

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5475 OF 2015

Sambappa S/o Trimbakappa Girwalkar,
Age: 83 years, Occu- Agri. & Advocate,
R/o Opp. Panchayat Samiti, Mitra Nagar,
Latur, Tq. And Dist. Latur. ...PETITIONER

versus

1. Manmathappa S/o Pandabappa Lokhande,
Age: 78 years, Occu: Business,
R/o Subhash Chowk, Latur.
2. Vishwanathappa S/o Chandbasappa
Dharne, Age: 83 years, Occu. Agri.
R/o Shivajinagar, Latur.
3. Joint Charity Commissioner,
at Latur.
4. Deputy Commissioner,
Latur, Region Latur.
5. Assistant Charity Commissioner,
Latur Region, Latur. ...RESPONDENTS

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Mr. R.S. Deshmukh, Advocate holding for
Mr. D.D. Pokharkar, Advocate for Petitioner
Mr. V.D. Salunke, Advocate for respondent No. 1
Mr. V.D. Gunale, Advocate for respondent No. 2
Mr. S.P. Daund, A.G.P. for respondents No. 3 to 5.

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 14th JULY, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for the parties finally, with consent.
2. The petition has been moved by the petitioner aggrieved by order dated 11th May, 2015 on Exhibit - 1 in Application No. 2 of 2014

passed by joint charity commissioner, Latur, whereunder his request for transfer of Application No. 2 of 2014 has been rejected.

3. Application No. 2 of 2014 has been moved by the petitioner seeking transfer of the proceedings instituted under section 22 of the Maharashtra Public Trust Act, 1950 in respect of change reports referred to therein of "*Mahatma Basweshwar Shikshan Sanstha, Latur.*"

4. Learned counsel Mr. Deshmukh, appearing for petitioner, refers to various factual aspects and contends that no proper opportunity of hearing was afforded to the petitioner before passing the impugned order. He relies on process-sheet annexed to the petition and refers to notings dated 28th April, 2014, which according to him, convey that matter was to be heard on Exhibits-26 and 24 on 11th May, 2015. He submits that on 11th May, 2015 one of the advocate member of Latur Advocates' Bar Association died, and as such, it was resolved to abstain from work on said day.

5. Learned counsel submits that under the circumstances, *pursis*, Exhibit-32, came to be filed, informing the joint charity commissioner about abstaining of advocates from work on said date. He submits that had opportunity been afforded, learned advocate for the petitioner would have proceeded with the matter on merits. However, but for the resolution of Advocates' Bar Association, advocate of the petitioner could not appear in the matter, albeit, order refers to hearing of arguments, it may not be in tune with the factual position. He, further, with reference to the impugned order, submits that there is no

application of mind to the relevant aspects involved in application No. 2 of 2014 and the order has been passed on general considerations. He further submits that perusal of impugned order does not reflect considerations of the content of the application.

6. Learned counsel submits that while the matter was posted for hearing on Exhibits - 26 and 24, application No. 2 of 2014 could not be expected to be heard, as such impugned order is passed in gross breach of principles of natural justice. He further submits that while rejecting the application, joint charity commissioner also purports to direct the deputy charity commissioner to decide the proceedings within a period of four months and such direction is uncalled for having regard to the facts and circumstances.

7. On the other hand, learned counsel Mr. V.D. Salunke, appearing for respondent No. 1 and Mr. V.D. Gunale, learned counsel appearing for respondent No. 2 submit that petitioner is bent upon to stretch and procrastinate the proceedings by resorting to all sorts of tactics. Learned counsel appearing for respondents, purportedly contend that, as a matter of fact, the order depicts that learned counsel for the petitioner was heard. They refer to various other proceedings and the orders passed by this court in the matters taken to this court from the proceedings pending before joint charity commissioner.

8. Learned counsel refer to order dated 18th November, 2014 passed by division bench of this court in writ petition no. 7201 of 2014, wherein division bench had kept all contentions open, granting liberty

to the petitioner to move application before respondent No. 2 therein and explore possibility for expeditious disposal and also submits that order dated 14th July, 2014 in civil application No. 3744 of 2014, also directs expeditious disposal of the proceedings.

9. I have heard learned counsel at quite some length. Perusal of *roznama* indicates that the matter was posted for hearing on Exhibits-26 and 24, on 11th May, 2015, while it appears *pursis* had been filed on 11th May, 2015 abstaining from the work upon resolution passed by Latur Advocates' Bar Association. Learned counsel for the petitioner makes a grievance that no adequate opportunity can be said to have been offered to the petitioner for making submissions on application No. 2 of 2014. Process sheet (*Roznama*) dated 28th April, 2015 and *pursis* appearing on the record about which there is no dispute, lets lot of credibility to submissions being advanced on behalf of the petitioner. The contentions of the respondents that the proceedings are being procrastinated by raising frivolous grounds and by making frivolous applications, may be a consideration while application no. 2 of 2014 is being considered.

10. Perusal of impugned order refers to general legal position rather than content of the application No. 2 of 2014. It is being contended on behalf of respondents that application does not bear any of the ground which would require the matter for consideration of transfer of the proceedings. Application has been moved frivolously just to prolong the case. However, in my view these are the aspects which would be worth consideration only when hearing by letting proper opportunity to

the petitioner. From the circumstances as are appearing it surfaces that there was no proper opportunity. The infirmity can be made good by making available an opportunity to petitioner.

11. Accordingly, I set aside order dated 11th May, 2015 on Exhibit - 1 in Application No. 2 of 2014 passed by joint charity commissioner, Latur and remit the matter to the joint charity commissioner, Latur. The application No. 2 of 2014 is restored to its position as was subsisting before passing of impugned order. Joint charity commissioner shall decide application No. 2 of 2015 within ten days from the date of receipt of writ of this order. All the contentions are kept open for the parties including which have been referred to while arguing present petition.

12. Parties to the proceedings to appear before the joint charity commissioner for the purpose of hearing on the application No. 2 of 2014 on 17th July, 2015 and no separate notice about hearing on application be insisted on by the parties. The parties appearing before this court undertake that they would appear before joint charity commissioner on 17th July, 2015 and would abide the schedule as may be fixed by the authority.

13. Writ Petition, as such, stands allowed. Rule is made absolute in aforesaid terms with no order as to costs.

Sd/-

(SUNIL P. DESHMUKH, J.)