

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL WRIT PETITION NO. 10115 OF 2015
WITH
CIVIL APPLICATION NO.1170 OF 2016**

Dr.Kamlesh U. Shrivastav & Ors. ..Petitioners

v/s.

The Charity Commissioner & Ors. ..Respondents

Mr. R.R.Paranjpe for the Petitioner.

Mr.J.P.Sen, Sr. Advocate a/w. Shailesh Sheth a/w. Mr. Sahil Bijliwala
i/b. FZB & Associates for the Respondent Nos.3 and 8.

Mr.P.P.Kakde, AGP for the State.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : JUNE 15, 2016.**

P.C.

1. Heard learned Counsel appearing for the respective parties. The petition is filed for the following reliefs:

1) Call for record and papers of respondent no.3 being
P.T.R.No F 1166 of 1964 pending before the respondent
no.2.

2) Grant ad-interim stay of election declared by the

respondent nos. 4 to 12 till the Adhoc Committee is appointed by this Hon'ble Court;

3) Dissolve the present body trustees/office bearers comprising the respondent nos.4 to 12 including the executive body representing the regions;

4) Appoint the Adhoc Body from amongst the members of the respondent no.3 and direct the Adhoc body to submit the change report of Memorandum of Association framed in the year 2013 to the respondent no.2.

5) Direct Respondent no.2 to record the names of members of such Adhoc Body appointed by this Hon'ble Court in Schedule I of the Trust being No. PTR F 1166 of 1964 and further direct him to decide the change report of Memorandum of Association of after giving notice to all the members of the respondent no.3.

6) Direct the respondent no.2 to take appropriate steps under Section 41A of the Maharashtra Public Trust Act, 1950 for holding election of the Respondent no.3 by the Adhoc Body.

7) Set aside the order of suspension of the petitioners

passed by the respondent nos. 4 to 12 dt. 2nd February, 2015 and further saddle a cost of Rs.1,00,000/- each on respondent nos.4 to 12 for passing illegal and defamatory order of suspension dated 2nd February, 2015 passed against petitioners and further set aside the report of the respondent no.13 to 15 confirming the order of suspension passed by the respondent nos.4 to 12 suspending the membership of the petitioners;

2. Admittedly, the petitioners are the members of the respondent no.3 trust which was registered in the year 1964 under the Societies Registration Act and Bombay Public Trust Act. The grievance of the petitioners is that since 1964 no elections are held nor the change reports are filed. The learned Counsel for the petitioners submits that on the record of the Charity Commissioner, in Schedule I the names of the initial trustees appointed in the year 1964 are still appearing. The learned Counsel submits that the election was held in the year 2015, but the same was illegal and therefore he seeks declaration that election of trustees of the respondent no.3 as invalid and appoint Adhoc body to administer the said trust.

3. The learned Counsel for the respondent nos.3 to 8 opposed the petition vehemently. He submits that in accordance with the constitution of the trust, election to elect trustees were held from time to time. He submits that election was also held in the year 2015 to elect the trustees in which the respondent nos.4 to 9 are elected. He also submits that accordingly change reports are filed before the Dy. Charity Commissioner in the year 2015 along with the condonation of delay application.

4. In the above circumstances we find that the issue regarding the validity of election of the respondent nos.4 to 12 is subjudice before the Deputy Charity Commissioner of Bombay. The petitioners being members of the said trust are entitled to intervene in the said, change reports and contest the same. The petitioners having alternative remedy, to which we find efficacious, cannot approach this court invoking the jurisdiction under Article 226 of the Constitution. We, therefore, are not inclined to entertain this petition.

5. Petition accordingly is dismissed. However, in the interest of

justice we direct the Deputy Charity Commissioner , to dispose of the change report filed by the respondent no.3 as expeditiously as possible.

6. In view of disposal of the writ petition, Civil Application No. 1170 of 2016 does not survive and the same is accordingly disposed of.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)