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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6391/2015

Karbasappa Mailariappa Phundipalle
and another.

...Petitioner..

Versus

The Assistant Charity Commissioner
and three others.

...Respondents...

.....

Shri N.P. Patil Jamalpurkar, Advocate for petitioners.

Shri S.P. Daund, AGP for respondent no.1.

Shri S.S. Jadhavar, Advocate for respondent nos.2 & 3.

.....

CORAM: SUNIL P. DESHMUKH, J.

DATE: 02.07.2015

ORDER :

1] Learned counsel for the petitioners submits that after institution of this writ petition, the petitioner no.1 died and as such seeks leave to delete his name from the array of the petitioners. Leave is granted. The petitioner no.1's name stands deleted.

2] Heard learned counsel for the parties.

3] The petitioner purports to be aggrieved by the order dated 5.6.2015 in Miscellaneous Application No.421/2015 filed by present respondent nos.2 & 3 seeking implementation of order passed by the High Court dated

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19.11.2007 in First Appeal Nos.299/2006 and 272/2006. While disposing of the said first appeals, the first appellate Court had issued directions under paragraph no.32, which for ready reference are reproduced hereinbelow:

"32. In the result, appeal (F.A.No.299 of 2006) is allowed. The impugned decisions rendered by the first Ad-hoc Additional District Judge as well as the Assistant Charity Commissioner are set aside. The order of appointment of the Managing Committee is also set aside. The matter is transferred to Assistant Charity Commissioner, Solapur. The Assistant Charity Commissioner, Solapur region shall appoint an Administrator to take over management of the trust. He shall prepare voters list after due verification of names of valid members and direct holding of elections as per existing scheme after calling objections to the voters list. He shall prepare election programme within period of two (2) months after publication of the final voters list. The voters list shall be prepared within two (2) months from receipt of this order and objections may be called within further 15 days and shall be decided within three (3) weeks thereafter. The election process be completed, thus, within six (6) months. Thereafter the appointment of the Administrator may be terminated and elected

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managing committee be given charge of the affairs of the trust. The First Appeal No.272 of 2006 is dismissed. No costs."

4] Aforesaid order of the High Court was taken in Special Leave to Appeal Nos.3305-3306/2008 and under order dated 18.2.2008, the Supreme Court had passed following order:

"Issue notice.
Stay in the meantime."

5] Subsequently, the Supreme Court on 1.5.2015 passed following order:

" Interim order passed earlier is vacated. The result of the election will be subject to the result of the Special Leave Petitions.

I.A.Nos.7-8/2015 are disposed of."

6] In furtherance of the order passed on 1.5.2015 by the Supreme Court, the aforesaid Miscellaneous Application had been moved before the Charity Commissioner, Solapur, pursuant to the directions under paragraph no.32 of the High Court's order in first appeals.

7] Learned counsel for the petitioner submits that

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after the stay order passed by the Supreme Court in 2008, atleast three elections thereafter have taken place. Consequently, elected body is in the management of the trust. He further submits that with the passage of time, the situation as had been prevailing while the High Court had decided the first appeals, has undergone sea change and, therefore, the proceedings for a trust from Osmanabad District would not be amenable for orders from Assistant Charity Commissioner in Solapur District. He, therefore, submits that the High Court's order directing the Assistant Charity Commissioner, Solapur, would not have to be read with the rigor with which it had been passed in the circumstances as were then prevailing. He, therefore, submits that the order passed by the Assistant Charity Commissioner, Solapur, shall be deemed to be outside his jurisdiction, power and authority.

8] The position which clearly emerges is, with the vacation of stay by the Supreme Court on 1.5.2015, the order passed by the High Court in first appeals on 19.11.2007 stands revived and it is that order which is sought to be implemented by Miscellaneous Application No.421/2015 which contains direction to the Assistant

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Charity Commissioner, Solapur.

9] Learned counsel for the petitioner further submits, the elections having already taken place, appointment of Administrator is also not necessary. In effect, learned counsel for the petitioner seeks recall of the directions under paragraph no.32 of the order in first appeals.

10] If any relief in respect of the direction under paragraph no.32 of the High Court's order is to be had, it would be open for the petitioner to prosecute such remedies as would be available in law before proper Court or before Supreme Court under a proper application. Present proceedings before this Court would not be proper proceedings.

11] In view of above position, I am not inclined to interfere with the impugned order. The writ petition as such stands rejected with no order as to costs.

12] Certified copy of the order is expedited.

(SUNIL P. DESHMUKH, J.)