

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO. 8310 OF 2015

MAHMAD MUSTAFA MAHMAD HANIF MORWE AND ANOTHERS
VERSUS
SAMS EDUCATION SOCIETY THROUGH ITS PRESIDENT AND
OTHERS

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Advocate for Petitioners : S.H. Tripathi h/f. Kulkarni Mukul S.

Advocate for Respondents : Salunke V.D. For R/2.

Deshmukh Yogesh P. For R/1.

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CORAM : P.R. BORA, J.

DATE : 06-04-2017.

P.C. :

1. With consent of the parties the petition is heard finally.
2. The order passed by the Joint Charity Commissioner, Latur, Region Latur on 20.06.2015 is questioned in the present petition. The impugned order was passed by the learned Joint Charity Commissioner, Latur on an application submitted by the present petitioners praying for expeditious hearing of the appeal filed by him.
3. The learned counsel for the petitioners submitted that, the petitioners had filed change report no. 601 of 2012 in respect of respondent no.1-trust. In the said change report, present respondent no.2 filed an application at exhibit-3 and prayed for rejection of the said change report. On the said application at exhibit-3 , the learned Assistant Charity Commissioner, Osmanabad

passed an order on 21.03.2013 and allowed the said application and, accordingly, passed the consequent order on exhibit-1 in the enquiry proceedings no. 601 of 2012, endorsing that the said enquiry application stands disposed of.

4. Against the said order passed by the Assistant Charity Commissioner, Osmanabad, the petitioners preferred an appeal before the Joint Charity Commissioner at Latur bearing appeal no. 35 of 2013. In the said appeal no. 35 of 2013, the petitioners on 20.03.2015, submitted an application for expediting hearing of the said appeal. The learned Joint Charity Commissioner while deciding the said application has passed an order to keep the proceedings of change report no. 601 of 2012 on *sine die*. Perusal of the order reveals that, the learned Joint Charity Commissioner was under an impression that the order passed below exhibit-3 was challenged before him and, therefore, some observations are made by the learned Joint Charity Commissioner that, such an appeal is not maintainable under Section 70 and 70-A of the Bombay Public Trust Act, 1950. The observations so made, apparently, appears unsustainable. The learned Assistant Charity Commissioner has not only passed the order on exhibit-3, but has passed a consequent order on exhibit-1 of the change report no. 601 of 2012 and, thereby, has rejected the change report. The petitioners have, therefore, rightly submitted an appeal under Section 70 of the trust Act.

5. Further there was every justification for the appellants to seek expeditious disposal of their appeal for the reason that for the same period another two change reports bearing change report nos. 547/12 and 471/12 have been filed before the Assistant Charity Commissioner and the hearing of the said applications is in progress. It was the precise contention of the present petitioners that, if their appeal is decided and the order passed by the Assistant Charity Commissioner is set aside the change report no. 601/12 filed by them also can be considered along with change report nos. 547/12 and 471/12. However, the request so made seems to have been rejected incorrectly. From the order passed by the learned Joint Charity Commissioner, it is clear that, the learned Joint Charity Commissioner was under an impression that, the change report no. 601 of 2012 is still in existence, whereas, the record shows that vide order passed below exhibit-1 in the said change report, the Assistant Charity Commissioner, Osmanabad has rejected the said report. The learned Joint Charity Commissioner did not appreciate that, it was a regular appeal filed under Section 70 of the Act and there was justification seeking expeditious hearing of the said appeal. The learned Joint Charity Commissioner should have considered the request so made by the petitioners for expeditious hearing of the said appeal on merits and could have accepted or rejected the prayer so made, but in no case such an order could have been passed by the learned Joint Charity

commissioner to keep the change report no. 601 of 2012 on *sine die*.

6. For the reasons stated above, the impugned order is set aside. The learned Joint Charity Commissioner is directed to hear and decide the appeal filed by the present petitioners as expeditiously as possible, preferably within a period of six months from the date of the receipt of the writ of this Court. Writ petition stands allowed in the aforesaid terms.

(P.R. BORA)
JUDGE