

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 08830 of 2017

District : Osmanabad

1. Vasantrao s/o. Apparao Balsure,
Aged : 68 years,
Occupation : Agriculture &
Trustee of Ashta Shikshan
Sanstha, Ashta (Kasar),
Taluka Lohara, Dist. Osmanabad,
R/o. Ashta (Kasar),
Taluka Lohara,
District Osmanabad.
2. Subhash s/o. Karbasappa Tadkale,
Aged : 62 years,
Occupation : Advocate
& Secretary of Ashta Shikshan
Sanstha, Ashta (Kasar),
Taluka Lohara,
District Osmanabad,
R/o. Ashta (Kasar),
Taluka Lohara, Dist. Osmanabad. .. Petitioners.

versus

1. The Assistant Charity Commissioner,
Solapur Region, Solapur.
2. The Administrator,
Ashta Shikshan Sanstha,
Ashta (Kasar),
Taluka Lohara,
District Osmanabad.
3. Vasantrao s/o. Vishwanathrao Mane,
Aged : 85 years,
Occupation : Pensioner,
R/o. Near Bharati Vidyapeeth,
ITI Stop, Solapur,
Taluka & District Solapur.

4. Sidram s/o. Tukaram Chavan,
Aged : 79 years,
Occupation : Pensioner,
R/o. Aarogya Nagari, Omerga,
District Osmanabad. .. Respondents.

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Mr. N.P. Patil Jamalpurkar, Advocate, for petitioners.

*Mr. Y.G. Gujarathi, Asst. Government Pleader, for
respondent no.01.*

*Mr. P.R. Katneshwarkar, Advocate, with
Mr. P.B. Gapat, Advocate, for respondents no.03
and 04 (caveators).*

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 24TH JULY 2017

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith. Taken up for final hearing by consent. Heard learned counsel appearing for parties.

02. After hearing learned counsel for parties, it appears paragraph 32 of decision of this court in first appeal no. 0299 of 2006 and first appeal no. 272 of 2006 dated 19-11-2007 would have a pivotal role to play, which reads thus :-

"32. In the result, appeal (F.A.No. 299 of 2006) is allowed. The impugned decisions rendered by the first Ad-hoc Additional District Judge as well as the Assistant Charity Commissioner are set aside. The order of

appointment of the Managing Committee is also set aside. The matter is transferred to Assistant Charity Commissioner, Solapur. The Assistant Charity Commissioner, Solapur region shall appoint an Administrator to take over management of the trust. He shall prepare voters list after due verification of names of valid members and direct holding of elections as per existing scheme after calling objections to the voters list. He shall prepare election programme within period of two (2) months after publication of the final voters list. The voters list shall be prepared within two (2) months from receipt of this order and objections may be called within further 15 days and shall be decided within three (3) weeks thereafter. The election process be completed, thus, within six (6) months. Thereafter the appointment of the Administrator may be terminated and elected managing committee be given charge of the affairs of the trust. The First Appeal No.272 of 2006 is dismissed. No costs. "

03. The petition proposes to take exception to order passed by assistant charity commissioner, Solapur, dated 07-07-2017 upon miscellaneous application (inquiry) no. 1077 of 2017, miscellaneous application (inquiry) no. 1152 of 2017 and miscellaneous application (inquiry) no.1179 of 2017.

04. In order to have a proper appreciation of the matter factual background may have to be succinctly referred to.

05. Decision of the high court in first appeals no. 299 and 272 of 2006 had been subjected to special leave petitions before the Supreme Court by present petitioners. The Supreme Court under its

order dated 18-02-2008 had issued notices and stayed the effect and operation of high court's decision.

06. While special leave petitions had been pending before the Supreme Court, quite few applications, particularly I.As. no. 9-10 of 2015 and I.As. no. 7-8 of 2015 had been moved wherein the Supreme Court had initially in July, 2015 issued notices to the State of Maharashtra in order to have information in respect of action taken by the assistant charity commissioner on change reports filed. On 01-05-2015 it appears, on interim application I.As. no. 7-8 of 2015 in the special leave petitions, an order came to be passed that the interim order passed earlier stands vacated and result of election would be subject to result of special leave petitions. It appears that there had been some dispute / confusion as to elections appearing in the order vacating interim relief with reference to election to take place as per paragraph 32 of the high court's decision in first appeals or elections taking place in the interregnum to which interim applications pertain. Accordingly, interim applications bearing I.A. nos. 7-8 of 2015 had been moved before the Supreme Court and the orders came to be passed.

07. On the other hand, it appears after interim relief had been vacated as aforesaid on 01-05-2015 by the Supreme Court

and, in furtherance of the order of the high court, as contained in paragraph 32, an order came to be passed on 05-06-2015 by the assistant charity commissioner appointing administrator over Ashta Shikshan Sanstha, Ashta (Ka), till result of the election is declared and administration of the trust had been handed over to the administrator so appointed. The administrator had further been directed to take record and administration of the trust in his possession within a week.

08. In the meanwhile, the assistant charity commissioner under his order dated 14-08-2015 purported to prepare a voters' list of the trust in tabular form, further directing the administrator to put the same on notice board of the office of the trust and call upon objections on or before 29-08-2015, directing administrator to prepare a panchanama of publication. It appears that in furtherance of the same, a list under *panchanama* had been displayed on notice board of office of the trust on 21-08-2015. Albeit there is some dispute that some objections presumably were submitted on behalf of present petitioners although it is being referred to that there had been some other objections which were sought to be submitted beyond 29-08-2015 which were not accepted having regard to order dated 14-08-2015.

09. In the meantime, it appears there had been some movement before the Supreme Court under the interim applications and the assistant charity commissioner had put on hold further action pursuant to the aforesaid order dated 05-06-2015. Finally, the Supreme Court under its order dated 09-05-2017 had passed following order :-

" Heard the learned counsels for the parties and perused the relevant material.

We find no merit in the present Special Leave petitions. The Special Leave Petitions as also all pending applications therein are accordingly dismissed. The directions contained in paragraph 32 of the impugned judgment of the High Court will now be given effect to. "

10. While the Supreme Court had finally disposed of special leave petitions, as aforesaid, miscellaneous applications came to be moved before assistant charity commissioner. Misc. application (inquiry) no.1077 of 2016 was preferred by one of the petitioners to start process of election afresh. Misc. application (inquiry) no.1152 of 2017 had been by one of the respondents herein to resume the election process from the stage from which it had been put on hold and one more application by one Mr. J.D. Chaudhari. Thereupon, the assistant charity commissioner has passed order disallowing misc. application (inquiry) no. 1077 of 2017 and allowing misc. application

(inquiry) no. 1152 of 2017 observing that the Supreme Court's order does not mean that the election process should be started afresh or since beginning as according to the learned assistant charity commissioner, it would mean that the election process be completed expeditiously. It further appears that under misc. application no. 1077 of 2017, there had been one more request to change the administrator. That request was declined under the said order.

11. Mr. N.P. Patil Jamapurkar, learned counsel appearing for petitioners, vehemently submits that the events and rigor of operative order under paragraph 32 in first appeals and final order passed by the Supreme Court referred to herein above is a clear indication of the mandate that the election process should be undertaken by the administrator afresh as directed by the high court under paragraph 32. According to the learned counsel, there is no alternative to the same. He further refers to that the preparation of voters' list including the provisional one or rather preliminary one is assigned to the administrator under paragraph no.32 of the high court's order, whereas the learned assistant charity commissioner had misguided himself and exceeded the powers, having regard to observations in paragraph 32 of the high court's order. Further, the high court's order refers to keeping of time limit of 15 days from the date of publication of preliminary voters' list which does not stand

satisfied in the present matter since preliminary voters' list under the order dated 14-08-2015 had been displayed only on 21-08-2015 and the calling of objections had been closed on 29-08-2015 without leaving 15 days space as per order of the high court. He submits that the whole election process pursuant to order dated 14-08-2015 is defective and outside the power, authority and jurisdiction of the assistant charity commissioner and thus, even otherwise the election process will have to start anew.

12. Mr. P.R. Katneshwarkar, learned counsel appearing for respondents no.03 and 04, submits that the whole trust record had been in possession of the assistant charity commissioner which is an admitted position as would emerge from the contents of the writ petition itself and in the circumstances, action if any, as contemplated under paragraph no.32 has been processed by the assistant charity commissioner, it is not a discrepancy at all. The administrator himself is to be appointed by the assistant charity commissioner under paragraph 32 of high court's order. The enactment Maharashtra Public Trusts Act, 1950, does not disallow such an action by the assistant charity commissioner. He further disputes that 21-08-2015 to be date of publication of voters' list as he purports to rely on certain documents annexed to the petition stating that the list had been prepared and had been available on

14-08-2015, as such, 15 days requirement under paragraph 32 of the high court's order stands satisfied. In the circumstances, according to him, having regard to the order passed by the Supreme Court on 01-05-2015, after vacating the stay, election means the election pursuant to paragraph 32 of high court's order which had already been put in process and some stages in the same had also been completed. In the circumstances, the process of election shall resume from the stage at which it had been stalled. He submits that there is no alternative and there is no question of putting any interpretation otherwise since the elections after vacating interim relief would mean elections pursuant to paragraph 32 of the high court's order and no other. He further submits that the elections in the interregnum and the change reports in those respects have not been contemplated under the order dated 01-05-2015. Subsequent interim applications bearing I.A. nos.9-10 of 2015 in I.A. no. 7-8 of 2015 before the Supreme Court would not affect in any way order dated 01-05-2015. He, therefore, submits that the words used "*The order of the high court be now given effect to*" means the process of election would be to proceed further from the stage at which it had been stalled and the matter will have to be considered accordingly.

13. Taking into account aforesaid, the high court under its order in the two first appeals appears to have directed administrator

to take over management of the trust and to go ahead with the elections including preparation of elementary or for that matter, provisional voters' list. It further appears that under order dated 05-06-2015, administrator came to be appointed with a direction to take in possession entire record of the trust and proceed with the election. Intriguingly the assistant charity commissioner had himself prepared the voters' list since record had been in his possession. This exercise appears to be in excess of the order passed by the high court in paragraph 32 of first appeals.

14. In the circumstances, although there is a dispute in respect of the actual date of publication of voters' list and subsequent time gap required for taking objections, it is a case wherein it would be required that since the order of the high court is there since 2007, to give effect to same without adding to or subtracting from and without leaving it to interpretation, as it is. The wording in order is plain and clear. In the circumstances, it would be appropriate to go ahead with the election process as directed by the high court under paragraph no.32 afresh. The order of the assistant charity commissioner dated 07-07-2017 to that extent stands set aside. The administrator appointed by the assistant charity commissioner to proceed ahead pursuant to paragraph 32 of the high court's order in first appeals no.299 of

2006 & 272 of 2006. The process be initiated and completed expeditiously. The writ petition to that extent stands allowed. Rest of the order declining change in administrator is not disturbed.

15. Mr. Katneshwarkar during the course of his submissions has adverted to the observations of the high court in first appeal in respect of one of the petitioners. It is for the authority to consider same on its own merits.

16. Rule made absolute in the above terms. In the circumstances, parties shall bear their own costs.

(Sunil P. Deshmukh)
JUDGE

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