

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5105 OF 2014

Rajabhau Damodar Raikar ...Petitioner
vs.
The Assistant Charity
Commissioner, Pune and Others ...Respondents

Mr. Prathmesh Bhangude i/b. Mr. S.B. Deshmukh,
for the Petitioner.
Mrs. M.P. Thakur, AGP for Respondent No. 1.
Mr. S.A. Javale, for Respondent Nos. 4 to 6.

CORAM : A.S. OKA & A.P.BHANGALE, JJ

DATE : 24TH MARCH, 2015.

ORAL JUDGMENT (Per A.S. Oka, J.)

. Heard the learned counsel appearing for
the Petitioner.

2] Notice for final disposal of the Petition
was issued by order dated 18th November, 2014.

3] Today an affidavit in reply has been filed

by the Respondent Nos. 4 to 6 who are contesting Respondents.

4] The challenge in this Petition under Article 226 of the Constitution of India, is to the order passed by the Maha Lok Adalat on 16th September, 2012 on a change report filed by the Respondent Nos. 4 to 6 under Section 22 of the Bombay Public Trust Act, 1950 (in short "*the said Act of 1950*").

5] The order passed by the Maha Lok Adalat on 16th September, 2012 reads thus:

Matter is put up before Maha Lok-Adalat on 16-09-2012

1. *The application is filed to report the change in respect of death/change in Trustee Committee/change in address.*
2. *In support of the application, the Applicant has filed copy of previous change report/death extract/proof of change in address/copy of notice/service proof/attendance roll/copy of proceeding book/no objection of outgoing trustees/consent of incoming trustee and affidavit.*
3. *The matter is uncontested. All these documents*

collectively show that the trust has followed due process to report the change. Hence order:-

ORDER

1. *The application is allowed.*
2. *The reported change has been accepted.*
3. *Necessary entry be made in P.T. Register.*
4. *Disposed in Maha Lok-Adalat.*

6] The issue which arises for consideration in this Petition is "whether a Lok Adalat constituted under the Legal Services Authorities Act, 1987 (in short "the said Act of 1987") is empowered to adjudicate upon a change report filed under Section 22 of the Bombay Public Trust Act, 1950 on merits?"

7] Though an Appeal is provided under the said Act of 1950 against an order passed on a change report, in view of sub-section (2) of section 21 of the said Act of 1987, the remedy of Appeal is specifically barred.

8] It will be necessary to make a reference to Section 20 of the said Act of 1987. Sub-section 1 and 2 of Section 20 of the said Act of 1987 deal with the power to make a reference to the Lok Adalat. Sub-sections 3 to 7 of Section 20 of the said Act of 1987 read thus:

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the Court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on

the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a Court.

(7) Where the record of the case is returned under sub-section (5) to the Court, such Court shall proceed to deal with such case from the stage, which was reached before such reference under sub-section (1)."

9] Sub-section 5 of Section 20 of the said Act of 1987 provides that where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case is required to be returned by it to the Court, from which the reference has been received under sub-section (1) of Section 20 of the said Act of 1987 for disposal in accordance with law.

10] Sub-section 7 of Section 20 of the said Act of 1987 provides that where the record of the case is returned under sub-section (5) to

the Court, such Court shall proceed to deal with such case from the stage, which was reached before the reference was made to Lok Adalat. On conjoint reading of various sub section of section 20, it appears to us that a Lok Adalat can dispose of cases only by way of settlement or compromise. Even sub-section (5) of Section 19 of the said Act of 1987 makes this aspect of the limitation on the powers of Lok Adalat very clear.

11] It will be necessary to make a reference to the provisions of the said Act of 1950. Section 22 of the said Act of 1950 deals with changes which occur in any of the entries recorded in the Register kept in accordance with Section 17 of the said Act of 1950. Various details such as the description of the trust property, the mode of succession of the trustees, the names of the trustees etc are required to be entered in the said Register.

12] Sub-section 1 of Section 22 of the said Act of 1950 contemplates the filing of a Change Report in a prescribed form. Sub-section 3 of Section 22 provides that the Deputy or Assistant Charity Commissioner, as the case may be, after receiving a change report under sub-section (1) and after holding an inquiry, if necessary, under sub-section (2), or merely after holding an inquiry, is satisfied that a change has occurred in any of the entries recorded in the Register kept under Section 17 in regard to a particular public trust, he shall record a finding with reasons to that effect. Even if he is not satisfied that a change has occurred as pleaded, he is required to record reasons.

13] Rule 7 of the Bombay Public Trusts Rules, 1951 provides that the inquiry under or for the purpose of Section 22 shall be held, as

far as possible, in the Greater Bombay Region in accordance with the procedure prescribed for the trial of suits under the Presidency Small Cause Courts Act, 1882, and elsewhere in accordance with the procedure prescribed for the trial of suits under the Provincial Small Cause Courts Act, 1887. In case of certain change reports as set out in sub-Rule 1 of Rule 22A, a public notice is required to be given.

14] Thus, a change report, whether contested or not, has to be decided after holding an inquiry in a manner provided in Rule 7 of the Bombay Public Trusts Rules, 1951. No change report can be accepted unless the Assistant Charity Commissioner or Deputy Charity Commissioner, as the case may be, after holding an inquiry, comes to a conclusion that the change as reported has occurred. Sub-

Section 3 of Section 22 requires findings to be recorded with reasons while disposing of the change reports whether there is a contest or not.

15] On plain reading of the said Act of 1987, we find that, the Lok Adalat has no power to make an adjudication by following the procedure which is required to be followed in case of trial of suits. Considering the peculiar scheme of Section 22 of the said Act of 1950, a change report cannot be allowed even by consent without holding an inquiry and without recording reasons.

16] Now coming back to the impugned order, the change report has been allowed by the Maha Lok Adalat only on the ground that the change report is uncontested. It is merely observed that the documents produced by the applicant

in the change report show that the trust has followed the due process to report the change.

17] Therefore, the Lok Adalat had no jurisdiction to decide the change report on merits. In this case, there was no compromise recorded before the Lok Adalat. Even otherwise, the proceedings in the nature of a change report under section 22 of the said Act of 1950 can not be disposed of without holding an inquiry only on the basis of a consent of the parties or a settlement between the parties. Therefore, the answer to the issue formulated in paragraph 6 is in the negative.

18] The submissions made by the learned counsel appearing for the Respondent Nos. 5 to 7 are based on merits of the Change Report. In the present case, we are not considering the merits as we have held that the Lok Adalat

lacked jurisdiction to decide the change report on merits.

19] In terms of the order of this Court dated 18th November, 2014 now the learned Charity Commissioner has issued a circular to all the Charity offices in the State containing instructions not to place such matters before Lok Adalats. Shockingly, the report submitted by the Charity Commissioner shows that as many as 158 change reports were disposed of in the Lok Adalat held on 16th September, 2012. Such matters cannot be placed before the Lok Adalat only with a view to show that large number of matters were disposed in a particular Lok Adalat.

20] Hence, we pass the following order:

a) The impugned order passed by the Maha Lok Adalat dated 16th September, 2012 on the

change report No. 1020 of 2012 is hereby quashed and set aside and the change report is restored to the file of learned Assistant Charity Commissioner, Pune Region, Pune;

b) The Assistant Charity Commissioner, Pune shall decide the change report as expeditiously as possible in accordance with law;

c) We have made no adjudication on the merits of the change report;

d) The Petition is partly allowed on the above terms with no order as to costs.

(A.P. BHANGALE, J.)

(A. S. OKA, J.)