

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1655 OF 2015

Mohd. Haroon Abdul Rasheed & Ors. .. Petitioners
VS.
Mohd. Ilyas Ab. Karim Gazi & Ors. .. Respondents

Mr. N. R. Bubna for Petitioners.
Mr. S. M. Kamble for Respondent No. 1.
Ms Aparna Vhatkar – AGP for Respondent Nos. 2 and 3.

CORAM : M. S. SONAK, J.
DATE : 23 FEBRUARY, 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] This petition challenges order dated 20 January 2015 made by the Joint Charity Commissioner, Nashik Region, suspending the petitioners as Board of Trustees of the trust known as Sir Sayyad Education Society, Nashik ("said trust") and appointing an adhoc body of five persons to look after the management and administration of the trust until further orders.

3] The learned counsel for the petitioners pointed out, and records also reveal that one of the main reasons why the impugned

order came to be made was that the petitioners, failed to file their say / reply to Exhibit '22' which is the application under Section 41B(3) of the Bombay Public Trusts Act 1950 ("said Act"). The impugned order in fact records that despite sufficient opportunities, no reply / say was filed by the petitioners and ultimately, application was made to take reply / say on record, which was rejected by the order dated 25 November 2014.

4] The learned counsel for the petitioners submits that sufficient cause had been made out for taking on record the reply / say. The learned counsel for the petitioners further pointed out that the impugned order contains no reasons as to why the petitioners were required to be suspended and in any case as to how the persons appointed as an adhoc body to look after the administration of the trust are fit and proper persons to do so.

5] The learned counsel for the respondents on the other hand defended the impugned order by submitting that ample opportunities were afforded to the petitioners to file their reply / say.

6] Having heard the learned counsels for the parties and perused the record, in my judgment, though it is true that the petitioners have been casual and negligent in the matter of filing

their reply, one more opportunity can be granted to them subject to certain terms and conditions. The petitioners have grievance with regard to the composition of the adhoc body. Rather than adjudicate into such matters, it will be in the interests of the trust, if some Government Education Officer or any other official as the Joint Charity Commissioner may deem fit and proper is appointed as Administrator of the trust, pending effective decision upon application under Exhibit '22' made under Section 41 B(3) of the said Act. The order dated 25 November 2014, by which the petitioners were precluded from submitting their say / reply can be set aside and the petitioners can be afforded an opportunity to file their say / reply within a period of two weeks from today. This shall of course be subject to the petitioners paying costs of Rs.10,000/- in favour of the said trust.

7] Accordingly, the present petition is disposed of by making the following order:

- (A) The impugned order dated 20 January 2015 is set aside;
- (B) The order dated 25 November 2014 by which the petitioners were precluded from filing their say / reply is also set aside;
- (C) The Joint Charity Commissioner shall within a period of

two weeks from today appoint Government Education Officer or any other official to be the Administrator of the trust, until the respondents application under Exhibit '22' is decided afresh by the Joint Charity Commissioner;

(D) The adhoc body of persons, if they have already taken charge in pursuance of the impugned order dated 20 January 2015, shall hand over such charge to the Administrator, which the Joint Charity Commissioner may appoint within a period of two weeks from today. In the meanwhile, the adhoc body of persons, shall not, in any manner, transfer or alienate the trust property or create any third party rights therein. Further, the restrictions imposed upon such body by the impugned order shall also continue to operate;

(E) The Administrator so appointed by the Joint Charity Commissioner, shall also look after day to day affairs and administration of the trust and shall not take any major policy decisions without the permission of the Joint Charity Commissioner;

(F) The petitioners to pay costs of Rs.10,000/- to the said trust within a period of two weeks from today. Upon production of necessary receipt that such amount has been paid to the said Trust, the Joint Charity Commissioner shall permit the petitioners to file their reply / say to the application

under Exhibit '22' and thereafter proceed to decide the same, in accordance with law.

(G) It is made clear that this Court has not examined the merits of the matter and all points and contentions of all parties are left open for decision by the Joint Charity Commissioner;

(H) The Joint Charity Commissioner shall endeavour to dispose of the proceedings within a period of three months from today.

(I) Rule is made absolute to the aforesaid extent. There shall be no further costs in this petition;

(J) All parties to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)