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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1840 OF 2016

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| 1. | Rajendra s/o Gulabrao Adhav
Age - 47 years, Occ - Service | PETITIONERS |
| 2. | Dnyanoba Narayanrao Jawale
Age - 55 years, Occ - Service | |

Both R/o Parbhani,
Taluka and District - Parbhani

VERSUS

- | | | |
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| 1. | The Assistant Charity Commissioner,
Parbhani | RESPONDENTS |
| 2. | Dr. Vedprakash Kashirao Patil,
Age - 66 years, Occ - Business and Agriculture
R/o Shivajinagar,
Parbhani, Taluka and District - Parbhani | |

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Mr. V.D.Hon, Sr. Advocate i/b Mr. A. R. Vyawahare, for petitioners
Mr. D. R. Kale, AGP for respondent-State
Mr. D. J. Choudhari, Advocate for respondent No.2

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 8th MARCH, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petition has been moved against order dated 10th February, 2016 passed by Assistant Charity Commissioner, Parbhani, rejecting application of the petitioners – Exhibit-44 in Inquiry No.69 of 2010 refusing to implead them as parties pursuant to section 73A of the Maharashtra Public Trust Act, 1950, which reads as under-

“73A. In any proceedings under this Act, any person having interest in the public trust may be joined as a party to such proceedings on an application made by such person on such terms and conditions as the officer holding the inquiry may order.”

3. Mr. Hon, learned senior advocate for the petitioners has pointed out that change reports bearing No.68 of 2010, 69 of 2010 and 615 of 2013 are pending consideration of the Assistant Charity Commissioner, Parbhani and that in change report No.68 of 2010, a similar application, which had been moved for impleading the petitioners as parties, had been allowed finding that the petitioners are interested persons as referred to in section 73A of the Maharashtra Public Trust Act, reproduced hereinabove. This order has been passed on 20th April, 2015. Learned senior advocate for the petitioners, therefore, submits that the reason which has weighed with the Charity

Commissioner is not proper for, once having found in one change report that the petitioners are interested persons in respect of the same public trust, however, rejecting present application for the reason that this application has been subsequently filed, is not a reason, which is tenable in law.

4. Learned advocate for respondent No.2, Mr. D. J. Choudhari, vehemently submits that division bench had in writ petition No.10183 of 2013 and in civil application No.421 of 2014 in the same under its order dated 20th March, 2014 directed the Assistant Charity Commissioner to decide all the change reports concerning the trust, as expeditiously as possible, preferably by end of year 2014, by granting opportunity of hearing to all the parties concerned. Subsequently, the period for disposal of those change reports was being extended from time to time and lastly it has been extended by a period of six months under orders of division bench dated 16th January, 2016. He submits that it is not a case that the petitioners were unaware of the orders being passed by the court. He further submits that under the orders of the division bench, the change reports were to be considered simultaneously. The movement of the petitioners is under a strategy to prolong and procrastinate decision making in the change reports pending consideration of the Assistant Charity

Commissioner. He submits that the application has been rejected in exercise of discretion as has been vested in law under section 73A of the Maharashtra Public Trust Act. He, therefore, submits that the reason given cannot be dubbed *per se* as untenable. He, as such, requests that no indulgence be given to the request being made under the writ petition and the writ petition be rejected.

5. Mr. V. D. Hon, learned senior advocate appearing for the petitioners refers to and relies on a decision of the Hon'ble single judge with reference to section 73A in case of “*Suresh Hiralal Shah V. Shree Mahavir Swami Digambar Jain Mandir Trust*” reported in 2001 (3) *Mh.L.J.* 147, wherein this court had directed to implead party under section 73A of the Maharashtra Public Trust Act. He submits that once finding the petitioners having interest in the public trust, they need to be impleaded and heard in the proceedings.

6. Overall situation emerges that the petitioners may not be said, now, in view of the application in change report No.68 of 2010 having been granted to be not interested in the public trust. The petitioners indeed appear to have moved belatedly in the present change report bearing No.69 of 2010. There have

been orders passed from time to time, extending the period for disposal of change reports No.68 of 2010, 69 of 2010 and 615 of 2013 as expeditiously as possible and lastly the time has been extended by a period of six months in January, 2016.

7. Under the circumstances, it may not be inappropriate to consider the request as has been made in the writ petition with the condition that on account of impleading the petitioners, the period for disposal of the change reports under the orders of the division bench on 16th January, 2016 shall not be exceeded.

8. Further that, the inconvenience in the process being caused to the other side shall be made good by imposition of costs. Mr. Hon, learned senior advocate points out that the petitioners are teachers. In view of the same, I deem it that Rs.7500/- would be reasonable amount towards costs. Respondent No.2, who is the contesting respondent is at liberty to withdraw the costs.

9. Writ petition, as such, stands allowed. Rule is made absolute in aforesaid terms. Upon getting impleaded, which should be done forthwith, further proceedings in the change reports should be proceeded with and the same be disposed of pursuant to the extension of time granted under orders of the

division bench dated 16th January, 2016. The amount of costs be deposited within a period of four weeks from today.

[SUNIL P. DESHMUKH, J.]

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