner.
Mr. A.V. Palshikar, APP for respondent No.1/State.
Mr. A.J. Gilda, Advocate for respondent No. 4.

CORAM:- AVINASH G. GHAROTE & ABHAY J. MANTRI, JJ.
DATE : 16.01.2025

JUDGMENT (Per : Abhay J. Mantri, J.)

Heard finally with the consent of the learned Advocate for the parties.

2. The petitioner, being aggrieved by the order dated 14.06.2024, passed by respondent No. 1 – Assistance Charity Commissioner, Akola in Enquiry No. 11/2024, thereby partly allowing the application filed by respondent Nos. 2 to 5 and directed the petitioner to conduct an auction of land Survey No. 336 in the presence of Superintendent of office of the Charity Commissioner, excluding the area covered by Mango, Lemon and Orange trees.

3. Succinctly, the facts are that the petitioner is a sole trustee of Shri Wakaji Sansthan Umra, Dist. Akola. The trust is registered under The Maharashtra Public Trusts Act 1950 (for short- '*The Act*"). The trust owns two fields bearing Survey Nos. 336 and 21 at Mauza Umara and Aurangabad, respectively. In field Survey Nos. 336, 694 Orange trees, 45 Mango trees, 4 Custard Apple trees, 3 Ramfal trees and Lemon trees are standing in some parts.

4. On 20.03.2024, Respondent Nos. 2 to 5 filed an application before respondent No. 1 under Section 41A of the Act, claiming that the field owned by the trust shall be put into an auction so that the trust can be properly accounted for and benefited from the same. After considering the parties' contentions and records, respondent No. 1 has partly allowed the application and directed the auction of land Survey No. 336, excluding the land covered by Mango, Lemon, and Orange trees. Being aggrieved by the same preferred this petition.

5. Mr. Y. N. Sambre, the learned Counsel for the petitioner, vehemently contended that the trust has never given its field to anyone through auction, but the trust is cultivating the field on its own. Also, canvassed that the Orange, Lemon, and Mango trees are standing in the field; therefore, it would not be in the interest of the trust to auction the field. Hence, he submitted that the issuance of direction is improper and is liable to be set aside. He further propounded that respondent No. 1 failed to appreciate that auctioning the property of the trust would amount to inducting a tenant on trust property, which is detrimental to the interest of the trust. Therefore, passing the impugned order is unjust and causes

prejudice to the petitioner's rights. He further argued that the petitioner has no concern with the property of the trust and, therefore, filing the petition is nothing but harassment of the petitioner.

6. *Per contra*, the learned AGP for respondent No.1 and Mr. Gilda, the learned Counsel for respondent Nos. 2 to 5, strenuously argued that as per Section 41A of the Act, respondent No.1 is empowered to direct the trustee of a public trust to ensure that the trust is properly administered, and the trustee properly accounts for the income. Therefore, issuing direction by respondent No. 1 is just and proper, requiring no interference at the hands of this Court. Thus, respondent Nos. 2 to 5 supports the impugned order.

7. We have appreciated the rival contentions of the parties and perused the impugned order and record.

8. It is not in dispute that the petitioner is the sole trustee of the trust. The trust owns Survey No. 336, admeasuring 5.57 HR. The petitioner planted Mango, Lemon, and Orange trees on 1.25 HR

land, and the crop stands on the remaining land. Our attention is also invited to the Order dated 05.09.2024, passed by the Assistant Charity Commissioner, Akola, and observations regarding the income of the trust as recorded in the impugned order from the audit report depict that the trust has an annual income of Rs. 1.93 Lakhs in 2021-22.

9. To protect the interest and for the welfare of the trust, respondents Nos. 2 to 5 have filed an application for the issuance of the direction to the petitioner to auction field S. No. 336.

10. The short question arises as to whether respondent No.1 is empowered to give direction under Section 41A of the Act. To ascertain the same, it would be proper to reproduce Section 41A of the Act, which reads thus:

> **41A. Power of Commissioner to issue directions [for proper administration of the trust.—**
>
> (1) Subject to the provisions of this Act, ***the Charity Commissioner may, from time to time, issue directions to any trustee of a public trust or any person connected therewith to ensure that the trust is properly administered, and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust;*** and *the Charity Commissioner may also give directions to the trustees* or such person that if he finds any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold,

> removed or disposed of.
>
> [**Provided** that, if any application is made by the trustee of any trust for seeking directions under sub-section (1), the Charity Commissioner shall decide such application within three months from the date of its receipt and if it is not practicable so to do, the Charity Commissioner shall record the reasons for the same.]
>
> (2) It shall be the duty of every trustee or of such person to comply with the directions issued under sub-section (1).

11. A bare perusal of the provisions of Section 41A reveals that it empowers respondent No. 1 to issue direction to the trustee of the public trust to ensure that the trust is administered properly and the income of the same is properly accounted for. It further appears from the observations regarding the trust's income as taken from the audit report that the trust had an annual income of Rs. 1.93 lakhs. Therefore, in our opinion, the issuance of direction by respondent No. 1 for conducting the auction of the land, except the land covered by the trees standing on the land, was passed to protect the interest and the welfare of the trust, is just and proper as respondent No.1 has empowered to do the same. Hence, we have answered the question in the affirmative.

12. In addition, respondents Nos. 2 to 5 contended that as residents of village Umra, they used to participate in the temple's

day-to-day activities and habit of attending the performance of worship, they have concerns about the said trust, so they are interested in its administration as per section 2 (10) (a) & (d). Hence, they filed the application. Even assuming for the sake of argument, respondents Nos. 2 to 5 have no concern or authority to file an application. However, respondent No. 1 can suo-moto pass an order under Section 41A of the Act to protect the trust's interest.

13. Thus, having considered the facts of the case, in our view, passing of the impugned order is just and proper for the welfare and benefit of the trust, and the same would not cause prejudice to the rights of the petitioner being the trustee but would help to better administration of the trust. In fact, the income accrued thereof can be properly accounted for.

14. Furthermore, it appears that the agricultural season starts from April to March every year, and now December 2024 is ongoing. Therefore, it would not be proper to continue with the direction of an auction for the year 2024-25, but it would be appropriate to direct the petitioner to put the land in the auction from 01.04.2025 to 31.03.2026 and onward.

15. In the wake of the above, we do not find any merit in the petition to interfere in writ jurisdiction. Hence, the petition stands dismissed with no orders as to costs.

16. It is clarified that the petitioner is to put the land to auction from 01.04.2025 to 31.03.2026 and onwards.

(ABHAY J. MANTRI, J.) **(AVINASH G. GHAROTE, J.)**

Belkhede

Signed by: Mr. R. S. Belkhede
Designation: PA To Honourable Judge
Date: 16/01/2025 18:27:37