

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12375 OF 2015**

Danial S. Khude & Anr

..Petitioners

Vs.

Nandkumar Shamuvel Amolik

..Respondent

Mr. Ravi Kadam for the Petitioners

CORAM : R. M. SAVANT, J.

DATE : 29th MARCH, 2016

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 28-10-2015 passed by the Assistant Charity Commissioner, Satara Division, Satara, by which order, the application filed by the Respondent herein came to be allowed and the directions as contained in the operative part of the impugned order came to be issued. The directions were to the effect that the Opponents amongst whom was the Petitioners herein were directed to deliver all the trust records in the custody of the Applicant and Secretary of the pastorate committee for the period 2009 to 2012. Further directions were to the effect that the inspector from the office of the Charity Commissioner was deputed for delivering the trust record and it was further directed that in the presence of the inspector that the trust record should be delivered to the Applicant and the Secretary of the trust. The inspector was accordingly directed to submit a compliance report.

2 It seems that the affairs of the trust in question are managed by the pastorate committee of the trust which manages the church. In that regard, Change Report No.389 of 2009 came to be filed for appointment of the pastorate committee for the term 2009-2012. The said Change Report came to be rejected by the Assistant Charity Commissioner by order dated 9-3-2015 and the consequence of the said rejection was that the pastorate committee and the office bearers were held to be “defacto trustees”. They were accordingly directed to hold elections for electing the new members of the pastorate committee. It seems that the elections were held and the Change Report Nos.828 of 2012 and 829 of 2012 pertaining to the appointment of the officer bearers were filed by the Opponents to the said application which were rejected on 9-3-2015. The custody of the trust record in terms of the scheme should be with the Secretary of the trust, however the Opponents to the said application amongst whom are the Petitioners had allegedly kept the trust record in their custody forcefully and in an unauthorised manner.

3 Against the order passed in Change Report No.389 of 2009 the Opponents have challenged the same by way of Appeal No.18 of 2015 before the Joint Charity Commissioner. The order passed in Change Report Nos.828 of 2012 and 829 of 2012 were also challenged by way of Appeal Nos.19 of 2015 and 20 of 2015 before the Joint Charity Commissioner. In the said

proceedings, the Joint Charity Commissioner has stayed the elections of the pastorate committee as a consequence of which the Applicant i.e. the Respondent herein is not in a position to take steps for holding elections. The Applicant therefore filed the instant application on the ground that it is the pastorate committee which is managing the affairs of the trust and that the presbyter of the trust would be the ex-officio President of the pastorate committee. The Assistant Charity Commissioner accordingly held that the Applicant as a presbyter has locus standi to file the application. The Assistant Charity Commissioner also held that there was no impediment for him to consider the application filed by the Applicant for the relief sought namely for the custody of the trust record. The Assistant Charity Commissioner was of the view that since the pastorate committee members are appointed for the period 2009-2012 and were held to be “defacto trustees” and therefore till the elections of the new pastorate committee they are the custodians of the trust record and though the Opponents are part of the pastorate committee they have no status of office bearers who are entitled to have custody of the trust record and since it is difficult to carry out the affairs of the trust without the trust record the Assistant Charity Commissioner deemed it appropriate to issue directions under Section 41A of the said Act for delivery of the trust records to the Applicant who was the Secretary of the trust for the period 2009-2012. The Assistant Charity Commissioner has also held that the instant application is maintainable as the earlier application filed by the Applicant was rejected on

the ground that the Change Report in respect of the appointment of the pastorate committee was subjudice and therefore the status of the applicant as trustee was not decided.

4 In my view, having regard to the reasons mentioned by the Assistant Charity Commissioner in the impugned order for directing the delivery of the trust record to the Applicant, the impugned order can be said to have been passed only in the interest of the trust in question, no case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]