

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11327 OF 2014
(NITIN KANAIYALAL GUJARATHI AND OTHERS VS. THE JOINT
CHARITY COMMISSIONER, NASHIK AND OTHERS)

WITH

WRIT PETITION NO.11335 OF 2014
(NITIN KANAIYALAL GUJARATHI AND OTHERS VS. THE JOINT
CHARITY COMMISSIONER, NASHIK AND OTHERS)

WITH

WRIT PETITION NO.11340 OF 2014
(NITIN KANAIYALAL GUJARATHI AND OTHERS VS. THE JOINT
CHARITY COMMISSIONER, NASHIK AND OTHERS)

WITH

WRIT PETITION NO.11579 OF 2014
(JAIKUMAR KEDU WANI VS. THE JOINT CHARITY COMMISSIONER,
NASHIK AND OTHERS)

Mr.D.S.Bagul, Advocate for the petitioner.

Mr.A.B.Girase, Advocate for the petitioner in WP No.11579/2014.

Mr.D.R.Korde, AGP for respondent No.1.

Mr.R.N.Dhorde, Sr.Advocate h/f Mr.V.R.Dhorde, Advocate for
respondent No.4 in WP Nos. 11327/2014, 11335/2014, 11340/2014
and for respondent No.3 in WP No.11579/2014.

Mr.N.B.Suryawanshi, Advocate for respondent Nos. 5 and 6 in WP
No.11327/2014 and for respondent No.5 in WP No.11340/2014.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/03/2015

PER COURT :

1. I have heard Mr.Bagul and Mr.Girase, learned Advocates on
behalf of the petitioners in all these petitions.

2. Contention/grievance is as regards the impugned order rejecting

the application of the petitioners, by which a preliminary issue is refused to be framed or considered at a preliminary stage.

3. The petitioners had filed an application on 08/12/2014 praying for framing 2 preliminary issues in relation to the application filed by the respondent/Trust invoking the powers of the Authority u/s 47 of The Maharashtra Public Trust Act.

4. By the impugned order dated 20/11/2014, the said application has been rejected by the learned Joint Charity Commissioner, Nashik Region Nashik. The petitioners have narrated a host of facts revolving around the change reports filed by them as well as the pending change reports filed by the respondent/Trust and the applications filed u/s 47 of the Maharashtra Public Trust Act.

5. The limited grievance of the petitioners notwithstanding the fact that the proceedings u/s 47 are being sought to be stayed through this petition, is that the concerned authority should have framed the preliminary issue, which pertain to the jurisdiction of the said authority in entertaining the application of the Trust filed u/s 47.

6. In the light of the above prayer, I have heard Mr.Dhorde, learned

Senior Advocate appearing on behalf of the purported founder trustee Shivaji Tanaji Bhavsar and Mr.Suryawanshi, learned Advocate appearing on behalf of the other respondent.

7. The litigating sides appear to be deeply locked in a legal battle as is evident from the record placed before this Court through these petitions. In Writ Petition No.6948/2014, these petitioners had sought indulgence of this Court with regard to the order passed by the Joint Charity Commissioner dated 31/07/2014 below Exh.12 and Exh.9 in different enquiry applications, seeking leave to be impleaded in the said proceedings. This Court, by its order dated 04/09/2014, has partly allowed the said petitions by setting aside the impugned order dated 31/07/2014 passed by the Joint Charity Commissioner, Nashik and had allowed these petitioners to be added as respondents in the Enquiry Application Nos. 16/2013, 2/2014, 8/2014 and 9/2014.

8. After hearing the learned Advocates for the respective sides for quite some time, in my view, the fate of the application filed by the petitioners dated 08/10/2014 is covered by the observations of this court made while deciding the bunch of petitions on 04/09/2014.

9. In the light of the above, it would be apposite to reproduce

paragraph Nos. 2 to 18 of the order dated 04/09/2014 hereinbelow :-

“2. The petitioners are before this Court aggrieved by orders dated 31st July, 2014 on Exhibit-12 and Exhibit-9, in Inquiry Applications No. 16 of 2013, 2 of 2014, 8 of 2014 and 9 of 2014, initiated at the instance of respondents No.4 to 6 pursuant to section 47 of the Bombay Public Trusts Act, whereunder petitioners’ request to intervene and to implead themselves in said proceedings, had been declined.

3. The petitioners, after reference to historical background involved in the matter, refer to that change reports bearing No.13 of 2014 and 312 of 2014 in respect of election of trustees of respondent No. 3 trust are pending before Assistant Charity Commissioner, Dhule.

4. Learned advocate for the petitioners refer to that five members were elected as office bearers in the meeting held on 11th February, 1996 and accordingly change reports were filed. Said change reports were rejected under order 16th March, 2004. An appeal therefrom had been allowed on 7th December, 2005. Miscellaneous application No. 2 of 2006, at the instance of present respondent No. 4 had been rejected on 26th August, 2008. The matter was carried in first appeal, which too ended up in dismissal.

5. He submits that the change report No.539 of 2001 was accepted under order dated 22nd July, 2009 and a further change report of new elections for the period from 2006 to 2011 bearing No. 220 of 2007 had also been accepted and entry to that effect has been recorded in Schedule I.

6. Respondent No. 4 had moved an application bearing No. 9 of

2004 pursuant to Section 41D of the Bombay Public Trusts Act. The same was allowed. Pursuant to said order u/s 41D, present respondents No. 2 and 4 were appointed as Secretary and President of respondent No. 3 Trust, as ad hoc body.

7. During operation of ad hoc arrangement, there has been appointment of ten persons, including present petitioners, as new trustees and necessary change report bearing No. 13 of 2014 according to the same pursuant to section 22 has been lodged and has been pending. It is further submission of the petitioners that a further change report No. 312 of 2014 has been lodged pursuant to elections that have been held on their appointment as trustees. Both the change reports are pending consideration before the Assistant Charity Commissioner.

8. In the meanwhile, inquiry application bearing No. 16 of 2013 pursuant to section 47 of the Bombay Public Trusts Act, at the instance of respondent No. 4 had been lodged. Respondent No. 2 had appeared in the same and had objected to the application. There are yet other applications bearing No. 2 of 2014, 8 of 2014 and 9 of 2014, pursuant to section 47 of the Bombay Public Trusts Act in respect of said trust, at the instance of various applicants.

9. The petitioners, taking into account aforesaid, had filed applications pursuant to section 73A of the Bombay Public Trusts Act for their inclusion in the matters preferred pursuant to section 47 of the Act. Their said request has been turned down by the Joint Charity Commissioner, as has been referred to herein above and as such, the petitioners are before this Court. According to petitioners, it cannot be said that any occasion had arisen for consideration of the applications pursuant to section 47 of said Act, as it cannot be

said that they are no trustees.

10. Perusal of the impugned orders shows that the contention of the petitioners is that change reports as have been referred to herein above, are pending before Assistant Charity Commissioner.

11. Perusal of paragraph No. 8 as appearing under the impugned orders shows that the Joint Charity Commissioner has been oblivious of developments in the matter. It has been contended that there has been internal elections pursuant to which change report 312 of 2014 has been filed and the same is pending. So also, change report No. 13 of 2014 with respect to appointment of trustees has been pending consideration before Assistant Charity Commissioner.

12. Mr. Dhorde, learned senior advocate appearing for respondent No. 4 submits that respondent No. 2 has no nexus with the trust as a trustee, for he is appointed under orders of Charity Commissioner only to assist the president of the trust. The trustees have already been dismissed u/s 41D of the Act and a challenge to said action has failed up to the Apex Court. Thus, the application pursuant to section 47 of the Act cannot be assailed on the ground that there is no occasion for the same. He further submits that the reason for which impugned order has been passed, is cogent and the further developments have no legal sanctity.

13. Be that as it may, the factual position about pendency of change reports is not disputed nor that the applications moved are merely for impleading the petitioners in order to enable them to be heard in the matter. Though learned senior advocate objected to their status and capacity in which they are seeking impleadment, yet the same will be considered while applications u/s 47 of the

Act are being considered and disposed of.

14. *Taking into account the authorities cited on behalf of the petitioners, particularly the one 2002 (3) Bom.C.R. 161 “Chembur Trombay Education Society & Others V/s D. K. Marathe and Others” it would be premature to say that the petitioners need not be heard. The applications on the face of it are simplicitor for impeachment and for opportunity of being heard to the petitioners. The same appear to have rejected without reference to further developments as has been referred to herein above.*

15. *As such, the impugned orders dated 31st July, 2014 passed by Joint Charity Commissioner Nashik on Exhibit-9 and Exhibit-12 in Inquiry Applications No. 16 of 2013, 2 of 2014, 8 of 2014 and 9 of 2014 are set aside. The applications filed by the petitioners for intervention stand granted. 16. Applications u/s 47 of the Bombay Public Trusts Act to proceed with on their own merits without being influenced by the observations, as are appearing in this order.*

16. *Applications u/s 47 of the Bombay Public Trusts Act to proceed with on their own merits without being influenced by the observations, as are appearing in this order.*

17. *Looking at that the change reports are also pending, it would be expedient and in the interest of justice to consolidate all the change reports together and concerned authority may consider those expeditiously.*

18. *So also consolidate all the applications u/s 47 of the Act pertaining respondent No. 3 Trust together and the concerned authority to go on with the same as expeditiously as possible.”*

10. From the above factual matrix as is recorded by this Court, the pending proceedings between the parties are expedited. Change report enquiries are pending. Applications u/s. 47(d) bearing No.9/2014 is also pending. However, the conclusions drawn by this Court in paragraph Nos. 16, 17 and 18 need to be considered since the legal battle between these sides appears to be unending. At every stage in the various matters, applications are filed and the same are carried up to this Court time and again.

11. Probably, keeping in view this scenario, this Court, in its order dated 04/09/2014 therefore observed in paragraph No.16 that the applications u/s 47 of the Bombay Public Trust Act (Now Maharashtra Public Trust Act) to proceed with on their own merits without being influenced by the observations appearing in the said order. Similar observations / directions are found in paragraph No.17 of the order. Finally, this court has directed that all applications u/s 47 of the Act pertaining to respondent No.3/Trust should be consolidated and the concerned Authority shall consider them together as expeditiously as possible on their merits.

12. Keeping in view these directions issued by this Court, these petitions are partly allowed only to the extent of modifying the

impugned order dated 20/11/2014. As such, the applications filed by the petitioners on 08/12/2014 seeking framing of preliminary issues in paragraph Nos. 6A and 6B, shall be decided alongwith the pending applications filed u/s 47 before the said authority. In short, the objections raised by the petitioners shall be considered by the Joint Charity Commissioner while deciding the applications u/s 47 together and shall refrain from deciding the objections of the petitioners as preliminary issues or in piecemeal. This direction is being issued keeping in view the directions issued by this Court in paragraph Nos. 16 and 18 of the order dated 04/09/2014 passed in WP No.6948/2014 and connected matters.

13. In the light of the above directions, the Joint Charity Commissioner shall decide all the issues together inclusive of the objections raised by the petitioners.

(RAVINDRA V. GHUGE, J.)