

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

WRIT PETITION NO. 832 OF 2015

Suresh s/o Gunderao Wagh,
Age 57 years, Occu: Service,
presently working as Secretary,
Yuvak Shikshan Prasarak Mandal,
Lohara, Tq. Lohara, District : Osmanabad
R/o Lohara, Tq. Lohara,
District Osmanabad.

... Petitioner

VERSUS

1] Shri Suresh s/o Kishanrao Sutar,
Age 60, Occu : Agril,
R/o Near Shivaji Chowk, Mardi Road,
Lohara, Tq. Lohara, District :
Osmanabad.

2] The Assistant Charity Commissioner,
Osmanabad Region, Osmanabad.

3] The Secretary,
Lohara High School, E-12, Lohara,
Tq. Lohara, District Osmanabad

... Respondents

.....
WITH

WRIT PETITION NO. 933 OF 2015

Suresh s/o Gunderao Wagh,
Age 57 years, Occu: Service,
presently working as Secretary,
Yuvak Shikshan Prasarak Mandal,
Lohara, Tq. Lohara, District : Osmanabad
R/o Lohara, Tq. Lohara,
District Osmanabad.

... Petitioner

VERSUS

1] Shri Dagdu Sopanrao Jadhav,

Age 59, Occu : Agril,
R/o Near Shivaji Chowk,
Lohara, Tq. Lohara, District :
Osmanabad.

2] The Assistant Charity Commissioner,
Osmanabad Region, Osmanabad.

3] The Secretary,
Lohara High School, E-12, Lohara,
Tq. Lohara, District Osmanabad ... Respondents

.....
Mr. P.S. Chavan, Advocate for petitioner in both the petitions
Mr. U.H. Bhogle, A.G.P. for respondent No. 2 / State in both the
petitions.

....

CORAM : RAVINDRA V. GHUGE, J.

DATE : 2nd FEBRUARY, 2015

ORAL JUDGMENT :

1. I have heard the learned Advocate for the petitioner for quite some.

2. The submissions of the petitioner can be summarised as follows :-

a] The petitioner claims to be the Secretary of Yuvak Shikshan Prasarak Mandal, Lohara, Tq. Lohara, Dist. Osmanabad, which is Trust.

b] He claims to be a member of another Trust namely Lohara High School, Lohara Trust.

c] Owing to his complaints against the Lohara High School, Lohara Trust, an F.I.R. is registered against some of the Trustees. Government is also taking steps against the school in relation to its grants given to the Lohara High School, Lohara.

d] The petitioner Trust as well as the Lohara High School, Lohara Trust run independent schools at the same place Lohara.

e] Change Report Enquiry Proceeding Nos. 77 of 2011 and 201/2011 pertaining to the elections held to the Lohara High School, Lohara Trust are pending.

f] The petitioner has moved applications Exhibit Nos. 79 and 50 respectively in the said enquiry proceedings seeking to intervene under Section 2 (10) of the Act read with Section 73-A of the Bombay Public Trust Act (BPT Act) on the basis that he is an interested witness.

g] Similar application has been made by the petitioner in the proceeding Nos. 201 of 2011.

h] By the impugned order, dated 12-11-2014, applications below Exhibit Nos. 79 and 50 have been rejected.

i] The petitioner relies upon the judgment of this Court in the matter of *Suresh Hiralal Shah Vs. Mahir Swami Digambar Jain Mandir Trust*, reported at 2001 (3) B.C.R. 779.

j] Contention is that the ambit of Section 73-A has been appreciated by this Court and a person having interest in a Public Trust needs to be joined in the proceedings.

k] Rejection of the applications have caused grave injustice to the petitioner who claims to be a whistle blower and has been instrumental in exposing various acts of malfeasance and misfeasance by the Trustees of the Lohara High School, Lohara Trust.

3. Having heard the learned Advocate for the petitioner and the learned A.G.P. for respondent No. 2 for quite some time, I have gone through the petition paper book and the judgment of this Court in the case of *Suresh Hiralal Shah* (Supra).

4. Peculiar facts are before this Court. The petitioner claims to be a Secretary of the Yuvak Shikshan Prasarak mandal, Lohara, Tq. Lohara, Dist. Osmanabad. The Change report enquiry proceeding Nos. 77 of 2011 and 201 of 2011 pertain to a completely different Trust i.e. Lohara High School, Lohara trust.

5. The petitioner had neither established his membership before the Assistant Charity Commissioner to claim that he is a member of the Lohara High School, Lohara Trust, nor has the petitioner even voted in the elections held in 2011 to the Lohara High School, Lohara Trust. Applications Exhibit 79 and 50 are filed in 2014 seeking addition as a respondent in the Change Report enquiry proceedings pertaining to the Lohara High School, Lohara Trust. I do not find any such material before me to hold that the petitioner is a subsisting member of the Lohara High School, Lohara, Trust.

6. Reliance of the petitioner on the *Suresh Hiralal Shah's* judgment (supra) is mis-placed. This Court had recorded the facts which indicate that the petitioner who was a caveator in the change report enquiry proceedings, was shown as the opponent in the change report Nos. 507 of 1998, 508 of 1998 and 509 of 1998. Notices were issued to said petitioner Suresh Hiralal Shah inviting his objections. Therefore, when the proceedings under Section 41-E of the BPT Act commenced, the petitioner Suresh Hiralal Shah was left out. It is in these circumstances that this Court concluded that the petitioner was clearly a person having interest in the public trust in question and, therefore, it was

imperative to join him as a party to the proceedings before the Deputy Charity Commissioner.

7. It is in this backdrop, that this Court while interpreting the scope of Section 73-A of the Act, came to a conclusion that the petitioner Suresh Hiralal Shah had interest in the trust affairs.

8. In the instant cases, the petitioner is a Secretary of a different trust. The Lohara High School, Lohara trust which operates a high school appears to have a clash of interest with the petitioner trust which also operates a school in the same area. With this back ground and without there being any material before the Assistant Charity Commissioner to indicate that the petitioner is a subsisting member of the Lohara High School, Lohara trust, the petitioner desires to intervene in the proceedings of a different trust which pertain to its own elections.

9. In my view, these petitions filed by the petitioner is nothing short of an abuse of the process of law. The petitions are devoid of merit. In these circumstances, the petitioner shall pay an amount of Rs. 10,000/- (Rs. Ten Thousand only) in each petition i.e. Rs. 20,000/- (Rs. Twenty thousand only) to the respondent No. 3 - Lohara High School, E-12, Lohara, Tq. Lohara, Dist.

Osmanabad. The petitioner shall make such payment by issuing Account Payee Cheques from his personal salary bank account and not from the Account of Yuvak Shikshan Prasarak Mandal, Lohara trust. The said amount shall be paid to respondent No. 3 within a period of four weeks from today.

10. Both the petitions are dismissed with costs as ordered herein-above.

(RAVINDRA V. GHUGE, J.)