

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO.7215 OF 2014

(Mahaparkash s/o Govind Parbate ..vs.. Balkrishna s/o Mahadeo Hatwar and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 31-08-2015

Heard Shri P.A. Gode, learned Advocate for the petitioner.

None appears for the respondents.

2. The petitioner has challenged the order passed by the Assistant Charity Commissioner, rejecting the application (Exhibit 14) filed by the petitioner praying that the proceedings under Section 50A of the Maharashtra Public Trusts Act, 1950 be dismissed summarily.

3. The respondents filed an application under Section 50A of the Maharashtra Public Trusts Act, 1950. The petitioner filed the application (Exhibit 14) contending that earlier also a similar application under Section 50A of the Maharashtra Public Trusts Act, 1950 was filed which came to be withdrawn and therefore, the subsequent application filed by the respondents is not maintainable. The learned Assistant Charity Commissioner, by the impugned order, has rejected the

application (Exhibit 14). The petitioner being aggrieved by the above mentioned order, has filed this writ petition.

4. Shri P.A. Gode, learned Advocate for the petitioner has submitted that the Trust is managed by duly elected trustees and proceedings under Section 22 of the Maharashtra Public Trusts Act, 1950 regarding the change in the executive body of the Trust is pending before the learned Assistant Charity Commissioner and there is no need of filing of the application under Section 50A of the Maharashtra Public Trusts Act, 1950. It is further submitted that earlier similar application under Section 50A of the Maharashtra Public Trusts Act, 1950 was filed and withdrawn and therefore, the subsequent application is not maintainable. It is further submitted that the learned Assistant Charity Commissioner has committed serious error in proceeding with the matter which is clear from the copy of the order-sheet placed on the record of the writ petition. The learned Advocate has pointed from the order-sheet dated 13-11-2014 that the matter was fixed for filing of reply by the other side to the application (Exhibit 14), on 03-12-2014. It is pointed out from the order-sheet dated 03-12-2014 that the reply was filed and then the application (Exhibit 14) was kept for order on 10-12-2014. It is submitted that the Assistant Charity Commissioner had not fixed the application (Exhibit 14) for hearing and as the impugned

order is passed without granting hearing to the petitioner, it is unsustainable.

Shri P.A. Gode, learned Advocate for the petitioner has pointed out from paragraph No.3 of the impugned order that the learned Assistant Charity Commissioner has recorded that Advocate Gode appearing for the non-applicant Nos.1 to 5 and 7 has been heard at length. It is submitted that the learned Assistant Charity Commissioner has acted arbitrarily. It is pointed out from the order-sheet dated 10-12-2014 where it is recorded that the Advocate for the non-applicants is absent. Though the above fact shows that the learned Assistant Charity Commissioner has not dealt with the matter properly, however, for the reasons to be recorded in the later part of this judgment, I am not inclined to interfere with the impugned order.

5. Though, prima facie, the submissions made on behalf of the petitioner that the impugned order is passed without granting hearing and therefore, it is unsustainable, appears to be proper, in the facts of the present case, the impugned order does not require any interference. The petitioner filed an application (Exhibit 14) praying that the proceedings under Section 50A of the Maharashtra Public Trusts Act, 1950 be dismissed summarily without trial. The learned Assistant Charity Commissioner while exercising his powers under the Maharashtra Public Trusts Act, 1950 is a statutory

authority and is required to be exercise the jurisdiction conferred by the provisions of the Act. It has been repeatedly said by the superior Courts that the Statutory Authorities/Tribunals exercising jurisdiction under the statute should endeavour to dispose of the matters on merits, without giving too much weightage to the interlocutory applications. The impugned order does not cause any prejudice to the petitioner inasmuch as the learned Assistant Charity Commissioner has not decided any issue which adversely affects the rights of the petitioner.

6. In view of the above, the writ petition is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE

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