

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6792 OF 2015**

Guru Basu Mallappa Biradar	)	
Age 66 years Occ Agriculture	)	
R/o Wajrawad Tq. Jath	)	
Dist Sangli	)	..Petitioner

Vs.

1 President Dhanamma Devi Shikshan	)
Prasarak and Samaj Sudhar Mandal,	)
Tq. Kawath-Mahankal, Dist Sangli	)

2 Chandrakant Ramchandra Sanglikar	)
Age 50 Years Occ Business	)

3 Rawsaheb Ramchandra Kamble	)
Age Major Occ Agriculture	)

4 Ashok Ramchandra Sanglikar	)
Age Major Occ Agriculture	)

5 Sou Aparna Ramchandra Sanglikar	)
Age Major Occ Business	)

6 Sou Basawa Vithal Dodmani	)
Age Major Occ Household	)

7 Sou Gourawa Rawsaheb Kamble	)
Age Major Occ Household	)

8 Sou Megha Basawant Katkar	)
Age Major Occ Household	)
All R/o Gudwasd, Tq. Jath Dist Sangli	)

9 The Charity Commissioner	)	
Maharashtra state, 83, Dr. Annie	)	
Basant Road, Worli, Mumbai	)	..Respondents

Mr. Akshay Shinde i/b Mr. Umesh Mankapure for the Petitioner
Mr. N.V. Vechalekar i/b N.V. Vechlekar & Co. for the Respondent Nos.1 to 8
Mrs. Vaishali Nimbalkar AGP for the Respondent No.9

CORAM : R. M. SAVANT, J.

DATE : 1st APRIL, 2016

ORAL JUDGMENT

1 Rule. Considering the nature of the challenge raised made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the order dated 27-4-2015 passed by the Learned Ad-hoc District Judge-1, Sangli, by which order the Misc Civil Application filed by the Petitioner came to be dismissed and resultantly the order passed by the Learned Joint Charity Commissioner Kolhapur, was maintained.

3 It is not necessary to burden this order with unnecessary details having regard to the nature of the final directions to be issued. The proceedings in question have their genesis in Change Report Nos.1922 of 2007 and 1921 of 2007 filed by one Prakash Sankpal who was at the relevant time the Chairman of the Respondent No.1 trust which is a public trust within the meaning of the Maharashtra Public Trust Act, 1950 (for short the said Act). The said Change Reports came to be accepted by the Assistant Charity Commissioner by order dated 14-8-2007. After the said Change Reports were

accepted, the Petitioner herein filed Misc Civil Application Nos.2152 of 2007 and 2153 of 2007 before the Assistant Charity Commissioner, Sangli, for setting aside the order passed in the said Change Report Nos.1922 and 1921 of 2007. The said applications were allowed by the Assistant Charity Commissioner by order dated 29-10-2007. It seems that prior thereto the Petitioner had filed Change Report Nos.2154 of 2007. The said Change Report concerns the resignation of 7 trustees and acceptance of 7 new trustees. The said Change Report came to be accepted by the Assistant Charity Commissioner by order dated 7-11-2007. Against the said order dated 7-11-2007 the Respondent No.2 filed Misc Civil Application No.2355 of 2007 which was filed on 1-12-2007 for setting aside the order dated 7-11-2007 passed in respect of Change Report No.2154 of 2007 and to allow the Change Report Nos.1922 of 2007 and 1921 of 2007. It seems that the Assistant Charity Commissioner on 3-12-2007 directed the office to put up a note in respect of the said application. The said Misc Civil Application No.2355 of 2007 was thereafter allowed on the same day i.e. on 3-12-2007, resultantly the order dated 7-11-2007 passed in Change Report No.2154 of 2007 was set aside as also the Change Report Nos.1922 and 1921 of 2007 filed by the said Prakash Sankpal were allowed.

4 The Petitioner aggrieved by the said order dated 3-12-2007 allowing the Misc Civil Application No.2355 of 2007 challenged the same by

way of an Appeal under Section 70 of the said Act before the Joint Charity Commissioner, Kolhapur. Suffice it would be to state that the Joint Charity Commissioner dismissed the Appeal by order dated 31-5-2104 on the ground that the same was not maintainable as the order impugned in the said Appeal was passed in a Misc Civil Application. The Petitioner thereafter carried the matter further against the said order passed by the Joint Charity Commissioner to the District Court. As indicated above, the Learned District Judge – 1 Sangli has by the impugned order dated 27-4-2015 has dismissed the Appeal. The dismissal is on the ground that since the order is passed in a Misc Civil Application, the same is not related with the said Act and is related with the Civil Procedure Code and therefore the subject matter of the Appeal is not one covered by Section 70 of the said Act. As indicated above, it is the said order dated 27-4-2015 passed by the Learned District Judge-1, Sangli , which is taken exception to by way of the above Petition.

5 The Learned Counsel for the parties i.e. the Learned Counsel Mr. Shinde for the Petitioner and the Learned Counsel Mr. Vechalekar appearing for the Respondent Nos.1 to 8 would urge submissions for and against the maintainability of the Appeal before the Joint Charity Commissioner.

6 Having heard the Learned Counsel for the parties the question that arises in the instant Petition is whether the Appeal filed by the Petitioner

before the Joint Charity Commissioner against the order dated 3-12-2007 passed by the Assistant Charity Commissioner allowing the Misc Civil Application No.2355 of 2007 is maintainable. In the said context, it is required to be noted that the Misc Civil Application was filed for setting aside the order dated 7-11-2007 passed in Change Report No.2154 of 2007 as also for restoration of Change Report Nos.1922 of 2007 and 1921 of 2007, whose proponent was one Prakash Sankpal who is probably on the side of the Respondent No.2 herein. The adjudication of any Change Report is under Section 22 of the said Act. Hence any application filed in respect of an order passed in Change Report proceedings would necessarily be referable to Section 22 of the said Act. In the instant case, by order dated 7-11-2007, the Change Report No.2154 of 2007 filed by the Petitioner was accepted. In so far as Change Report No.1922 of 2007 and 1921 of 2007 are concerned, they were allowed to be withdrawn on the application of their proponent i.e. Prakash Sankpal. Hence both the orders i.e. order dated 7-11-2007 as well as the earlier order permitting the withdrawal i.e. order dated 29-10-2007 are referable to Section 22 of the said Act. There can be no dispute about the fact that the said Misc Civil Application No.2355 of 2007 was for setting aside the said order dated 7-11-2007 as also the order dated 29-10-2007 permitting the withdrawal of the said Change Report Nos.1922 of 2007 and 1921 of 2007. The said Misc Civil Application was therefore filed in connection with the acceptance of the Change Report No.2154 of 2007 and permission to withdraw

Change Report Nos.1922 of 2007 and 1921 of 2007.

7 It is required to be noted that what has been done by the order dated 3-12-2007 is that the order passed on Change Report No.2154 of 2007 has been set aside as also the order dated 29-10-2007 permitting the withdrawal of the said Change Report Nos.1922 of 2007 and 1921 of 2007 has been set aside and the said Change Reports have been allowed. The order dated 3-12-2007 is therefore referable to an order passed under Section 22 of the said Act and hence the Appellate Authority i.e. Joint Charity Commissioner and the Learned District Judge-1 have erred in coming to a conclusion that the Misc Civil Application is one referable to the CPC and not the said Act.

8 In my view, the orders passed by the Appellate Authority i.e. the Joint Charity Commissioner and the Learned District Judge-1 are unsustainable and are required to be quashed and set aside and are accordingly quashed and set aside. Resultantly the Appeal filed by the Petitioner before the Joint Charity Commissioner would stand restored. The Joint Charity Commissioner is directed to hear and decide the said Appeal on merits. At the hearing of the above Petition a contention was sought to be raised as regards the locus standi of the Petitioner to file the Appeal before the Joint Charity Commissioner. All such contentions are kept open for being urged before the Appellate Authority i.e. the Joint Charity Commissioner who

undoubtedly would decide the Appeal on its own merits and in accordance with law. The parties to appear before the Joint Charity Commissioner on 25-4-2016. The Joint Charity Commissioner thereafter to decide the Appeal expeditiously and latest by 30-6-2016.

9 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]