**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.2909 OF 2024

Dnyaneshwar Shriram Gavande and others
Vs.
Joint Charity Commissioner, Amravati and others

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Shri U.J. Deshpande, Advocate for petitioners.
Shri S.B. Bissa, AGP for respondent no.1.
Shri S.A. Mohta, Advocate for respondent nos.2,4 and 8.

CORAM : M.W. CHANDWANI, J.
DATE : 25.03.2026.

1. The petition challenges the order dated 07.12.2023 passed by the Joint Charity Commissioner, Amravati in Enquiry No.3/2015 whereby, suo moto enquiry recommended by the Deputy Charity Commissioner came to be dismissed. The relevant paragraphs read as under:

> *"22. The Assistant or Deputy Charity Commissioner or any officer authorised by the State Government shall have powers of inspection of trust record under section 37 of the Maharashtra Public Trusts Act, 1950. As per section 38 of the Maharashtra Public Trusts Act, 1950 on receipt of report of inspector or on receipt of the complaint the Deputy or Assistant Charity Commissioner shall call the explanation of the trustees. Thereafter as per section 39 the Deputy or Assistant Charity Commissioner shall hold an inquiry in a prescribed manner and submit the report to the Charity Commissioner in respect of trustees of gross negligence, breach of trust, misappropriation and misconduct which resulted in loss to the trust. Now very crucial question arises before this authority is that*

whether proper procedure has been followed by learned Assistant Charity Commissioner while submitting report under section 39 of the Maharashtra Public Trusts Act, 1950 for taking action under section 41-D of the Maharashtra Public Trusts Act, 1950.

26. This authority has perused the report of the inspector exh.1 dated 22/05/2015. There is no evidence on record that Janunkar has participated in the administration of the trust. It is not clear from the report of the inspector that which construction has been carried out by the non-applicants trustees without inviting tenders. The details of construction and expenditure has not been produced on record. Description of movable properties has not been mentioned in the report of the inspector. The scheme of the trust has not been produced on record. Hence it is not clear that how many meetings are required to be held by the non-applicants trustees. It is not clear from the evidence of inspector Anup Deshmukh and his report when the auction of the agricultural land has been held and how much amount has been misappropriated by the non-applicants. It is not clear from the report of the inspector and his evidence on record that how much amount has been spent for the construction by the non-applicants trustees and how much amount has been withdrawn. The record of the trust namely cash-book, vouchers, account book, dead stock register has not been produced on record. Hence the evidence of the inspector Anup Deshmukh is not sufficient to hold the non-applicants trustees guilty in respect of the charges of malfeasance, misfeasance, misappropriation of trust fund and breach of trust. Hence, the evidence of inspector of Anup Deshmukh does not inspire the confidence of this court."

2. Thus, the main ground for dismissing the enquiry was that explanation was not called for, either by the Deputy

Charity Commissioner or the Assistant Charity Commissioner. Enquiry under Section 39 of the Maharashtra Public Trusts Act, 1950 (for short, "**Act of 1950**") has not been conducted by them. Another finding given by the Joint Charity Commissioner is that the report of the Inspector does not mention vital details and is not sufficient to hold the non-applicants therein guilty of malfeasance, misfeasance, breach of trust and misappropriation of funds.

3. With the able assistance of the learned counsel for the respective parties, I have gone through the report of Inspector – Shri Anup Deshmukh and the statement of the tenant of the agricultural field of the trust wherein, it has been mentioned that the amount due towards rent has been paid to respondent no.2 – Suresh Hole. It has further been alleged that no receipt was given and no entry was made in the register regarding the payment of rent. However, this aspect has not been touched by the Joint Charity Commissioner. The report submitted by the Inspector may not be clear with regard to quantum of amount which has been allegedly misappropriated by the non-applicants therein, but the fact remains that there are instances which prima facie suggest that there is material which shows that there is malfeasance, misfeasance, breach of trust and misappropriation of funds.

4. Nonetheless, explanation was required to be sought either by the Assistant Charity Commissioner or by the

Deputy Charity Commissioner and thereafter, either of them could have conducted the enquiry which has not been done in this case. Though, the order of dismissal of proceedings under Section 41D passed by the Joint Charity Commissioner, Amravati is correct to the extent of non-compliance of Section 38 and 39 of the Act of 1950 as well as the absence of specific evidence with regard to the amount of misappropriation; however, the Joint Charity Commissioner, Amravati should have directed the Assistant Charity Commissioner to proceed under Section 38 and 39 of the Act of 1950. The petition succeeds to that extent. Therefore, the writ petition is partly allowed.

5. While upholding the order dismissing the suo moto proceedings under Section 41D of the Act of 1950, it is directed to the Assistant Charity Commissioner or the Deputy Charity Commissioner as the case may be, to proceed under Section 38 and 39 of the Act of 1950 and conduct enquiry on the report submitted by Inspector – Shri Anup Deshmukh.

6. With this, the petition stands disposed of.

(M.W. Chandwani, J.)

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