

BEFORE THE JOINT CHARITY COMMISSIONER,
GREATER MUMBAI REGION, MUMBAI

In the matter of "Shifakhana-E-
Saifiyah Trust"
P. T. R. No. B-856 (Mumbai)

Application No. 1 of 2021

(Under Section 41D of The Maharashtra Public Trusts Act, 1950)

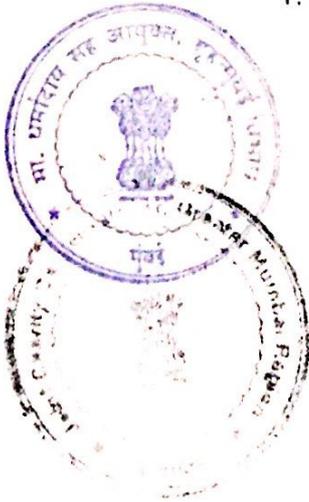
CHARGE

I, Nivedita S. Pawar, Joint Charity Commissioner, Greater
Mumbai Region, Mumbai do hereby charge you ;

- (2) His Royal Highness Shahzada Aliasgar Bhaisaheb
Kalimuddin, Mazoon-E-Dawat-IL-HAQ (DM)
- (3) Janab Amil Sahab Sk. Fakruddin Bhanpurwala.
- (4) Mr. SK. Abbas Hakim
- (5) Mr. SK. Haiderbhai Roopawala

as follows -

1. That you being the trustees of the Trust "Shifakhana -E-
Saifiyah" made persistent default in submission of
accounts reports and returns, thereby not disclosing the
true and proper accounts of the Trust. The trustees are
running and managing illegally Medical Nursing Home
without requisite permission and thereby collecting profits
at the tune of Rs.60,00,00,000/- (Rupees Sixty Crores)
and not accounting for the same. The trustees have



(Signature)

earning 100 Crores of rupees from the running of Medical Nursing Home illegally and has misappropriated the said income for their personal benefit by manipulating the accounts and your very act has attracted Section 41D(1)(a).

2. That you being the trustees of the aforesaid Trust have wilfully disobeyed lawful order issued by the concerned authority i.e MCGM which is undertaking of State Government. The concerned authority has time and again issued several notices for discontinuing illegally running of Nursing Home, however, the same was neglected by the trustees and continuing the illegally running of Nursing Home without proper permission from the authority. Therefore, the very act of the trustees attracts Section 41D(1)(b) of the Act.
3. That you being the trustees of the aforesaid Trust have continuously neglected your duties and thus committed malfeasance, misfeasance, breach of Trust in respect of the Trust by running illegally Nursing Home without proper permission from the concerned authority not obeying the terms of the Health Department, Fire Department etc. to the detriment of the public at large and the beneficiaries of





the Trust, thereby you attracts Section 41D(1)(c) of the Act.

4. That you being the trustees of the aforesaid Trust have misappropriated and dealt improperly with the properties of Trusts of which you are trustees. Thereby Mrs. Zehra Shk. Fakhruddin Bhanpurwala, Mrs. Nisreen Shk. Abbas Hakim, Mrs. Zehara Shk. Haider Khorakiwala and Mrs. Ruksana Shk. Haider Rupawala in collusion with the trustees of Anjuman Trust illegally and unlawfully encroached upon the lands of Anjuman Trust and (i) Mrs. Zehra Shk. Fakhruddin Bhanpurwala, Mrs. Nisreen Shk. Abbas Hakim (Shifakhana – E – Saifee) illegally and unlawfully encroached upon an area admeasuring 898 built up area on the ground floor of Qutbi Building and have made illegal and unlawful construction on the said land which is now known as Cabin no. Cabin No.15 (A, B, C & D). That in order to give color of legality to the illegal construction admeasuring 898 built up the Trust has fraudulently issued rent receipts of rent at Rs.2,550/- per month. (ii) Mrs. Zehara Shk. Haider Khorakiwala and Mrs. Ruksana Shk. Haider Rupawala (Shifakhana – E – Saifee) illegally and unlawfully encroached upon an area



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admeasuring 898 built up area on the ground floor of Qutbi Building and have made illegal and unlawful construction on the said land which is now known as Cabin no. Cabin No.16 (A, B, C, D & E). That in order to give color of legality to the illegal construction admeasuring 898 built up the Trust has fraudulently issued rent receipts of rent at Rs.2,550/- per month. As of today, you trustees are running the said Saifee Medical Nursing Home from a total area admeasuring 3768.25 sq. ft. built up area which is completely illegal, unlawful and in gross violation of rules and regulations. Thereby your very act attracts Section 41D (1) (d) of the Act.

5. That you being the trustees of the aforesaid Trust have illegally and unlawfully, converted the said residential flats into a Nursing Home and Polyclinic/Medical Centre without any permission in that regard from concerned H/W Ward, Bandra (West) of MCGM. Therefore, it is a clear case of Change of User. The said illegal nursing home / medical clinic is being run by the trustees from the said residential flats in gross violation of MCGM Act. The encroachment area is 1796 sq. ft. which has completely blocked the access of residents to their buildings. The



said illegal cabin structures are being used by you trustees as hospital beds and patients are being admitted there for treatment. That you respondent trustees for the sake of money, are playing with the lives of innocent citizens residing in Ghiya Compound and other common public. Thereby your very act is attracts Section 41D (1) (d) of the Act.

Therefore I hereby direct that you be tried by me in respect of aforesaid charges.



(Signature)
13/8/2021
(N. S. Pawar)

Joint Charity Commissioner,
Greater Mumbai Region, Mumbai.

Date – 13/08/2021
Place – Mumbai.



Certified to be a True copy

Albhyer
30-8-2021
Superintendent (Certified Copy)
Public Trust Registration Office
Greater Mumbai Region Mumbai

(Signature)
30-08-2021

BEFORE THE JOINT CHARITY COMMISSIONER,
GREATER MUMBAI REGION, MUMBAI

In the matter of "Shifakhana-E-
Saifiyah Trust"
P. T. R. No. B-856 (Mumbai)

Application No. 1 of 2021

(Under Section 41D of The Maharashtra Public Trusts Act, 1950)

Order Below Exh.16

(Delivered on 13/08/2021)

1. The present application at Exh.16 is the Draft Charges filed by the applicants proposing for framing the said charges against the opponent trustees on the ground stated in the Draft Charges read with Exh.1.

2. The applicants submit that the respondent trustees have continuously neglected their duties, committed breach of duties and Breach of Trust as trustees under Section 41D(1)(c) by running and managing an illegal and unlawful Medical Nursing Home without Change of user and registration with Health Department, H/W Ward, MCGM, Bandra (W), Mumbai.

The applicants further submit that the Respondents No. 1 to 5 have improperly dealt with trust properties as under Section 41D(1)(d) by running and managing an illegal and unlawful



(17)

Medical Nursing Home from residential premises without Change of user and without registration with Health Department, H/W Ward, MCGM, Bandra (W), Mumbai. The applicants further state that the Respondents No. 1 to 5 improperly dealt with Trust properties as under Section 41D(1)(d) by running and managing an illegal and unlawful Medical Nursing Home from residential premises without Change of user and without registration with Health Department, H/W Ward, MCGM, Bandra (W), Mumbai. The applicants submit that Respondents No. 1 to 5 have committed malfeasance, misfeasance in respect of the Trust under Section 41D(1)(d) by earning and misappropriating illegal and unlawful income from an illegal and unlawful Medical Nursing Home from residential premises without Change of user and without registration with Health Department, H/W Ward, MCGM, Bandra (W), Mumbai. The applicants further submit that the Respondent No. 1 to 5 have committed neglect of their duties for running and managing an illegal and unlawful Medical Nursing Home from residential premises without permission from His Holiness, Dai Al Mutlaq Change of user without registration with Health Department, H/W Ward, MCGM, Bandra (W), Mumbai. The applicants submit that the



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Respondent No. 1 to 5 have committed neglect of their duties as trustees by not seeking permission / consent of 51st Dai-Al-Mutlaq, Syedna Taher Saifuddin (R.A.), His Holiness, The 52nd Dai-Al-Mutlaq, Sardar Aqua Moula Syedna Muhammad Burhanuddin (RA) and His Holiness Syedna Mufaddal Saifuddin Saheb (T.U.S.) His Holiness, Dai Al Mutlaq for running and managing an illegal and unlawful Medical Nursing Home from residential premises without Change of user & without registration with Health Department, H/W Ward, MCGM, Bandra (W), Mumbai.

3. The respondent trustees in their defence submit that Shifakhana-E-Saifee for the benefits of Dawoodi Bhora Community started running a medical care centre by obtaining license from MCGM as per the policy of MCGM. As per the rules of MCGM the said license were renewed every year, which was valid upto 31st March 2006. The respondents further submit that, thereafter MCGM made Inspection Report No. 0008818 wherein they called upon to pay a registration fees towards the renewal of registration license for the period of 01/04/2006 to 31/03/2006 (there is typographical error instead of 31/03/2007 it is mentioned 31/3/2006). Accordingly the



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respondents made the payment to MCGM with receipt No. HVV/MOH/06/003046 accepting the renovation fees of the license for the period of 1/4/2006 to 31/3/2007. Thereafter, the respondents time and again had written several letters to the MCGM for renewal of the licenses, but on one pretext to other MCGM is delaying to renew.

4. The respondents further submit that earlier Shifakhana-E- Saifee Trust was providing medical care wherein Nursing Home license was required, but presently from last several years Shifakhana-E- Saifiyah Trust are functioning a medical centre where doctors such as General Physician, ENT, Dentists and Ophthalmic are visiting and treating patients, but none of them are carrying out any form of surgeries or treatment which requires license from MCGM. Only the Cataract surgeries are carried out which does not require any mandatory permissions or license from MCGM, however, if any such permission is mandatory, the respondents undertake not to carry out cataract surgeries until the earlier license is renewed or new license is issued. The patients are treated on daily basis, therefore, there is no requirement of any license from MCGM. Thus, presently the respondents are not carrying out



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any activities that require license. The respondents further submit that MCGM has installed an integrated Common Bio Medical Waste TREATMENT STORAGE AND Disposal facility at Devnar dumping ground, through M/s. SMS Envoclean (P) Ltd., to take care of the bio medical waste, of all the health case establishments, operative in entire Mumbai City. The MCGM vide Circular dated 25/1/2012 called the Respondent Trust to register them and accordingly the Respondent Trust registered with them and till date BMC collected bio medical disposal from the premises of Respondent Trust, which apparently clear that services for medical help which are provided by the respondent Trust are within the knowledge of MCGM and hence deem to be permitted.

5. The respondents submit that they have not carried out any illegal or unlawful structural changes or encroachment upon the premises from where the medical care centre is functioning. Carrying out illegal or unlawful structural changes, or encroachment that both the activities falls under the jurisdiction of MCGM and till date they have not received any notice from MCGM for alleged illegal or unlawful structural changes or encroachment.




6. The respondents further submit that applicant No.1 was earlier using Flat No.13, on a temporary leave and licenses basis wherein Mr. Mustafa H. Rupawala & Mr. Mohammed H. Khorakiwala are the tenants of said Flat No.13. As the present owner i.e. Summer Radus Really Private Limited issued notice to all the Tenants calling upon them not to give their premises on leave and license basis to any third party, therefore, Mr. Mustafa H. Rupawala & Mr. Mohammed H. Khorakiwala called upon the applicant No.1 to vacate the said Flat No.13, who are the family members of Respondents No. 5 & 6, therefore the applicant has got grouch against these respondents and have filed the present application just to harassed the respondents and take revenge.

7. The respondents further submit that the allegation that they have committed illegal, unlawful act, mislead, omission, commission, malfeasance, misfeasance and breach of duty and have committed fraud to the tune of Rs.60,00,00,000/-, there is no iota of truth. The account of the said Trust are regularly audited by their C.A. and the same is periodically submitted before the Charity Commissioner.



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8. The Medical Officer of Health Department filed his affidavit in reply on behalf of Respondent MCGM. It is submitted that as per the provisions of Section 527 of the Mumbai Municipal Corporation Act, it was incumbent on the plaintiff to give a statutory notice to the defendants before filing a suit against them. Further it is submitted that after perusing the office files and records maintained by Medical Officer of Health Department, Shifakhana and Saifee Nursing home situated at Qutabi Manzil, Ground Floor, Ghiya Compound, 2nd Hasnabad lane, Santacruz (W), Mumbai 400 054 was registered under Bombay Nursing Home Registration Act 1949 from 1/4/2002 to 31/3/2006. Thereafter the registration has not been renewed, as the said nursing home is not in commercial premises. It is further submitted that on complaint of Shabbir Chunawala that the nursing home is running without registration certificate, the Nursing Home was visited on 12/2/2020 and found that the nursing home was conducting without registration under Bombay Nursing Home Registration Act, 1949.

Accordingly on the same day notice was issued to the Trustees to stop nursing home activity. Thereafter again on 7/3/2020 visited the said nursing home and again it found conducting nursing home without license and again notice was issued on



9/3/2020. Nursing Home was again visited on 11/2/2021 and again found conducting nursing activity without registration. Thereafter after preparing Inspection report, offence sheet was prepared for launching prosecution against the trustees of said nursing home.

9. Heard all the parties at length. Perused all the documents before me. Accordingly I pass following order.

REASONS

10. As stated hereinabove the present draft charges at Exh.16 are proposed by the applicants against the present opponent trustees on the grounds that the opponent trustees committed breach of duties and breach of trust by running and managing an illegal and unlawful medical nursing home without change of user and without registration with the Health Department H/W ward, MCGM, Bandra (West). That the opponent trustees have committed malfeasance and misfeasance in respect of the Trust by earning and misappropriating illegal and unlawful income from an illegal and unlawful Medical Nursing Home. The opponent trustees have committed neglect of their duties by running Medical Nursing Home illegally without permission of his Holiness Dai Al Mutlaq,



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51st Dia-Al-Mutlaq, Syedna Taher Saifuddin (R.A.), His Holiness, The 52nd Dai-Al-Mutlaq, Sardar Aqua Moula Syedna Muhammad Burhanuddin (RA) and His Holiness Syedna Mufaddal Saifuddin Saheb (T.U.S.) His Holiness, Dai Al Mutlaq for running and managing an illegal and unlawful Medical Nursing Home from residential premises without Change of user & without registration with Health Department, H/W Ward, MCGM, Bandra (W), Mumbai.

11. The said allegations are supported by notices issued by Municipal Authority H/W Medical Officer to the opponent trustees calling upon to stop running Nursing Home activities as the same is run without registration. The said letters or notices are dated 12/2/2020 and 9/3/2020. Though the opponent trustees submitted an affidavit cum undertaking on dated 4/8/2021 wherein para No.3 the opponent trustees submit that for last several years as well as presently

Shifakhana – E – Saifiyah Trust is functioning the Medical Care Centre where Doctors namely General Physician, ENT, Dentists and Ophthalmic are visiting and treating patients, but none of them is carrying out any form of surgeries or treatment which requires license from MCGM, hence, this cannot be



termed as nursing home as per the law and rules. They further submit in para No.5 of their Affidavit-cum-Undertaking that for the sake of putting the unnecessary controversy to rest, without prejudice and to show their bonafied, they agree and undertake not to carry out any Nursing Home activity i.e. of any form of surgeries or treatment which requires license from MCGM and if found they shall be responsible for the same. They deny that of violating any provisions of law and rules. In para 6 they undertake not to breach any terms and conditions of the Health Licence Department / Fire Department / B.M.C. rules and regulations and other prevailing laws. They also undertake not to run Nursing Home without proper licence from concerned department. However, from letter dated 13/7/2015 from Saifee Polyclinic & Diagnostic Centre managed by Shifakhana – E-Saifiyah Trust, it is admitted that the licence for running the Nursing Home was pending for renewal from 1/4/2009 till 31/3/2016 and the reasons stated due to some mistake and communication gap. Which is an admission that, the Nursing Home is run without licence. There is report from B.M.C. that patients are admitted in the Nursing Home and therefore it is not merely a day care. Appreciating the undertaking given by the opponent trustees still the Nursing Home is running illegally

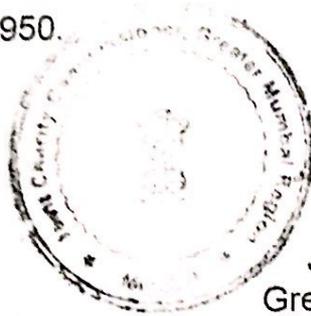


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& the other allegation stated hereinabove persist. Therefore the present 41D proceeding shall be proceeded and therefore this authority approved the draft charges and proceed to pass the following order.

ORDER

1. Draft charges at Exh.16 are approved.
2. The opponent trustees are held responsible under Section 41D(1)(c), (1)(d) & (1)(f) of The Maharashtra Public Trusts Act, 1950.



N. S. Pawar
13/8/2021
(N. S. Pawar)

Joint Charity Commissioner,
Greater Mumbai Region, Mumbai.

Date – 13/08/2021
Place – Mumbai.



Certified to be a True copy

Albhayan
30/8/2021
Superintendent (Certified Copy)
Public Trust Registration Office
Greater Mumbai Region Mumbai

Shawar
30-8-2021