

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10657 OF 2015

Dr. Zakir Hussein Education Society
Trust and ors.

.. Petitioners

vs.

Shaikh Salim Abdul Latif and anr.

.. Respondents

Mr. Ashok S. Pandive and Mr. Tushar Mendkudale for the Petitioners.
Mr. Pratik B. Rahade i/b P.N. Joshi for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 29 OCTOBER 2015.

P.C. :-

1] This petition challenges the order dated 24 July 2015 made by the Joint Charity Commissioner in purported exercise of powers under Section 47(2) of the Maharashtra Public Trusts Act, 1950 (said Act).

2] In terms of sub-section (5) of Section 47 of the said Act, the order of the Charity Commissioner under sub-section (2) shall be deemed to be the decree of the Court and an appeal shall lie therefrom to the High Court. Clearly, therefore, there is no case made out to entertain the present petition. The petitioners shall, however, have the liberty to institute an appeal in terms of Section 47(5) of the said Act.

3] The learned counsel for the Petitioners submits that this is a case where there was violation of principles of nature justice. No doubt, in case of violation of principles of nature justice, the party may not be relegated to avail alternate remedy. But normally, the violation complained of must be apparent. In this case, Roznama records that the notices were served upon the Petitioners. However, it is the case of the Petitioners that no such notices were ever received by them. In such a situation, it would be appropriate if the Petitioners avail alternate remedy by way of statutory appeal.

4] The learned counsel for the Petitioners states that the appeal under Section 47(5) of the said Act is required to be filed within 90 days and there might be some marginal delay. The impugned order is dated 24 July 2015. The Petitioners have instituted this petition on 21 October 2015. In such situation, it may be open to the Petitioners to point out that the Petitioners were bonafide in pursuing this remedy on the basis of legal advise.

5] This petition is not entertained and same is disposed of accordingly. However, liberty is reserved to the Petitioners to avail alternate remedy in terms of Section 47(5) of the said Act.

(M. S. SONAK, J.)