

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11332 OF 2016

Usman Ibrahim Mujawar .. Petitioner
vs.
Hazarat Peer Malik Rehan
Durgah & Anr. .. Respondents

Mr. T. S. Ingale for Petitioner.
Ms M. S. Bane – AGP for State.
None for other Respondents.

CORAM : M. S. SONAK, J.
DATE: 15 NOVEMBER 2016

P.C :

1] The petitioner challenges order dated 2 August 2016 made by the Deputy Charity Commissioner, Kolhapur, dismissing the petitioner's change report no. 265/16 on the ground that the Deputy Charity Commissioner has no jurisdiction to entertain such change report in view of the provisions of Section 5(2) of the Wakf Act 1995.

2] Mr. Ingale, learned counsel for the petitioner submits that this is a clear case of failure to exercise jurisdiction arising out of misinterpretation of decisions of this court as well as the Hon'ble Apex Court in the context of Wakf Act 1995. Therefore, he submits that the present petition be entertained.

3] In terms of Section 70 of the Maharashtra Public Trusts Act 1950 (said Act) an appeal lies against the impugned order before the Charity Commissioner or the Joint Charity Commissioner as the

case may be. The contention now raised by Mr. Ingale, learned counsel for the petitioner, can as well be raised before the appellate authority. Since, there is a statutory appeal against the impugned order, there is no necessity to entertain the present petition.

4] Accordingly, the present petition is dismissed. However, liberty is granted to the petitioner to institute an appeal. All contentions of all parties are left open for determination by the appellate authority.

5] Mr. Ingale states that the petitioner will institute an appeal within a period of ten days from today. If this is done, then the period from the date of institution of this petition and the date of institution of the appeal may be treated as period spent *bona fide* in pursuing remedy against the impugned order.

6] Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

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

Chandka

(M. S. SONAK, J.)