

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8395 OF 2014**

Shri Manohar Ganpat SapatePetitioner.
Versus
Laxman Atmaram Sathe & Anr. ...Respondents.

Mr. V.S.Deokar, advocate for the Petitioner.
Ms. P.S.Cardozo, AGP for the respondent no.2-State.

CORAM : M.S.SONAK, J.

DATED : January 19, 2015.

P.C.:

Not on board. Upon Production, taken on board.

This petition is directed against the order dated 27.8.2014 made by the Assistant Charity Commissioner rejecting petitioner's application to summon Smt. Mishra, Assistant Charity Commissioner under whose aegis elections for the period of 1998-2003 were held as witness in respect of change proceedings for the period 2004-2009.

2 Record reveals that Change Report No.500 of 1999, which concerns the period 1998-2003 was rejected on merits by the Assistant Charity Commissioner and appeal against the same is pending before the

joint charity commissioner. In the proceedings concerning Change Report No.500 of 1999, Mrs. Mishra has been examined as witness, as it was under her aegis, that elections for the period of 1998-2003 came to be held. Said Mrs. Mishra was in no way concerned with the elections for the period 2004-2009.

3 Learned counsel for the petitioner, however, submitted that if elections for the period 1998-2003 are held as legal and valid, then such validity will enure for the benefit of petitioner in the present proceedings before the Assistant Charity Commissioner, as well. For this purpose, learned counsel submits that it is necessary to summon Mrs. Mishra as witness.

4 As noted earlier issue with regard to the change report for the period 1998-2003 is pending for determination before the appellate authority. Mrs. Mishra was not concerned with elections for the period 2004-2009. In such situation, Assistant Charity Commissioner was right in making impugned order declining issuance of summons to Mrs. Mishra. Issue of legality or otherwise of the change report for the period 1998-2003 will have to be decided by the appellate authority on its own merits and by taking into consideration deposition of Mrs. Mishra in the said proceedings. There is no necessity to examine Mrs. Mishra once again, in

the present proceedings. Accordingly, no interference is required with the impugned order. The present petition is, accordingly, dismissed. There shall be no order as to costs.

5 It is however clarified that none of the observations made in the present order shall be taken as an expression of any opinion on the merits of the matter. Proceedings in Change Report No.1434 of 2004 be decided in accordance with law and on its own merits.

(M.S.SONAK, J.)