

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3630 OF 2016

1. Smt. Pushpa Shanker Dandge,
Age: 39 years, Occ. Household,
R/o Vidaynagar, Shikshak Colony,
Bhokardan, Tq. Bhokardan,
Dist. Jalna.
2. Nandu Danyinba Wankhede,
Age: 46 years, Occ. Service,
R/o Branjala (lo.),
Bhokardan, Tq. Bhokardan,
Dist. Jalna.
3. Pratik Kaduba Raut,
Age: Minor, Occ. Shikshan,
R/o Vidaynagar, Shikshak Colony,
Bhokardan, Tq. Bhokardan,
Dist. Jalna.
4. Pratidnya Kaduba Raut,
Age: Minor, Occ. Shikshan,
R/o Vidaynagar, Shikshak Colony,
Bhokardan, Tq. Bhokardan,
Dist. Jalna.
5. Bhimrao Yamaji Raut,
Age: 60 years, Occ. Agri.,,
R/o Vidaynagar, Shikshak Colony,
Bhokardan, Tq. Bhokardan,
Dist. Jalna. ... Appellants

Vs.

Kailash s/o Rangnathrao Bhutekar,
Age 46 years, Occ. Service,
R/o Baranjala, Tq. Bhokardan,
Dist. Jalna. ... Respondent

Mr. Arun S. Lomte, Advocate for the Appellants.
 Mr. W.S. Jadhav, Advocate for the respondent.

CORAM : P.R. BORA, J.
DATE : 08-12-2016.

ORAL JUDGMENT :

1. The present appeal is filed against the order dated 28.03.2016 passed by the Ad-hoc District Judge-3, Jalna in Miscellaneous Civil Application No. 119 of 2015, whereby, the learned District Judge has confirmed the order passed by the Joint Charity Commissioner on 18.06.2015 in Appeal no. 31 of 2012.

2. The learned Joint Charity Commissioner vide the aforesaid order had remanded the matter back to the Assistant Charity Commissioner to consider, hear and decide the change report no. 759 of 2010 afresh. The learned counsel for the appellant submitted that, though, the appellant has challenged the order passed by the learned District Judge and the Joint Charity Commissioner on several grounds, he is now pressing only one ground that the order of remand passed by the Joint Charity Commissioner and confirmed by the learned District Judge has now become infructuous, in view of the fact that, the body which has come in power in 2009 and in respect of which the subject change report was submitted has completed its tenure of five years and, thereafter, a new body has come in power and is presently functioning. The learned counsel placing his reliance on the judgment of this court (Coram: S.C. Pratap, J.) in the case of **Jagat Narayan Singh Swarupsingh Chithere and Ors. V/s. Swarupsingh Education Society and Anr.** reported in **1980**

Mh.L.J. 372 submitted that, the remand order has now become infructuous and the issues now remain only for academic discussion. The learned counsel has, therefore, prayed for setting aside both the aforesaid orders.

3. Shri W.S. Jadhav, the learned counsel appearing for the respondent submits that, the present respondent had objected the change report on the ground that a minor boy was taken as a trustee on the board of trustees and the said objection was not duly considered by the Assistant Charity Commissioner. The learned counsel further submits that, in the new body also the same minor has again been taken as a trustee and the challenge, therefore, still subsists. The learned counsel, therefore, submitted that the matter needs to be heard and decided so far as the nomination of a minor on the board of trust is concerned.

4. Though, there is substance in the argument made by the learned counsel appearing for the respondents, in view of the fact that, the new change report which has been filed after the new body has come into being in the year 2014, has also been challenged by the present respondent, it would be open for the respondents to make all submissions as about admitting the minor as a trustee, before Assistant Charity Commissioner in the said change report, and said objection can be conveniently considered and decided by the Assistant Charity Commissioner. However, in

view of the judgment of this court cited supra there appears no propriety in keeping the present matter pending or to maintain the order of remand as has been passed by the Joint Charity Commissioner and confirmed by the learned District Judge. I am therefore inclined to pass the following order:

ORDER

- i) The order passed by the learned District Judge in Misc. Civil Application No. 119 of 2015 on 28.03.2016 and order passed by the Joint Charity Commissioner in Appeal no. 31 of 2012 on 18.06.2015 stand quashed and set aside.
- ii) It is clarified that, the legal issues raised by the parties are kept open to be agitated in the change report pending for consideration before the Assistant the Charity Commissioner.
- iii) The appeal stands disposed of in the aforesaid terms, however, without any order as to the costs.

(P.R. BORA)
JUDGE