

Hussein Usman Merchant	...	Petitioner
Vs.		
The State of Maharashtra	...	Respondent

Mr. Hussein Merchant, Petitioner in person.
Mr. V.B. Thadani, AGP for Respondent-State.
Mr. R.A. Shaikh for Intervenor.

CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.

DATE : JULY 29, 2016.

P. C.

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The petitioner seeks an order to club/consolidate the following proceedings in relation to Yateemkhana & Madrasa Anjuman Khairul Islam Trust(Yateemkhana):

“1] 15.11.1997 --- DyCC/5715/1997

2] 15.11.1997 --- DyCC/5716/1997

3] 08.07.1999 --- DyCC/3637/1999

4] 09.09.1999 --- DyCC/4697/1999

5] 02.12.1999 --- DyCC/6209/1999

6] 04.04.2001 --- DyCC/2447/2001

7] 04.04.2001 --- DyCC/2448/2001

8] 12.06.2001 --- DyCC/3584/2001

9] 22.10.2001 --- DyCC/6347/2001

10] 12.11.2002 --- DyCC/3965/2002

11] 19.11.2003 --- DyCC/4792/2003

12] 19.11.2005 --- DyCC/4369/2005

13] 15.12.2005 --- DyCC/4756/2005

14] 27.08.2008 --- DyCC/3432/2008

15] 27.08.2008 --- DyCC/3433/2008

16] 20.11.2008 --- DyCC/4533/2008

17] 07.01.2012 --- DyCC/280/2012

18] 07.01.2012 --- DyCC/281/2012

19] 12.07.2012 --- DyCC/3093/2012

and any other CHANGE REPORT/S filed and remaining pending and whose details is/are not available.”

3] The petitioner, had earlier instituted Writ Petition No. 2632 of 2014 seeking substantially similar reliefs. The petition was disposed of by order dated 23 December 2014 by holding that the petitioner has an alternate efficacious remedy of filing application under Section 41A to 41 E of the Maharashtra Public Trusts Act, 1950 (said Act) before the Charity Commissioner, who has the power to issue directions as applied for by the petitioner in the said petition. Therefore, reserving the right of the petitioner to apply to the Charity Commissioner, the petition was disposed of.

4] The petitioner filed Application No. 5 of 2015 and applied to the Charity Commissioner, Mumbai for directions in the matter of clubbing/consolidation of the aforesaid proceedings. It is the case of the petitioner that the Charity Commissioner has made no orders in the application filed by the petitioner. Rather, the petitioner has been informed by the Charity Commissioner that he has no jurisdiction or authority to even entertain the application. Hence, the present petition.

5] At the outset, we cannot appreciate the action of the Charity Commissioner, to either refuse to entertain the application made by the petitioner or in any case, to make no orders thereon, if indeed, the Charity Commissioner was of the opinion that the reliefs applied for by the petitioner, did not deserve to be granted. This Court, in its order dated 23 December 2014, had clearly held that the petitioner has an alternate efficacious remedy by filing application under Sections 41A to 41E of the said Act before the Charity Commissioner, who has the power to issue direction as sought by the petitioner in Writ Petition No. 2632 of 2014. In terms of such order, the minimum that was expected by the Charity Commissioner was to entertain the petitioner's application and thereafter to decide in accordance with law whether the petitioner was entitled to the reliefs claimed for by him.

6] Some of the Trustees of the Yateemkhana applied for impleadment in the present petition, since the petitioner, had not chosen to make them as parties to this petition. Such impleadment was permitted and Abu Saleh Ansari, one of the Trustee, has filed an affidavit raising various issues.

7] At the stage of hearing, Mr. R.A. Shaikh, learned counsel for some of the Trustees, on basis of instructions from Mr. Abu Saleh Ansari, who was present in the Court, has fairly stated that there would be no objection for clubbing and consolidation of the Change Reports and for disposal of the same in a time bound manner. This statement is accepted.

8] Mr. Hussein Usman Merchant, the petitioner, who appears in person, has also placed reliance upon the Charity Commissioner Circular No. 48 dated 5 March 1953, which reads thus:

“There is no provision in this Act for the consolidation of applications. In the Civil Procedure Code also there is no express provision regarding the consolidation of suits or proceedings. The Civil Courts use their inherent power under Section 151, Civil Procedure Code, to consolidate suits or other proceedings. It is always desirable that all applications in respect of the same trust, should be heard side by side and in the presence of all the rival claimants. This should be borne in mind while scrutinising applications and if two or more applications are made for registration of the same trust, the Deputy or Assistant Charity Commissioner should hear them simultaneously in the presence of all concerned who wish to be heard. He may then pass a common order in respect of all the

applications discussing and disposing of the case of each application and keep the order so passed on the record of each application. It will also be open to the Deputy or Assistant Charity Commissioner to pass a separate order in each application, if he thinks fit to do so.”

9] We are satisfied that it would be in the interests of justice if the aforesaid proceedings, which relate to one and the same Trust, i.e., Yateemkhana, are clubbed, consolidated and disposed of in a time bound manner. To a certain extent, it is possible that at least some of the Change Reports are in fact interconnected, in the sense that the decision in one might determine the decision in the other Change Reports as applied for.

10] Accordingly, the order is hereby made to club and consolidate all the proceedings referred to in paragraph '2' of this order concerning the Yateemkhana Trust. Further, the Charity Commissioner is directed to nominate a suitable Deputy Charity Commissioner to deal with and dispose of such proceedings. Such nomination shall be done by the Charity Commissioner within a period of fifteen days from the date of production of authenticated copy of this order. The Deputy Charity Commissioner so nominated, shall endeavour to dispose of such clubbed/consolidated proceedings as expeditiously as possible and in any case within a period of one year from the date of such nomination. All parties to cooperate in the matter of expeditious disposal of such proceedings and not to seek any unnecessary adjournments in the matter.

11] Rule is accordingly, made absolute to the aforesaid extent. There shall however, be no order as to costs.

12] Before we part with this matter, we consider it our duty to express that it would be in the interests of Yateemkhana Trust and considering the aims and objectives for which such Trust came to be founded that the parties explore the possibility of settling their disputes and difference in an amicable manner so that they can concentrate towards achieving the aims and objectives of the Charitable Trust. We are informed that the Trust operates Orphanages and Educational Institutions, which are necessary for the promotion and welfare of the children from the community, whose cause the Trust seeks to espouse. We accordingly, express the hope that the parties will make earnest attempts to explore the possibility of settlement of their disputes and differences, rather than persist in such litigations.

13] The parties to appear before the Charity Commissioner on 8 August 2016 and produce authenticated copy of this order.

14] All concerned to act on the basis of authenticated copy of this order.

[M. S. SONAK, J.]

[V. M. KANADE, J.]