

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's or Judge's orders.
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APPEAL FROM ORDER NO.: 29 OF 2015
MANIK S/O RAOSAHEB PATIL AND OTHERS
VERSUS
SHESHRAO S/O SHANKARRAO PATIL AND OTHERS

WITH
CA/4181/2015
IN
AO/29/2015
MANIK S/O RAOSAHEB PATIL AND OTHERS
VERSUS
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Mr. V. D. Salunke, Advocate for the Appellants.
Mr. R. N. Dhorde, Advocate h/f Mr. V. R. Dhorde, Advocate
for Respondent Nos.1 to 5.
Smt. R.. K. Ladda, A.G.P. for the Respondent/ State.

CORAM: T. V. NALAWADE, J.
DATED: 10th August, 2015.

ORDER:

1. The two proceedings are filed against common order made by learned District Judge-1, Omerga, District Latur in M.A.No.3 of 2012 and No.4 of 2012. These two applications were filed for review of common judgment and order delivered by the District Court in Misc. Civil Application Nos.8 of 2010 and 9 of 2010. The original proceedings in the District Court were filed to challenge the common judgment delivered by the Joint Charity Commissioner, Latur in proceedings Nos.33 of 2009 and 34 of 2009. In short, it can be said that change report No.717 was filed by present appellants and change report No.722 was filed by opposite side in the office of Assistant Charity Commissioner and both the change reports are rejected. The Assistant Charity Commissioner at Latur had accepted Change Report No.717 and this decision was set aside by Joint Charity Commissioner. The District Court dismissed the challenge made to this decision of Joint Charity Commissioner. In the decision dated 3rd January, 2012

the District Court had directed Assistant Charity Commissioner to hold elections to the managing body of the trust for a period 2011 to 2016 as per the constitution of the trust and after verifying the validity, eligibility of the members of the trust. The review application was filed by the appellant, the person who had filed change report No.717 and it was contended that as per the finding given by the Joint Charity Commissioner only those members who were held to be validly made members were entitled to participate in the election and so the Assistant Charity Commissioner cannot inquire into the validity of others who may come forward to claim themselves as member of the trust. The District Court has allowed the review application and has directed to see that there is compliance of para No.19 of the common judgment delivered by Joint Charity Commissioner in the Proceeding Nos.33 of 2009 and 34 of 2009 which is to the effect that there are only 10 valid members of the trust. Both the sides are head.

2. Learned counsel for the Appellant took this Court through some other observations on the circumstances made by Joint Charity Commissioner in the judgment delivered in

Proceedings Nos.33 of 2009 and 34 of 2009 and particularly at para Nos.12 and 14. From the record, it can be said that not only the procedure, which was followed for the elections held by the rival groups, was under challenge but there was membership issue also. Specific point was framed and considered by the Joint Charity Commissioner, in view of the rival contentions, as follows:

“How many valid members are there of Bhartiya Rashtriya Shikshan Sanstha, Lohara?”

3. After making discussion of the material and rival contentions, the Joint Charity Commissioner has held that only 10 members are valid members and their names are mentioned in para No.19 of the decision. It can be said that the decision given by Joint Charity Commissioner was confirmed by the District Court in proceeding Nos.8 of 2010 and 9 of 2010 and both appeals were dismissed. It can be said that second part of the operative order in which direction was given to Assistant Charity Commissioner to inquire into the validity of the members created confusion when the aforesaid finding given by the Joint Charity Commissioner was not disturbed by the District Court. It appears that in routine course, the second part of the operative order was mentioned and the purpose behind it was to give direction to hold the

elections as both the sides had failed to prove that their elections in the year 2006 were legal and valid. When this circumstance was brought to the notice of District Court, District Court reviewed the decision and directed to act in accordance with the finding given by Joint Charity Commissioner and by holding that there are only 10 valid members of the trust as mentioned in para No.19 by Joint Charity Commissioner. In view of the record, it cannot be said that the District Court has committed any error in making this clarification by allowing the review application.

4. It cannot be disputed that such direction could have been given even by the Joint Charity Commissioner. On this point, the learned counsel for the applicant placed reliance on case reported as **2007 (O) BCI 156**, Aurangabad Bench (**Dattatraya S/o Mahadeo Hiware and others V/s Arjun S/o Sambhaji Shinde and others**). In that case, in view of the facts, it was observed that it was necessary that inquiry was made about the eligibility of voters before declaring the program of election. The facts of the present matter are altogether different and the issue of validity of the membership is already decided and that decision has become final. If this issue is again allowed to be opened, the dispute will not come to an end. The circumstance that the

subsequent membership was also challenged by other side and that matter is still pending cannot come in the way of holding of the elections in view of the aforesaid facts and circumstances. This Court, therefore, sees no reason to interfere in the order made by the District Court.

5. In the result, both the Appeals from Order stand dismissed. The pending civil applications are also disposed of.

6. Learned counsel for the Appellant requested for stay of eight days. In view of the aforesaid facts and circumstances of the case, it is not a fit case to further stay the elections which need to be held and so the stay is refused.

[T. V. NALAWADE, J.]

Dt.10/08/2015
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