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

WRIT PETITION NO. 8795 OF 2015

1. Panditrao s/o Madhavrao Mane,
Age: 62 years, Occu: Agri.
2. Dnyanoba s/o Tukaram Pawar,
Age: 61 years, Occu: Agri.
3. Shaikh Shabbir Narsoddin,
Age: 62 years, Occu: Agri.
4. Shrihari s/o Apparao Mane,
Age: 62 years, Occu: Agri.
5. Bhausahab s/o Madhavrao Mane,
Age: 61 years, Occu: Agri.
6. Venkati s/o Ganpati Mane,
Age: 67 years, Occu: Agri.
7. Achyut s/o Tukaram Polawar,
Age: 56 years, Occu: Agri.
8. Vinayak s/o Madhavrao Mane,
Age: 57 years, Occu: Agri.
9. Chandrakishor @ Chandrakant s/o Shriniwas
Polawar,
Age: 56 years, Occu: Agri.
10. Vishwanath s/o Lahu Telangi,
Age: 72 years, Occu: Agri.
11. Shrihari s/o Vaijnath Gawale,
Age: 52 years, Occu: Agri.
12. Ramakant s/o Mallikarjun Swami @ Mathpati,
Age: 57 years, Occu: Agri.
13. Laxman s/o Kishanrao Kulkarni,
Age: 62 years, Occu: Agri.
14. Laxman s/o Bapurao Bokade,
Age: 60 years, Occu: Agri.

All R/o. Ajansonda (B),
Tq. Chakur, Dist. Latur

..PETITIONERS

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VERSUS

1. Dinanath s/o Gopalrao Bhurkapalle,
Age: Major, Occu; Agri.,
2. Gunderao s/o Nivrutti Mane,
Age: Major, Occu; Agri.,
3. Shivaji s/o Banaras Mane,
Age: Major, Occu; Agri.,
4. Pashamiya Jafarsab Shaikh,
Age: Major, Occu; Agri.,
5. Pandit s/o Sopan Mandumale,
Age: Major, Occu; Agri.,
6. Sampat s/o Ranba Gaikwad,
Age: Major, Occu; Agri.,

All R/o. : Ajansonda (Bk.)
Tq. Chakur, Dist. Latur

7. The Assistant Charity Commissioner,
Latur Region, Latur

..RESPONDENTS

Mr M. V. Ghatge, Advocate for petitioners;
Mr V. D. Salunke, Advocate for respondent Nos. 1 to 5;
Mr. S. P. Katneshwarkar, Advocate for respondent No. 6;
Mr A. P. Basarkar, Asstt. Govt. Pleader for respondent No. 7

CORAM : N.W. SAMBRE, J.

**Date of reserving
the order : 17th November, 2015**

**Date of pronouncing
the order : 19th November, 2015**

ORDER :

The petitioners herein are claiming to be the members of one Saraswati Vidya Prasarak Mandal, a public trust registered under the Maharashtra Public Trusts Act (for short "Act"). According to the

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petitioners, respondents no.1 to 6 have filed Change Report vide Enquiry No.472 of 2013, whereas the opposite group has filed another Change Report bearing Enquiry No.520 of 2013 under section 22-A of the Act.

2. According to the petitioners, they being life members of the trust in question, intend to object Change Report No.472 of 2013 as they were not noticed in the election. As such, they sought to be a party pursuant to the provisions of section 73-A of the Act to the said Enquiry No.472 of 2013, which is rejected by the Assistant Charity Commissioner, Latur Region, Latur, by an order dated 3rd July, 2015. Thus, the present petition.

3. Mr Ghatge, learned Counsel appearing on behalf of the petitioners, while trying to make out a case for grant of relief under section 73-A of the Act would urge that the petitioners are the persons interested *qua* the public trust in question and being life members are entitled to object the proceedings which are initiated by the respondents herein in the form of Enquiry. He would then urge that the order dated 30th August, 2000, passed by 2nd Additional District Judge, Latur, in Misc. Application No.61 of 2000, preferred under section 72 of the Act will not bind the petitioners, as the compromise was arrived between the parties to the said application and the petitioners were never parties to the said proceedings. According to him, the parties to the said proceedings cannot decide the membership of the petitioners and as such, they have every right to get impleaded, as parties to the proceedings. He would then urge that the petitioners are in possession of certain evidence which is necessary for adjudicating the rights claimed in the said Enquiry.

4. The petition is opposed by Mr Salunke, learned Counsel appearing on behalf of respondents no.1 to 5, who would urge that in view of the order passed by learned 2nd Additional District Judge, Latur on 30th August, 2000, in Misc. Application No.61 of 2000, preferred under section 72 of the Act, the petitioners cannot be termed as persons interested and as such, are not entitled for the benefit under section 73-A of the Act. He would

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then urge that as at the relevant time the petitioners were claiming through Ramrao Kulkarni, who has compromised the rights of the petitioners by agreeing that they were amongst 148 members, who were never registered as the members of the trust and as such, according to him, the present petition is liable to be dismissed. He would then urge that of the total members who claimed to be enrolled and were declared to be non-members on 30th August, 2000 by the order of 2nd Additional District Judge, Latur, 16 have already given an affidavit that they were never members of the trust in question. According to him, the order passed by the learned Assistant Charity Commissioner is a well reasoned order and based on the law laid down by this Court in the matter of **Chetan Mehta vs. State of Maharashtra**, reported in **ALL MR 2008 6 189** and as such sought dismissal of the petition.

5. Having considered rival submissions and bestowed my anxious thought over the same, it is required to be noted here that the Assistant Charity Commissioner, in the order impugned, has relied upon the order of the learned 2nd Additional District Judge, Latur, passed on 30th August, 2000, while dealing with Misc. Application No.61 of 2000, preferred under section 72 of the Act. Admittedly, the petitioners are neither parties to the said petition nor at any point of time have given up their right of membership to the trust in question. The fact that there is a mention about 148 members of the trust, whose status as a member was compromised by the parties to the said application itself speaks of rights in favour of the petitioners *qua* the trust in question. Apart therefrom, the fact remains that at no point of time, the petitioners have given any affidavit that they were not the members of the trust in question, but rather are trying to establish their right before the competent authority.

6. Apart from above, it is required to be taken note of the fact that prima facie it appears that by compromising Misc. Application No.61 of 2000, the parties to the said application are trying to restrict the control of the trust to themselves by excluding participation of other members.

7. So far as the law laid down by this Court in the matter of Chetan Mehta (supra) is concerned, in my opinion, the same has hardly any application, particularly in the background of facts of the present case, as the petitioners herein, claiming to be the members of the trust can always be termed as interested persons and can assist the authority in the matter of deciding the enquiry in question, in accordance with law. The purpose of introducing section 73-A of the Act can appropriately be relied upon from paragraph 4 of the judgment in the matter of Chetan Mehta (supra). In my opinion, rather the law laid down in the matter of Chetan Mehta (supra). The petitioners who claim to be persons interested, can appear before the authority and in the background of above observations can assist the authority in reaching to proper conclusion.

8. For the reasons set out herein above, the learned Assistant Charity Commissioner has misconstrued the claim of the petitioners, in the background of the aim and object of section 73-A of the Act, particularly in the background of the facts of the present case. Thus, the order dated 3rd July, 2015, passed by Assistant Charity Commissioner, Latur Region, Latur, below Exh.19, in Enquiry No.472 of 2013 (Shivaji vs. Ramrao), is hereby quashed and set aside and the application Exh.19, preferred under section 73-A of the Act stands allowed.

Writ Petition stands allowed in above terms with no order as to costs.

(N.W. SAMBRE, J.)

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