

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**LETTERS PATENT APPEAL NO. 22 OF 2004
WITH
CIVIL APPLICATION NO. 689 OF 2008**

Radheshm @ Sham S/o. Jagannath Somani
Age- 45 years, Occu. Business & Secretary
of Shri Yoganand Shikshan Prasarak
Mandal, Partur,
R/o. Somani galli Partur, Tq. Partur,
Dist. Jalna.

... APPELLANT /
PETITIONER.

VERSUS

1. The State of Maharashtra.
2. The Assistant Charity Commissioner,
Satkar Complex, Jalna
3. Chandrakant S/o. Gangadharrao Patil
Age – 48 years, Occu.: Advocate,
R/o. Partur, Dist. Jalna.

... RESPONDENTS.

Mr. S.P. Sonpawale Advocate for Appellant;
Mrs. V.A. Shinde, A.G.P. for Respondent/State.
Mr. M.V. Deshpande, Advocate for Respondent No.3 (absent)

**CORAM : R.M. Borde and P.R. Bora, JJ.
DATE : 22nd January, 2015.**

JUDGMENT: (Per : P.R. Bora, J.)

1) Order passed by the learned Single Judge of this Court in Writ Petition No.3844/2003 on 17.12.2003 is challenged in the present appeal. In the aforesaid writ petition, appellant had questioned the legality of the order passed by the Assistant Charity Commissioner, Jalna on an application under section 22-A

of the Bombay Public Trust Act (hereinafter referred to as 'the Act'), filed by the present appellant. It was the contention of the appellant in application under section 22-A of the Act filed before the Assistant Charity Commissioner that, the change report was accepted without any proper enquiry and without issuing notices to the outgoing trustees. The challenge so raised was rejected by the learned Assistant Charity Commissioner vide order dated 18.08.2003.

2) The record reveals that, the change report No. 19/1991 was accepted in the year 1991 itself and the application under section 22-A of the Act was moved by the present appellant in the year 2003 i.e. after long lapse of 12 years. The grounds on which the Assistant Charity Commissioner rejected the application under section 22-A of the Act have been upheld by the learned Single Judge. The record further reveals that, the present appellant had sought to explain the delay which has occasioned in filing an application under section 22-A of the Act stating that, few days before filing of the said application, he learnt about the fact that the record was manipulated, and on the basis of such manipulated record, the earlier order was passed by the Assistant Charity Commissioner. The explanation so submitted by the appellant was not accepted by the Assistant Charity Commissioner and the learned Single Judge has also

rejected the same.

3) The learned counsel appearing for the appellant submitted that, the learned Single Judge has failed in appreciating that the original impugned order dated 13.02.1991 was passed by the Assistant Charity Commissioner without issuing notices to the outgoing and incoming trustees. The learned counsel submitted that, in fact, the learned Single Judge ought to have allowed the writ petition filed by the present appellant on that ground alone that the proper procedure was not followed by the Assistant Charity Commissioner while accepting the concerned change report. The learned counsel further submitted that, there is no limitation prescribed in the Act or Rules thereunder for filing application under section 22-A of the Act. In such circumstances, according to him, the delay in filing the application could not have been the reason for rejecting the said application. The learned counsel further submitted that, this aspect has also not been considered by the learned Single Judge.

4) We have carefully considered the submissions made on behalf of the appellant. We also carefully perused the judgment delivered by the learned Single Judge and also of the Assistant Charity Commissioner. We also perused the record of the case. On perusal of which, it is apparently revealed that, the

appellant has not made out any case and the present appeal is liable to be rejected. The learned Single Judge has reproduced the contents of Section 22-A in paragraph No.2 of his judgment. The learned Single Judge has further observed that, from the facts which had come on record, it is difficult to believe that the appellant was not aware of the acceptance of the change report by the Assistant Charity Commissioner vide order passed on 13.02.1991. The learned single Judge has further elaborately discussed as to how the present appellant participated in three subsequent elections held after the amendment in question was brought into effect. It has also been observed that, all the change reports in respect of the three subsequent elections held have been duly approved by the Assistant Charity Commissioner after conducting due enquiry in that regard. The learned Single Judge has recorded a conclusion that it was difficult for him to accept the submissions of the appellant that for a period of 12 years, he was not aware of the acceptance of changes on the basis of alleged manipulated resolutions. The learned Single Judge has further elaborately discussed the further changes occasioned and the orders time to time passed by the Assistant Charity Commissioner accepting the said changes and further having considered all these aspects, the learned Single Judge has reached to the conclusion that, no mistake was committed by the Assistant Charity Commissioner in rejecting the application. The

learned Single Judge has also discussed that, the enquiry under section 22-A of the Act could not have been initiated impleading the Trust as party to the said proceeding and also the trustee whose concerned was shown in the said application. Admittedly, in an application filed under section 22-A by the present appellant, he had not made the Trust as a party, nor he has impleaded the name of the concerned person i.e. Shri Ambhure.

5) For the reasons stated above, we do not find any reason to interfere in the judgment, impugned in the present appeal. The appeal is devoid any substance and is liable to be rejected. It is accordingly rejected. No order as to cost.

6) In view of rejection of the appeal, civil application No. 689/2008, does not survive and same is disposed of.

**P.R. Bora,
Judge**

**R.M. Borde,
Judge**

S P Rane