

Ramdas, Vs. Karuji,

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Court : Mumbai

Decided On : Jan-15-2002

Reported in : 2002(3)BomCR20

Judge : R.S. Mohite, J.

Acts : Bombay Public Trust Act, 1950 - Sections 41-A

Appeal No. : Writ Petition No. 2240 of 2001

Appellant : Ramdas, ;vitthal, ;sam, ;radheshyam and Shrawan

Respondent : Karuji, ;pandurang, ;mansaram, ;shalikram and the Assistant Charity Commissioner, Gadchiroli

Advocate for Def. : K.G. Pande, Adv. and ;Deepak Thakre, AGP

Advocate for Pet/Ap. : Mohit P. Khajanchi, Adv.

Disposition : Petition allowed

Judgement :

1. Heard the learned advocates for the parties.
2. Rule. By consent, rule is made returnable forthwith.

3. This is a writ petition challenging an order dated 26.7.2001 passed by the Assistant Charity Commissioner, Gadchiroli, by which, while deciding two applications under Section 41-A of the Bombay Public Trust Act, 1950, filed by opposing parties, he has chosen to give a direction appointing an ad hoc committee to manage and administer the trust (Bouddha Mahasabha Korchi, District - Gadchiroli), which is a duly registered Trust.

4. I have seen the prayers in both the applications under Section 41-A of the Bombay Public Trust Act, 1950, being Application Nos. 120 of 2001 and 121 of 2001. In neither of these applications, there is any prayer for direction of appointment of an ad hoc committee. Apart from this, on a plain reading of Section 41-A of the Bombay Public Trust Act, it is evident that the Charity Commissioner can only issue directions to any trustee of a Public Trust or any person connected therewith.

5. The Bombay High Court has in the case of Asaram Bhimrao Shinde v. State of Maharashtra reported in 2001 (4) Mh.L.J. 548 categorically held that Section 41-A of the Bombay Public Trust Act, 1950, speaks about only directions to be issued to the trustee or persons connected with the trust for proper administration of the Trust and for diligent performance of duties by the trustee for attaining the objects and purpose for which the Trust is established. It does not empower the Charity Commissioner to remove or appoint any new committee for the administration of the trust.

6. It appears that the Assistant Charity Commissioner has placed reliance on observations of a judgment of an unreported case being First Appeal No.354 of 1998 delivered by Shri D.K. Deshmukh, J., on 28.8.1999 in which there is a passing observation to the following effect :

'It goes without saying that according to the present practice followed during the pendency of the enquiries, unless there is an order under section 41-A of the Act, putting somebody other than the one whose name is entered in the register incharge of the trust, it is only those persons whose names are entered in the register can continue to manage the affairs of the trust.'

6. These observations, which are made in passing in the aforesaid matter, do not specifically state that the Charity Commissioner is empowered to appoint a new Managing Committee.

7. In the result, this petition is allowed. Rule is made absolute in terms of prayer clause (a). However, the matter is remanded back to the Assistant Charity Commissioner, Gadchiroli, to consider the prayers made by the parties and issue directions in accordance with law.

8. I am informed that Change Reports filed by both the parties are kept pending. It will be in the interest of justice if the Change Reports are decided along with the remanded matter so that the entire dispute between the parties is settled once for all. The Assistant Charity Commissioner will expedite the hearing of the Change Reports as well as two applications under Section 41-A of the Bombay Public Trust Act, 1950, and decide the same on or before 31.8.2002.

9. There shall be no order as to costs.