

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) WP NO.7359/2015

916 WRIT PETITION NO. 7359 OF 2015

MADHUKARRAO NAMDEORAO KHARAT AND OTHERS
VERSUS
VITTHALRAO GANPATRAO FARTADE AND OTHERS

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Advocate for Petitioners :Mr. Bachate Pralhad D.

AGP for Respondent State:Mr. S.G.Karlekar

Mr. Nagargoje R. T., Adv., for R/1.

Mr.Choudhari D.J., Adv., for R/2

Mr. V.J.Dixit, Senior Advocate, i/b Mr. Vijay Deshmukh, Adv., for
R/3.

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CORAM : R. M. BORDE & P.R. BORA, JJ.

Dated: July 29, 2015

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PER COURT :-

1. The petitioner is objecting to the order issued by the Assistant Charity Commissioner in exercise of powers under Section 41-A of the Maharashtra Public Trusts Act, 1950, directing holding of elections of the managing body of the trust within a period of sixty days.

2. The petitioner contends that, in fact, after registration of the trust in year 1995, the elections were held only once and after 2000, there is no elected body holding the office. It is contended that the de facto body, which has been permitted to conduct the elections, would add to the complexities, as it does not have right to continue and conduct the affairs of the trust. It is contended that before entertaining an application under Section

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41-A, recourse should have been taken to the provisions of Section 41-D or 41-B of the Act. It has not been pointed out as to what irregularities are committed by the members of the de facto body which call for their suspension, removal or dismissal as trustees of the trust.

3. It is not a matter of dispute that since inception no change report has been tendered to the Office of the Assistant Charity Commissioner. Thus, there is no report in respect of elections of the managing body of the trust subsequent to the first election after registration of the trust in the year 1995.

4. In these circumstances, we are of the view that the directions issued by the Assistant Charity Commissioner in respect of holding of the elections are perfectly within the powers and jurisdiction vested in him.

5. Reliance is placed on the judgment in the matter of **Gram Vikas Samitee, Shahapur Vs. Darshanlal s/o Nandlal Malhotra and others (2009 (5) Mh.L.J. 457)** to contend that the task of holding elections should not have been entrusted to the de facto body since the said body does not have entitlement to continue in the office. Even if it is assumed that the said body does not have right to conduct the elections, the elections can very well be held by an officer functioning under the Maharashtra Public Trusts Act, 1950.

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6. Learned Assistant Charity Commissioner has directed the de facto body to conduct the elections of the Managing Body and Office bearers and, in the event of it's failure, further directed that the conduct of the election shall be under the supervision of Mr.S.S.Joshi, Inspector.

Instead of directing the de facto body to conduct the elections of Managing Body and Office bearers, we deem it appropriate to direct Mr. S.S.Joshi, Inspector, official functioning under the provisions of the Maharashtra Public Trusts Act, to conduct the elections from amongst the members of the Trust, and it is accordingly directed.

Rest of the directions issued by the Assistant Charity commissioner shall remain unchanged.

With the modification as above, the writ petition stands rejected.

(P.R. BORA, J.)

(R. M. BORDE, J.)

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