

**(1984) 01 BOM CK 0056**

**Bombay High Court**

**Case No:** Misc. Petition No. 410 of 1983

In Re: Joseph Eleouet

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** Jan. 25, 1984

**Acts Referred:**

- Bombay Public Trusts Act, 1950 - Section 41
- Guardians and Wards Act, 1890 - Section 41, 7

**Citation:** AIR 1984 Bom 266

**Hon'ble Judges:** Pendse, J

**Bench:** Single Bench

**Advocate:** K.L. Kapoor, for the Appellant;

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### **Judgement**

@JUDGMENTTAG-ORDER

Pendse, J.

This matter is placed before me for directions in view of unusual circumstances, which would be set out hereinafter.

2. The petitioner - Joseph Eleouet, a national of France, of France, has filed this petition in this Court on September 8, 1983, under the provisions of the Guardians and Wards Act, 1890, for his appointment as guardian for the person of a female minor by name Alisha. The minor was an inmate of Shraddhanand Anathalaya, which is a public Trust registered under the Bombay Public Trusts Act, 1950. The relief sought by the petitioner was supported by the trustees of the Shraddhanand Anathalaya.

3. The petition was accepted by the learned single Judge of this court and the intimation of filing of the petition the intimation of filing of the petition was given to the Indian Council of Social Welfare, Bomaby, as required by the Rules of this Court. The petition was made returnable on October 12, 1983. The learned Judge after

hearing the counsel for the petitioner and the representatives of the Indian Council of Social Welfare and on perusing the petition, came to the conclusion that it is advisable to grant the petition, and accordingly, passed an order in exercise of the powers passed an order in exercise of the powers u/s 7 of the Guardians and Wards Act, appointing the petitioner as the guardian of the female minor Alisha. The learned Judge also granted leave to the petitioner to remove the said minor from the jurisdiction of this Court. The learned Judge signed the order on October 12, 1983 on certain undertakings given by the petitioner.

4. In spite of the order passed by this Court, the petitioner is unable to take custody of the minor child and to carry the said child with him to France, the place of residence of the petitioner. The petitioner is prevented from taking advantage of the order of this Court in view of certain proceedings adopted u/s 41-A of the Bombay Public Trusts Act, 1950 before the Joint Charity Commissioner, Nagpur, and it is now necessary to advert to those proceedings.

5. One Smt. Pushpa w/o Shashikumar Pradhan has instituted Application No. 6 of 1982 before the Joint Charity Commissioner, Nagpur under Sec. 41-A of the Bombay Public Trusts Act, 1950, against the Trustees of the Shraddhanand Anathalaya, and the Superintendent of the said Anathalaya. The applicant had made several allegations against the Trustees about Trust, failure to account for the funds and has sought certain directions from the Joint Charity Commissioner as regards the finances and accounts of the

Trust. In the application, and allegation is made that the Trustees are indulging in giving the minor inmates of the Trust in adoption to the foreigners and that is in contravention of the provisions of the Trusts Act. The proceedings are resisted by the Trustees and the hearing is adjourned from time to time. The proceedings came up before the Joint Charity Commissioner on April 16, 1983 and it appears from the order passed by the Joint Charity Commissioner that he was not merely impressed but was carried away by certain adverse reports appearing in the newspapers about the Trust giving its minor inmates in adoption to the foreigners. The order passed by the Joint Charity Commissioner indicates that the Joint Charity Commissioner posed a question as to whether in each and every case of adoption the governing body is required to consider the case and approve the adoption. The Deputy Charity Commissioner made number of observations about how, in his judgment the adoption should be carried out, but it is not necessary to make any reference to those observations because the jurisdiction to appoint guardian is vested in this Court and the Charity Commissioner need not have made any such observations in respect of matters over which he had no jurisdiction. Be that as it may, what has created problem for the institution is an undertaking given by the Advocate for the Anathalaya and recorded by the Joint Charity Commissioner in paragraph 11 of the order. The relevant portion reads as under:

"In this behalf, Mr. Sadavarte, Advocate for the Respondents, submitted that he on behalf of the Respondents gives an undertaking to this Authority at the Bar that from today no child or woman from the Anathalaya shall be given in adoption or handed over to anybody without placing all the facts in this behalf before this Authority and getting its approval for the same pending this inquiry whether or not there is any order of other Authority of approval of the adoption including that of High Court. Similar statement has been made by the President of the institution Smt. Sumatidevi Dhanwate as well as respondent No. 1 Superintendent of the Anthalaya".

The Joint charity Commissioner in view of the undertaking given by the Advocate on behalf of the Trustees, felt that it was not necessary to pass any interim order.

6. Shri Kapoor, learned counsel appearing for the petitioner and also representing the Shradhanand Anathalaya, seriously complained by the Joint Charity Commissioner and given by the Advocate for the Trustees in a proceeding u/s 41-A of the Bombay Public Trusts Act. Shri Kapoor complains that the Advocate for the Trustees had no authority to given an undertaking that the minor inmates of the Anathalaya would not be handed over to the guardian appointed by the High Court. Shri Kapoor complains, and in my judgment with considerable merit, that the jurisdiction to appoint guardian and hand over custody of the minor rests absolutely in the High Court under the provisions of the Guardians and Wards Act, and no authority subordinate to the High Court can secure any undertaking from any person to defeat the jurisdiction of the High Court. Shri Kapoor is perfectly right in his submission that once the High Court passes an order in exercise of the powers u/s 7 of the Guardians and Wards Act, then that order must operate forthwith and cannot be made subject to confirmation of any authority subordinate to the High Court, and obviously the Joint Charity Commissioner cannot sit over the order passed by the High Court. In my judgment, Shri Sadavarte, Advocate appearing for the Trustees before the Joint Charity Commissioner, has over-stepped his authority in giving such an undertaking which would defeat the orders passed by this Court, and the joint Charity Commissioner was wholly in error in accepting such an undertaking.

7. Apart from the consideration that the Joint Charity Commissioner had overlooked the fact that he is subordinate to the High Court and cannot prevent operation of the orders of the High Court by securing such an undertaking from the parties before him, he has also committed an error in securing such an undertaking in exercise of his jurisdiction u/s 41-A of the Public Trusts Act Section

"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."

8. A mere perusal of the Section makes it crystal clear that the Charity Commissioner can give direction to the Trust or to the Trustees if he finds that the property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold etc. It hardly requires to be stated that the inmates of the Shraddhanand Anathalaya cannot be treated as the property of the Trust. Surely, the Charity Commissioner should have exercised more care before giving directions in pursuance of the undertaking given by the Advocate for the trustees and preventing the operation of the orders passed by this Court. The High Court has exercised the powers u/s 7 of the Guardians and Wards Act for the benefit of the minor inmates of Shradhanand Anathalaya and the Advocate for the Trustees by giving an undertaking and the Joint Charity Commissioner by accepting the same has defeated the order of the High Court, which was passed for the benefit of the minor.

9. Shri Kapoor informs me that in view of the undertaking given on behalf of the Trustees, Shraddhanand Anathalaya is required to file applications before the Joint Charity Commissioner for approval after this Court passes an order u/s 7 of the Guardians and run could be taken custody of by the guardians and removed from the country only after the Joint Charity Commissioner gives his approval. In one of the matters the Joint Charity Commissioner has not yet given his approval in spite of repeated requests. IN my judgment, the course adopted by the Joint Charity Commissioner is wholly illegal and contrary to the well settled principles of hierarchy of judicial forums. IN these circumstances ... requesting that the Trustees of the Anathalaya should be relieved of the under taking given on their behalf by their Advocate Shri Sadavarte before the Joint Charity Commissioner, Nagpur on April, 16, 1983 in Application No. 6 of 1982 filed u/s 41-A of the Bombay Public Trusts Act.

10. Accordingly, the Trustees of Shraddhanand Anathalaya are relieved of the undertaking given on their behalf by their Advocate and it is made clear that the authorities of the Shraddhanand Anathalaya are not required to secure any approval of the Joint Charity Commissioner, Nagpur or any other authority after an order is passed by this Court u/s 7 of the Guardians and wards Act, 1890.

11. Ordered accordingly.