

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

916 WRIT PETITION NO. 4655 OF 2015

MURLIDHAR BHAURAO KATE AND ANOTHER
VERSUS
SANJAY HANUMANT BORADE AND OTHERS

Shri. V.D. Salunke, Advocate, for petitioners.

Shri. K.A. Tambe, Advocate, for respondent No.1.

Shri. A.N. Nagargoje, Advocate, for respondent No.3.

CORAM: T.V. NALAWADE, J.

DATE : 2nd SEPTEMBER 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibits 45 and 52 in Scheme Application Inquiry No.308/2012 which is pending before the Assistant Charity Commissioner, Osmanabad. Both the sides are heard.

2) Present respondent Nos.1 to 3 have filed application to frame scheme in respect of trust institution viz Vidya Vikas Mandal, Pathrud, District Osmanabad. Present petitioners who are controlling the Trust filed

application and raised preliminary issue as follows and requested to reject the application itself.

"Whether the scheme application is maintainable ? "

3) The submissions are made that the application does not come within the ambit of provision made for framing scheme under the Maharashtra Public Trusts Act. It was contended that the scheme was already in its place and so this provision cannot be used. It was also contended that in the past similar application was made by the other persons in the year 2004 but the said application was rejected in the year 2009 and so the new application though by different party cannot be entertained. During argument in the present proceeding learned counsel for the petitioner submitted that if there is grievance in respect of management, other provision like Section 41-D can be used but application under section 50-A of the Act cannot be entertained.

4) The learned Assistant Charity Commissioner has considered the provisions and law laid down on the

aforesaid point in some reported cases like **AIR 1988 SC 1624 (Saiyad v. Abdulhabib)**. It is observed that in exceptional cases, powers under section 50-A can be used. It is also observed that entitlement of the applicants who have applied for framing scheme can also be considered only during inquiry and at the threshold it cannot be said that they are not entitled to file such application and such scheme cannot be framed.

5) The learned counsel for the petitioner placed reliance on a case reported as **2005(2) Mh.L.J. 266 (Mallikarjun v. Dattatraya)**. In this case this Court has laid down that if present scheme is found to be insufficient then new scheme can be framed otherwise it is not permissible to settle the new scheme in lieu of the existing one. There cannot be dispute over this proposition. During inquiry it can be ascertained as to whether present scheme is sufficient. There are serious allegations against the present trustees managing the affairs. Though separate action can be taken in respect of the lapses mentioned, if due to insufficiency of the scheme lapses have occurred insufficiency can be ascertained. This Court

holds that the learned Assistant Charity Commissioner has not committed any error in holding that at the threshold the application cannot be rejected and inquiry needs to be made. There are no merits in the present proceeding. The petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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