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

WRIT PETITION NO.6286 OF 2024

Shammi Gaffar Sheikh **Vs.** Dr. Shruti Sakharam Sorte and Others

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. V.N. Morande, Advocate for the Petitioner.
Mr. H.R. Dhumale, AGP for the Respondent/State.
Mr. A.P. Thakare, Advocate for Respondent No.8.

CORAM: SIDDHESHWAR S. THOMBRE, J.

DATED : 13th OCTOBER, 2025

1. Heard Mr. V.N. Morande, learned counsel for the petitioner, Mr. H.R. Dhumale, learned AGP for the respondent/State and Mr. A.P. Thakare, learned counsel for the respondent No.8,

2. The petitioner instituted the proceeding under Section 41D of the Maharashtra Public Trusts Act, 1950 (for short “the Act”) before the Joint Charity Commissioner, Nagpur whereby, an issue was raised that when change report was not yet accepted, whether the proceedings are maintainable under Section 41D of the Act.

3. The change report was not accepted and that proceeding under Section 22 of the Act was at the preliminary stage when the application under Section 41D was filed. Therefore, on that ground, the application under Section 41D was rejected by the learned Joint Charity Commissioner holding that the same is not maintainable. Against this rejection, the present writ petition is filed.

4. Learned counsel for the respondent Nos.1 to 6 and 9, tendered their reply affidavit and pointed out that the charge report filed under Section 22 was rejected and the appeal against that order is already filed under Section 70 of the Act and the same is pending.

5. Learned counsel for the respondents further contended that as the proceeding filed under Section 22 itself are rejected whereby, respondents are not trustees and therefore, the Joint Charity Commissioner rightly passed an order rejecting the application filed under Section 41D of the Act. It is contended by the learned counsel for the respondent Nos.1 to 6 and 9 that the counsel who represented the petitioner, herself submitted that the proceedings are not maintainable and therefore, that once the counsel who represented the parties has specifically stated that the proceedings are not maintainable, now it is not proper on the part of the petitioner to take 'u-turn' and submit otherwise. He further submitted that the petitioner does have the status of *de-facto* trustees. Therefore, on that count, he supported the order of learned Joint Charity Commissioner and prayed for dismissal of the writ petition.

6. Learned counsel for the petitioner submits that the change report was filed under Section 22 was rejected but still, pursuant to the elections held, the managing committee is officiating as trustees, therefore, only because the change report is rejected, that does not mean that they are not a trustees and therefore, he supported the petition.

7. Having gone through the order passed by the learned Joint Charity Commissioner passed under Section 41D, my attention is brought to the observation recorded by the learned Joint Charity Commissioner. Considering section 41D which is reproduced as under :-

> *"41D. Suspension, removal and dismissal of trustees.—*
> *(1) The Charity Commissioner may, either on application of a trustee or any person interested in the trust, or on receipt of a report under section 41B or suo motu may suspend, remove or dismiss any trustee of a public trust, if he,—*
> *(a) makes persistent default in the submission of accounts report or return;*
> *(b) wilfully disobeys any lawful orders issued by the Charity Commissioner under the provisions of this Act or rules made thereunder by the State Government;*
> *(c) continuously neglects his duty or commits any mal-feasance or misfeasance, or breach of trust in respect of the trust;*
> *(d) misappropriates or deals improperly with the properties of the trust of which he is a trustee ; or*
> *(e) accepts any position in relation to the trust which is inconsistent with his position as a trustee ;*
> *(f) if convicted of an offence involving moral turpitude.*
>
> *(2) (a) When the Charity Commissioner proposes to take action under sub-section (1), the Charity Commissioner may issue notice to the trustee or the person against whom the action is proposed to be taken only when he finds that there is prima facie material to proceed against the said person.*
> *(b) The trustee or person to whom a notice under clause (a) is issued, shall submit his reply thereto within fifteen days from the date of receipt of notice.*
> *(c) If the person fails to give reply to the notice issued under clause (a) or the Charity Commissioner finds that the reply is not satisfactory, the Charity Commissioner shall frame charges against the said person within fifteen days of the filing of the reply or the default in the filing of reply, as the case may be, and give the said person an opportunity of meeting such charges and after considering the evidence adduced against him and in his favour, may pass order regarding suspension or removal or dismissal within three months from the date of framing of charges. If it is not practicable for the Charity Commissioner to issue notice, frame charges and pass final orders within stipulated time, he shall record reasons for the same.*

(d) The order of suspension, removal or dismissal shall state the charges framed against the trustee. his explanation, if any, and the finding on each charge with reasons therefor.].

(3) Pending disposal of the charges framed against a trustee the Charity Commissioner may place the trustee under suspension.

(4) Where the Charity Commissioner has made an order suspending, removing or dismissing any trustee and such trustee is the sole trustee or where there are more than one trustee and the remaining trustee according to the instrument of trust, cannot function or administer the trust without the vacancy being filled, then in that case the Charity Commissioner shall appoint a fit person to discharge the duties and perform the function of the trust, and such person shall hold office only until a trustee is duly appointed according to the provisions of the instrument of trust.

(5) * **

(6) An appeal shall lie to the Court against the order made under sub- section (1), as if such decision was a decree of a district court as a court of original jurisdiction from which an appeal lies, within sixty days from the date of the order.

(7) The order of the Charity Commissioner shall, subject to any order of the Court or in appeal, be final."

8. The order passed by the learned Joint Charity Commissioner, if considered, reveals that merely because the enquiry under Section 22 was pending, the observations of the learned Joint Charity Commissioner, that the proceeding under Section 41D of the Act are not maintainable, are totally illegal. The moment, elections were held, the elected body starts officiating. As far as the change report is concerned even if it is rejected, the body which got elected pursuant to the Resolution passed by the managing committee, still can be considered as trustees.

9. In this case also, the change report was filed and same was rejected and now against that an appeal is filed. Therefore, the observations by the learned Joint Charity Commissioner are perverse and therefore, such order cannot sustain in the eyes of law. Considering all these facts and circumstances of the case, I pass the following order :-

O R D E R

(1) The writ petition is **allowed**.

(2) The order passed by the learned Joint Charity Commissioner dated 27.02.2024 is hereby quashed and set-aside.

(3) Proceedings are restored to its original position.

(4) Both the parties to appear before the learned Joint Charity Commissioner on 10.11.2025.

(SIDDHESHWAR S. THOMBRE J.)

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