



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1403 OF 2023

1. Mr. Sandeep Brijal Sharma
Age : 53 years, Occ.: Business,
Shrikrishna Apartment, Jajuwadi,
Indrakund, Panchavati, Nashik
2. Mr. Akassh Sandeep Sharma,
Age : 27 years, Occ: Business,
Shrikrishna Apartment, Jajuwadi,
Indrakund, Panchavati, Nashik

... Petitioners.

Versus

1. The State of Maharashtra,
Mantralaya, Mumbai
2. Assistant Charity Commissioner,
Nashik
3. Joint Charity Commissioner,
District Nashik
4. Shri Balakrishna Prabhudev Panchavati,
Nashik.
5. ~~Shrimant Sardar Ashokraje Anandrao
Raste, age about 85 years, Occ.:Business
Resident of Plot No.A 1/7, Potnis Parisar
Society, Karvenagar, Pune 411 011.~~

... (Deleted)

- 5(a). Ashiwini Dinesh Risbude
Age : 54 years, Occ: Housewife,
R/o. Ashirwd Apartment,
Flat No.3, S. No.19, Plot No.20,
Near HDFC Bank, Erandwane,
Deccan Gymkhana, Pune 415 004.

5(b). Ashlesha Rajesh Joshi,
Age : 51 years, Occ: Housewife,
R/o. S. No.29/2, CTS No.905,
Potnis Complex Co-operative Housing
Society, A-1, Flat No.7, Opp. Giriraj
Shankar Society, Karve Nagar, VCT,
Pune Taluka, District Pune.

... Respondents.

*Mr Aniesh S. Jadhav i/by Mr Aniket Pawar, Advocate for the Petitioners.
Mr Salil V Dabke, Advocate for Respondent Nos.4, 5(a) and 5(b).
Ms Pooja Patil, AGP for Respondent-State.*

CORAM : SHARMILA U. DESHMUKH, J.
Reserved on : March 05, 2026
Pronounced on : March 09, 2026

JUDGMENT :

- 1. Rule.** With consent of parties, Rule made returnable forthwith and taken up for final hearing.
- 2.** By this petition filed under Article 227 of the Constitution of India, the challenge is to the order dated 15th March, 2022 and the review order dated 21st September, 2022 by which the Revision Application by the original Respondent No.5 came to be allowed and the order in Scheme Application No. 38 of 2015 was set aside.
- 3.** Briefly stated the facts of the case are that the Petitioners and the original Respondent No.5 submitted Scheme Application No.38 of 2015 under Section 50A(1) of the Maharashtra Public Trusts Act, 1950 (for short, "**Trusts Act**") in respect of Respondent No.4-Trusts which was registered in the year 1955 with the object to maintain the

temple and its properties. The application was filed in the year 2015 seeking sanction of the scheme submitted as Annexure "A" to the application. Vide order dated 22nd February, 2018, the Assistant Charity Commissioner partly allowed the application and sanctioned the scheme at Annexure "A". While sanctioning the scheme, the Petitioners and the Respondent No.5 came to be appointed as the Trustee of the Respondent No.4-Trust.

4. Respondent No.5 filed revision application under Section 70A of the Trusts Act seeking revision of the order dated 22nd February, 2018 and rejection of the Scheme Application No.38 of 2015. The ground for revision was that the signature of the Respondent No.5 was fraudulently obtained and there has been no illegal appointment of the Trustee in the Scheme Application by setting aside the original hereditary mode of succession without any inquiry and that the Respondent No.5 was never present during the inquiry conducted by the Assistant Charity Commissioner.

5. Vide the impugned order dated 15th March, 2022, the Joint Charity Commissioner allowed the revision application and set aside the order of 22nd February, 2018, holding that the signature of the Respondent No.5 is different in the Scheme Application, in the scheme itself the Board of Trustees appointed and that the mode of

succession as per the Trust-Deed is hereditary which has been modified by the order dated 22nd February, 2018. The review preferred by the present Petitioners against the said order came to be rejected by the order dated 21st September, 2022. Hence, the present petition.

6. Mr. Jadhav, learned counsel appearing for the Petitioners would submit that in 1974, the original Trustee expired and as per the mode of succession one Anandrao Mahadeorao Raste became the sole Trustee. He submits that in the year 1979, Inquiry Report No.2 of 1978 revealed that the temple has been neglected and that it is necessary to frame *suo motu* scheme by appointing a local person as a Trustee. In 2003, after the death of Anandrao Raste, Respondent No.5 became the sole Trustee. He submits that the Scheme Application No.38 of 2015 was filed by Respondent No.5 along with the Petitioners and in the said Scheme Application, the affidavit of evidence was filed by the Respondent No.5. He points out that on 5th February, 2018, the oath was administered to Respondent No.5 and therefore, it is not possible to accept that the scheme application was not filed by the Respondent No.5 along with the Petitioners. He submits that there is no embargo against appointment of the first Board of Trustee when framing the scheme under Section 50A of the Trusts Act and even if the mode of succession is by inheritance, it is open for the authorities

to take appropriate steps for appointment of the Trustee and framing appropriate scheme in furtherance of the object of the trust. In support, he relies upon the following decisions:

- (i) *The Charity Commissioner, Maharashtra State v. Hirjibhoy Mancherji Kavarana*¹**
- (ii) *Subhash Trimbakrao Inamdar and Ors. vs. Pandurang Tansingh Savner and Ors.*²**
- (iii) *Trambakeshwar Devasthan Trust and Anr. vs. President, Purohit Sangh and Ors.*³**
- (iv) *Hemkant s/o Madhavrao Kombe vs. Purushottam s/o Wamanrao Kombe*⁴**
- (v) *Haribhau Dagdu Tandale vs. Industrial Cooperative Association Ltd. and Ors.*⁵**
- (vi) *Ganesh Raghunath Dhadphale vs. Deputy Charity Commissioner and Ors.*⁶**

7. *Per contra*, Mr. Dabke, learned counsel appearing for the Respondent Nos.4, 5(a) and 5(b) submits that the provisions of Section 50A of the Trusts Act would apply in the case of public trust and that the Respondent No.4 - Trust is not registered as a public trust.

8. Upon query by this Court that the revision application pleads that the Respondent No.4-Trust is a registered trust bearing P.T.R.No.A-455/Nashik registered under the provisions of Trusts Act, Mr. Dabke is unable to offer any explanation.

1 1971 SCC OnLine Bom 53
2 2003 (3) Mh.L.J. 131
3 (2011) 15 SCC 323
4 2022 SCC OnLine Bom 917
5 (1996) 10 SCC 714
6 [2007 (6) Mh.L.J. 646]

9. Rival contentions now fall for determination:

10. The Scheme Application No.38 of 2015 was filed under Section 50A(1) of the Trusts Act and the cause title of the application reflects the name of the Respondent No.5 alongwith the Petitioners. The application pleads that the sole Trustee i.e. Respondent No.5 resides at Pune and is unable to look after the affairs of the trust due to his old age. It is necessary to increase the number of trustees for effective management of the trust. There are several properties owned by the temple which are being encroached upon. The application pleads about the inquiry ordered by the Charity Commissioner in the year 1978 and seeks implementation of Clause 4 of the inquiry report. The inquiry report and proposed scheme was annexed to the application and it was prayed that the scheme as proposed at Annexure "A" to the application be sanctioned.

11. In these proceedings, an intervention application was filed by other legal heirs of deceased Sardar Madhavrao Raste claiming that the Respondent No.5 in connivance with the Petitioners has filed the application and sought intervention. The application was opposed by filing reply which was verified by the Respondent No.5. The intervention application came to be allowed vide order dated 25th October, 2017. Vide application below Exhibit 17, the Respondent No

5 requested that oath be administered to the Respondent No.5 on 5th February, 2018 as the matter was fixed for evidence on 8th February, 2018 and the Respondent No.5 is unable to remain present on 8th February, 2018. The application came to be allowed. The Respondent No.5 has also filed affidavit of evidence in support of the Scheme application.

12. In light of the material on record, it is difficult to accept that Respondent No.5 was not a party-applicant to the Scheme Application No.38 of 2015. By the order of 22nd February, 2018, the Assistant Charity Commissioner noted that the Respondent No.5 who was the Applicant No.1 in the application is the sole trustee as per hereditary mode of succession. The interveners though permitted to intervene did not participate in the proceedings. It noted that the trust was the owner of substantial properties and it is necessary for proper administration of the trust that scheme be settled for the trust. The Assistant Charity Commissioner noted that the scheme proposed that the Petitioners and Respondent No.5 will remain as managing trustees and taking into consideration the need for proper administration of the trust opined that the terms of the trustees will be elected for period of five years by general body. The Assistant Charity Commissioner modified the scheme as deemed fit in the proper administration of the trust and while sanctioning the scheme

appointed the Petitioners and Respondent No.5 as trustees.

13. Despite having filed the scheme application and being appointed as trustee alongwith the Petitioners, the Respondent No.5 filed the Revision Application under Section 70A of the Trusts Act. The revisional authority allowed the revision on three grounds (a) that the scheme application though shown as filed by three persons had been signed by only two persons and there is difference in the signature of the Respondent No.5 in the scheme application and revision proceedings (b) while framing the scheme, the first trustee board was appointed and (c) hereditary mode of succession could not be changed.

14. The revisional authority ignored that in the scheme application, there were several documents filed by the Respondent No.5 which made it apparent that the Respondent No.5 had participated in the proceedings in support of the scheme application. Even admitting that the Respondent No.5 did not join in the Scheme Application, the provisions of Section 50A of the Trusts Act which governs the powers of the Assistant Charity Commissioner to frame a scheme provides for the exercise of powers *sou motu* by the Assistant Charity Commissioner or upon an application by two or more persons. The requirement for settling the scheme is arriving at the satisfaction that

the scheme is required to be settled for proper management and administration of the public trust. The order of the Assistant Charity Commissioner records the satisfaction that for the proper administration of the trust, it is necessary that the scheme be framed. The Assistant Charity Commissioner has modified the terms of the proposed scheme in so far as the appointment of trustees is concerned in better interest of the trust. Even if the Respondent No.5 had resiled from the said application, the scheme application was maintainable at the instance of the present Petitioners. It is not the case of the Respondent No.5 that the Petitioners are not persons having interest in the public Trust and that being so, the application was maintainable at the instance of the present Petitioners.

15. The other reason for upsetting the order dated 22nd February, 2018 was that in the scheme itself, the Board of Trustees was appointed which according to the revisional authority is contrary to the scheme of Section 50A of the Trusts Act. According to the revisional authority, before framing of scheme there should be valid trustee board and after hearing the them scheme should be framed. The finding is flawed for the reason that at the time of scheme application, the sole trustee was Respondent No.5 who had joined in the application and filed evidence in support of the application. There was no further requirement of hearing the trustee before framing of

the scheme. The scheme application met the requirements of Rule 26 of the Maharashtra Public Trusts Rules. The finding is unsustainable in view of decision of this Court in the case of ***The Charity Commissioner, Maharashtra State v. Hirjibhoy Mancherji Kavarana*** (supra). The submission canvassed in that case was that in view of Section 47 and 47AA of the Trusts Act, the powers under Section 50A of the Trusts Act to frame the scheme does not include the power to appoint the Trustees. The argument was that under Section 47 of the Trusts Act, even the Court is not empowered to appoint a new Trustee unless the minimum number of Trustees fixed by the relevant instrument, scheme etc. is reached or is not available for administration of the Trust. The learned Single Judge held that it would be surprising to come to a conclusion that while delegating the power under Section 50A of Court to the Charity Commissioner, it was not intended that he should have power to make initial appointment of trustees of the scheme framed by him. In that case while settling the scheme, provision was made for appointment of the first trustees and upheld the appointment of trustees while framing the scheme.

16. Considering the language of Section 50A and decision in ***Hirjibhoy Mancherji Kavarana*** (supra), it is evident that the powers thereunder are wide and also covers appointment of trustee.

17. The third ground on which the Revision Application has been allowed is that the appointment of the Trustees is contrary to the hereditary mode of succession provided in the Trust. The issue is no longer *res integra* and is settled by the decision of this Court in the case of ***Subhash Trimbakrao Inamdar and Ors. vs. Pandurang Tansingh Savner and Ors.*** (supra). In that case a specific question which arose for determination was when in basic document, mode of succession is given as “hereditary” then under such circumstances, the learned Charity Commissioner can have power to appoint new Trustee/Trustees. The learned Single Judge held that the Charity Commissioner is crowned with very wide powers to check and control the irregularities, malpractices and misconduct in the functioning of the public Trust. In that case the Court noted that the facts brought on record revealed that the application was filed where it is found that the Devastan and was not being maintained properly and there is misappropriation by the hereditary Trustees in which, it was held that the Assistant Charity Commissioner was justified in framing the scheme. In the present case, the Inquiry Report No.2 of 1978 in respect of the Respondent No.4 trust records that the temple is neglected and the sole trustee rarely visits the temple and it is necessary to frame suo motu scheme by appointing local person as trustee.

18. The revisional authority relied upon the decision in the case of ***Ganesh Raghunath Dhadphale vs. Deputy Charity Commissioner and Ors.*** (supra), to hold that in view of the mode of hereditary succession there cannot be any changes in the mode of succession. In that case, the contention which was advanced is that there was no necessity for exercise of discretion under Section 50A of the Trusts Act for framing of the scheme. The learned Single Judge noted that there were no complaints received regarding the management of the Devsthan and the Charity Commissioner ought not to have framed the scheme of changing the hereditary mode of succession. In that case there was a direction that the trust should spend certain amount for the purpose of education which did not find favour of the learned Single Judge. The decision turned on the facts of the case upon a finding that there was no necessity of framing of scheme.

19. It is also pertinent to note that after the impugned order, the Respondent No.5 filed Miscellaneous Application No.41 of 2022 on 11th April, 2022 for appointing new Trustees under Section 47 who are not the lineal descendants of Raste family. One of the grounds on which the impugned order was passed stands diluted by the very act of the Respondent No.4 appointing Trustees apart from the lineal descendants.

20. The impugned order does not record any finding that there was no necessity for framing the scheme and the finding of the Assistant Charity Commissioner on that aspect is not disturbed. As the said finding has attained finality, the scheme was required to be settled for Respondent No.4 and the reasons for interference by the revisional authority are clearly unsustainable.

21. In light of the above, the impugned order is unsustainable and is hereby quashed and set aside. Resultantly, the order of the Assistant Charity Commissioner dated 22nd February, 2018 is revived.

22. Petition stands allowed. Rule is made absolute in the above terms.

[Sharmila U. Deshmukh, J.]