

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11965 OF 2015

Raghunath Vihar Army Welfare
Society and Another.

..Petitioners.

Versus

Mr. Gurudas Saha & Others.

..Respondents.

Mr. R. D. Soni along with Mr. Sujay N. Gawade i/b Shree & Co., for
the Petitioners.

Mr. Pratap Patil for Respondent No. 2 and 3.

Mr. Satish Shetty, Respondent No. 4 in person.

Mr. Sunil S. Sonawane, Respondent No. 5 in person.

Mr. P. G. Sawant, AGP for Respondent No. 6 to 8.

Coram : Ranjit More &
A. S. Gadkari, JJ.

Date : **July 14, 2016.**

P. C. :

1. Heard Mr. R. D. Soni along with Mr. Sujay N. Gawade
the learned Counsel appearing for the Petitioners, Mr. Pratap
Patil, the learned Counsel appearing for Respondent Nos. 2 and
3, Mr. P. G. Sawant, AGP for Respondent Nos. 6 to 8 and
Respondent No. 4 and 5 who are appearing in person.

2. By this petition filed under Articles 227 and 226 of
the Constitution of India, the Petitioners are challenging the
order dated 31st January 2015 passed by Mr. D. K. Patil, Assistant
Charity Commissioner, Raigad Region, Alibag in Application Nos.

97 of 2014 and 39 of 2015. The impugned order is passed in exercise of powers under section 41A of the Maharashtra Public Trusts Act. The Applicant in Application No.97 of 2014 is Respondent No.1 in this petition and the Applicants in Application No. 39 of 2015 are Respondent Nos. 1 to 5 herein.

. By the impugned order, those applications are allowed by the said Assistant Charity Commissioner [for short "ACC"] and consequential directions are issued to the Petitioner – Trust.

3. Mr. Soni, learned Counsel appearing for the Petitioner invited our attention to the averments made in paragraph 11A and document annexed at Exhibit-I to the petition. The said averments and document at Exhibit-I show that Mr. D. K. Patil, ACC who disposed of Application Nos. 97/2014 and 39/2015 by the impugned order, was earlier Advocate for Respondent No. 1 and other members. On 4th February 2014, Mr. D. K. Patil, in his capacity as Advocate for Respondent No.1 had issued the said notice to the Secretary of the Petitioner. The notice was in respect of the very same subject matter of Application Nos. 94 of 2014 and 39 of 2015.

4. Mr. Soni submitted that application filed by Respondent Nos. 1 to 4 was *suo moto* converted by said Mr. D. K. Patil, ACC into an application under section 41A and thereafter disposed of by him by passing the impugned order.

5. Mr. Patil, the learned Counsel appearing for the Respondent Nos. 2 and 3, Respondent No. 4 and 5, who are appearing in person justified the impugned order. They submitted that the point which is being now taken by the Petitioner was not taken by the Petitioner before the ACC and in fact they had submitted to the jurisdiction of ACC and therefore the Petitioner now cannot allege that ACC was biased.

6. Having considered the rival submissions and having gone through record, we find merit in the contention of the Petitioner. On 4th February 2013 Mr. Dinkar K. Patil, who passed the impugned order was the lawyer and in that capacity he had given notice to the Secretary of the Petitioner – Trust on behalf of Respondent No.1. The subject matter of the notice and subject matter of the said applications before him was one and the same. In our view, Mr. D. K. Patil, ACC ought not to have taken up those applications before him and ought to have refrained from taking

up those applications. Mr. D. K. Patil ACC has committed impropriety while deciding applications filed by the Respondents as he was at one point of time Advocate for Respondent No.1 and in fact had dealt with the very same matter. The impugned order therefore is contrary to the principles of natural justice.

7. In the backdrop of above discussion, we quash and set aside the impugned order and remand the matter back for afresh decision. The Joint Charity Commissioner, Mumbai Region shall assign the applications filed by Respondent Nos. 1 to 5 being Application Nos. 97/2014 and 39/2015 to some other ACC. Needless to mention that said ACC shall decide the applications on their own merits without being influenced by the order impugned in this petition or by the present order. The ACC shall decide those applications as expeditiously as possible and at any rate within the period of six months from the date on which those applications are assigned to him. All points and contentions of the respective parties are kept open.

8. Writ Petition stands disposed of.

[A. S. GADKARI, J.]

[RANJIT MORE, J.]