



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

WRIT PETITION NO. 4116 OF 2026

1. **Shri Shyam Vasant Kale,**
Aged about 62 Yrs., Occu.: Service,
R/o. C/o. Shri Durga Devi Sarvajanik
Deostham, Pratap Nagar, Nagpur-22
2. **Shri Vijay Janardhan Bhat,**
Aged about 74 Yrs., Occu.: Retired,
R/o. 62, Durga Krupa Apartment,
Pratap Nagar, Nagpur

...PETITIONER

// VERSUS //

1. **The Learned Assistant Charity**
Commissioner-II, Nagpur
2. **Shri Ramchandra Krushnarao Kelapure**
Aged about 76 yrs,
R/o. Plot No. 23, 'Anand', Pratap
Nagar Road, Near Union Bank,
Ashok Colony, Khamla, Nagpur-25
3. **Sau. Swati Chintaman Sathe,**
Aged 76 Yrs.,
R/o. Plot No. 28, Postal Audit
Colony, Behind Durga Mandir,
Pratap Nagar, Nagpur-22
4. **Shri. Vishal Vilasrao Deshpande,**
Aged : Major,
R/o. C/o. Shri Durga Devi Sarvajanik
Deostham, Pratap Nagar, Nagpur-22

5. **Shri Shakal Prakash Shukla,**
Aged : Major,
R/o. C/o. Shri Durga Devi Sarvajanik
Deostham, Pratap Nagar, Nagpur-22

RESPONDENTS

Mr S. D. Abhyankar, Advocate for the petitioner/s
Mr P. P. Pendke, AGP for respondent No.1/State
Ms Dipti V. Khanorkar, Advocate for respondent Nos. 2 and 3
Mr A. J. Pathak, Advocate for respondent Nos. 4 and 5

CORAM : ANIL S. KILOR AND RAJ D. WAKODE, JJ.
DATED : 10th JUNE, 2026.

ORAL JUDGMENT : (PER : ANIL S. KILOR, J.)

1. Heard.
2. **RULE.** Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.
3. The question, whether in a proceedings under Section 41A of the Maharashtra Public Trusts Act, 1950 (for short 'the Act of 1950') the Assistant Charity Commissioner is empowered to interfere with the election process in the middle of the same, is involved in this petition.

The brief facts of the present case are as under :

4. The respondent Nos.2 and 3 approached the Assistant Charity Commissioner-II, Nagpur by filing Application No. 160 of 2026 filed under Section 41A of the Act of 1950 with a grievance that they are appointed trustees of the public trust 'Shree Durga Mandir Sarvajanic Devasthan Vishwasta Mandal, Nagpur' and the persons having interest under the modified scheme in inquiry No. 485 of 2004, vide order dated 30/08/2007.

5. The petitioners/non-applicant Nos. 1 and 2 claimed to be the President and Secretary of the Trust, respectively. It is stated that the election due from 2010 onwards have been conducted in accordance with the approved scheme. The elections allegedly held in the year 2010 and 2013 were disputed and Change Reports in respect of the same came to be rejected. It is further submitted that the Change Reports pertaining to elections of 2017, 2019 and 2022 are pending for adjudication.

6. It is further stated that the election notice dated 29/03/2026 proposing to conduct elections on 24/04/2026 is without lawful authority and in violation of the procedure

prescribed under the modified scheme, particularly when the legality of existing Managing Committee is under serious doubt.

7. Accordingly, under section 41A of the Act of 1950 notice dated 29/03/2026 is sought to be quashed and set aside and permission to manage the day-to-day affairs of the Trust as caretakers was prayed for.

8. The petitioners by filing reply denied all the allegations about illegality of election and further opposed the application on the ground that once the election programme is issued, the elections cannot be interfered with.

9. The learned Assistant Charity Commissioner after hearing both the parties passed the impugned order dated 24/04/2026 quashing and setting aside the election notice dated 29/03/2026 and the petitioners and all concerned are directed to conduct fresh election of the Managing Committee strictly in accordance with the approved scheme within 90 days from the date of the order. Further, it is directed that till such election the existing

committee shall continue as caretaker body for day-to-day administration and shall not take major policy decisions or create any third party rights.

10. We have the learned counsel for the respective parties.

11. A vital ground on which a challenge is raised to the impugned order dated 24/04/2026 passed by the Assistant Charity Commissioner-II, Nagpur is that under Section 41A of the Act of 1950 the Assistant Charity Commissioner does not have any authority to interfere in the election matters or to quash and set aside the election programme/notice.

12. In reply, the learned counsel for the respondent Nos. 2 and 3 pointed out the observations made in the order justifying such interference in the election, more particularly para 24 to 26.

13. According, to the learned Assistant Charity Commissioner legality and continuity of the Managing Committee is under serious doubt and in absence of legally accepted managing body, initiation of election process lacks valid foundation. Thus, it

is further observed that permitting the election process to continue would defeat the very object of the Scheme and undermine lawful administration of the Trust.

14. It is important to note that while recording such findings by the Assistant Charity Commissioner, in the operative order, the same Managing Committee is directed to conduct further election and further to continue as a caretaker body for day-to-day administration of the Trust.

15. Be that as it may, the core question as we have noted in the beginning of the judgment is to be considered in light of the provisions of Section 41 A of the Act of 1950, 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 if he finds that 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).

16. From the language of Section 41 A of the Act of 1950 it is evident that the said provision empowers the Assistant Charity Commissioner to issue directions to the Trustees to ensure that the Trust is properly administered and the income thereof is properly accounted and applied to the object and for the purposes of the Trust. The power conferred by Section 41 A of the Act of 1950 is thus an administrative power which is to be exercised in the interest of the management of the trust and its finances.

17. The Hon'ble Supreme Court of India in the case of *N. P. Ponnuswami .vs. The Returning Officer, Namakhal Constituency, Namakkal, Salem Dist., and others*, reported in **AIR 1952 SC 64**, has held that it is now well recognised that where a right or liability

is created by a statute which gives special remedy for enforcing it, the remedy provided for by that statute only must be availed of.

18. The expression 'administration of the trust' involves managing the daily affairs of the trust strictly in accordance with the objects of the trust, fulfilling the statutory requirements, conducting regular meetings, maintaining record as per the statute, safeguarding and handling trust's movable and immovable properties, bank accounts, prepare a budget estimating annual income and expenditure, ensure regular payment of salaries and allowances to employees and staff, maintain accounts, to ensure that income and property utilized only for the object of the trust, furnish information to the authorities as mandated by the statute etc.

19. Any deviation from such functions may amount to mismanagement of the trust or non-accounting of income properly or not applying the income properly to the object and for the purpose of the trust. Such deviation will give power to the Charity Commissioner to take cognizance and issue necessary direction under Section 41A of the Act of 1950 to ensure that the trust is

properly administered and income thereof is properly accounted and applied to the object and for the purpose of the trust.

20. A question, whether the Managing Committee, which is administering the affairs of the trust, is legal or not, would fall within the scope of Section 22 of the Act of 1950 and can be gone into while deciding the Change Report relating to the change occurred due to the entry recorded in the register maintained under Section 17 of the Act of 1950. Such finding can be given only after conducting inquiry as contemplated under the said provision.

21. While making such inquiry under Section 22 of the Act of 1950, if any objection is raised as regards the validity of the election on the ground of fairness in conducting the election, illegality, if any, committed in preparing the voters list, the authority of the Managing Committee to hold elections etc. can be gone into. However, in any case, challenge to validity of election notice, under Section 41A of the Act of 1950 is beyond the scope of election dispute as it is outside the purview of such powers as envisaged under Section 41A of the Act of 1950.

22. Having held so, the scope of Section 41A of the Act of 1950 cannot be permitted to expand by interpreting the expression “properly administered” used in it to include any issue relating to the election, once it is commenced.

23. Admittedly, in the present matter the prayer under Section 41A of the Act of 1950 was to quash and set aside the election notice. This shows that the election process was commenced and after such commencement of the election process the application under Section 41A of the Act of 1950 came to be filed.

24. The learned Assistant Charity Commissioner vide impugned order has held that the existing Managing Committee which has issued election notice is not as per the modified scheme approved by the Charity Commissioner. While recording so, the Assistant Charity Commissioner has failed to appreciate that the original applicants-respondent Nos. 2 and 3 are the part of the Managing Committee since the year 2010 and after 2010 at least

five elections were held and the Change Reports about last three elections are pending.

25. Having held that the Assistant Charity Commissioner has no jurisdiction to interfere with the election of the Trust under Section 41A of the Act of 1950, we have no hesitation to hold that the learned Assistant Charity Commissioner has erroneously treated such interference in the election process as necessary for the proper administration of the Trust.

26. Hence, we are of the opinion that the Assistant Charity Commissioner has exceeded its jurisdiction while setting aside the election notice dated 29/03/2026, thus the petition fails.

27. Accordingly, we pass the following order:

- i. The Writ Petition is allowed.
- ii. The impugned order dated 24/04/2026 passed by the Assistant Charity Commissioner-II, Nagpur in Application No. 160 of 2026 is hereby quash and set aside.

Rule is made absolute accordingly.

28. The Writ Petition stands disposed of, accordingly.
Pending application(s), if any, shall stand disposed of. No order as to
costs.

[RAJ. D. WAKODE, J]

[ANIL S. KILOR, J.]

R.Raut.

Duties and Liabilities of the Managing Committee under the Bombay Public Trusts Act, 1950 (Maharashtra Public Trusts Act, 1950)

I. Statutory Duties of the Managing Committee

1. General duty to manage and administer the trust

Section 56N(1) provides that it is the duty of the Committee to properly manage and administer the affairs of the endowment/trust and ensure that its income is applied only for the objects and purposes for which it was created.

The Committee must ensure:

- * Proper maintenance of the trust;
- * Proper control and administration;
- * Protection of trust property; and
- * Application of income strictly for trust purposes.

II. Specific Duties under Section 56N(2) (a to f)

(a) Maintain records

The Committee shall maintain records relating to:

- * Origin of the trust;
- * Income;
- * Objects; and
- * Beneficiaries.

(b) Prepare annual budget

The Committee shall prepare a budget estimating annual income and expenditure.

(c) Payment of salaries and allowances

The Committee shall ensure regular payment of salaries and allowances to employees and staff from the Management Fund.

(d) Maintain separate accounts

Separate accounts must be maintained for every endowment or trust under its management.

(e) Proper application of income and property

The Committee shall ensure that trust income and property are utilized only for the objects of the trust.

(f) Recover lost properties

The Committee must take steps to recover lost, encroached or illegally alienated trust properties.

(g) Institute and defend legal proceedings

The Committee may initiate or defend legal proceedings concerning the trust.

(h) Furnish information to authorities

The Committee shall provide:

- * Returns;
- * Statistics;
- * Accounts; and
- * Other information sought by the State Government.

(i) Inspection of properties

The Committee shall periodically inspect trust properties.

(j) General administration

The Committee shall perform all acts necessary for the proper control, maintenance and administration of the trust.

III. Duties of Trustees applicable to the Managing Committee

Section 36A – Powers, duties and restrictions on trustees

Every trustee shall:

1. Administer the affairs of the trust according to:

- * The trust deed;
- * Usage of the institution;
- * Lawful directions of the Charity Commissioner; and
- * Orders of competent courts.

2. Exercise the same degree of care that an ordinary prudent person would exercise while dealing with his own property.

3. Exercise only those powers necessary for prudent and beneficial management of the trust.

IV. Statutory Liabilities of the Managing Committee (Section 36)

1. Liability for breach of trust

Members may become personally liable if they:

- * Misappropriate trust funds;
- * Divert trust property;
- * Act dishonestly;
- * Abuse their position; or
- * Cause loss by negligence.

2. Liability for unauthorized alienation of trust property

No sale, exchange, gift, mortgage or long-term lease of immovable trust property can be effected without prior sanction wherever required under law.

Unauthorized transactions may be declared invalid and responsible persons may be proceeded against.

3. Directions by the Charity Commissioner

Under Section 41 A, the Charity Commissioner may issue directions for proper administration and management of the trust.

Failure to comply may invite further action.

4. Suspension, removal or dismissal

Under Section 41 D, trustees may be suspended, removed or dismissed for:

- * Persistent default;
- * Wilful disobedience of lawful orders;
- * Breach of trust;
- * Misconduct;
- * Misappropriation;
- * Maladministration; or
- * Acting against the interest of the trust.

5. Supersession of the Committee

Under Section 56R, the State Government may supersede a Committee if:

- * It is unable to perform its duties;
- * Persistently defaults;
- * Exceeds its powers; or
- * Abuses its powers.

Upon supersession:

- * Members vacate office;
- * Their powers cease; and
- * Management vests in the person(s) appointed by the Government.

The Managing Committee occupies a fiduciary position and is under a statutory obligation to administer the trust honestly, prudently and exclusively for the objects of the trust. Any persistent default, breach of trust, misapplication of funds, unauthorized alienation of property or maladministration may render its members personally liable and may also invite removal, suspension or supersession under the Maharashtra Public Trusts Act, 1950.