

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

FIRST APPEAL NO.326 OF 2017

WITH CIVIL APPLICATION NO.9049 OF 2015

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| 1 | Laxman Baburao Avale,
Age 69 years, Occu: Pensioner
R/o Siddeshwar Housing Society,
Old Ausa Road, Latur | .. Appellants |
| 2 | Bhimashankar Vishwanath Siddeshware
Age 55 years, Occu: Advocate
R/o Old Saraf Lane, Zinganappa
Galli, Latur | |
| 3 | Sidramappa Mallikarjunappa Aurade
Age 58 years, Occu: Business,
R/o Samarth Nagar, Latur | |
| 4 | Gangadhar Channappa Manthale
Age 52 years, Occu: Business,
R/o Manthale Nagar, Latur | |
| 5 | Babu s/o Mallikarjun Waghmare,
Age 68 years, Occu: Pensioner,
R/o Pochamma Galli, Latur | |

VERSUS

- | | | |
|---|---|----------------|
| 1 | Surendra s/o Brijmohan Agarwal,
Age 53 years, Occu: Business,
R/o 14, Siddeshwar Hsg. Society,
Latur | .. Respondents |
| 2 | Shri Vankatesh Education Society,
Latur, Through
Vasantrao Baburao Yadav,
Age 75 years, Occu: Business,
R/o Near Kalantri Dal Mill,
Samrat Chowk, Nanded Road,
Latur. | |
| 3 | The Joint Charity Commissioner,
Latur Region, Latur | |
| 4 | Prashant s/o Shivappa Patne
Age 46 years, Occu: Agri, &
Secretary, Shri Vyankatesh
Vidyalaya, Latur. | |

Mr. N. P. Patil (Jamalpurkar), Advocate for the
appellant,
Smt. Anjali Dube-Bajpai, Advocate for Respondent No.1,
Mr. S. S. Thombre, Advocate for Respondent No.2

CORAM : K. L. WADANE, J.

RESERVED ON : 04.09.2017

PRONOUNCED ON : 08.09.2017

JUDGMENT:

1. In the present appeal, the appellants have assailed the common judgment and order passed by the District Judge-4, Latur in M.A. No. 107, 108 and 109 of 2012, dated 25.06.2015.

2. The brief facts of the case may be stated as follows:

(1) According to the appellants they are the legal and valid members of a Educational Society i.e. Shree Vyankateh Education Society which was formed and established on 15th August, 1955 and it was duly registered as Society under the provision of Registration of Societies Act, 1860 The said Society was then registered as a public Trust on 26th September, 1963, having registration No. F-25 (Osmanabad) and after formation of Latur district, the said society came to have been re-registered at Registration No.12 (Latur). The Society/Trust has

its own memorandum of association. It has framed the Rules and Regulations for managing the affairs and administration of the trust. Mode of succession of trusteeship is by way of election every after five years as shown in Schedule-I of the PTR.

(2) The elections of the managing committee of the trust was held on 16th September, 2001 in general body meeting, wherein the present appellants were present and the new body was elected for the period from 16.09.2001 to 15.09.2006. Pursuant to the said election, the change had occurred in the managing body by way of election. Therefore, the then Secretary, reported the change to the Deputy Charity Commissioner on 7th January, 2002 along-with all the necessary annexures and documents.

(3) Respondent No.1, without resorting to the provisions of section 73A of the Maharashtra Public Trusts Act, filed objection on 28th March, 2002 and resisted the change report, alleging that the present appellants were not members of the trust and as such, they may be declared as "No members" of the trust. The appellants have filed third party application under section 73(A) of the Act,

requesting to allow them to intervene in the matter and file their say. The appellants then appeared in the matter and filed their say and prayed that by conducting an enquiry, they may be declared as valid and legal members of the society. The Deputy Charity Commissioner proceed with the matter and after referring oral as well as documentary evidence on record of both sides, has allowed the Change Report No. 44/2002 by judgment and order dated 24.08.2010. That order was assailed before the Joint Charity Commissioner, who disposed of the Appeals by a common judgment and order dated 17.03.2012 holding that the learned Deputy Charity Commissioner has no jurisdiction to declare the present appellants as legal and valid members of the trust in an enquiry relating to the change report filed under section 22 of the Act. Thereafter, the present appellants filed application under section 72 (1) of the Act before the learned District Judge, Latur by way of Appeal No. 63/2010.

- (4) The learned District Judge-4, Latur partly allowed the appeals filed by different trustees and rejected the appeal filed by the present appellants bearing application No. 107 of 2012 and thereby held

that the Deputy Charity Commissioner has no jurisdiction to decide the issue of legality of the membership under section 22 of the Act relating to the change report. Hence this appeal.

3. I have heard the arguments of Mr. N. P. Patil (Jamalpurkar), learned counsel for the appellant, Smt. Anjali Dube-Bajpai, learned counsel for Respondent No.1, Mr. S. S. Thombre, learned counsel for respondent No 2.

4. Looking to the limited controversy between the parties, a very short question arises for my consideration, i.e. Whether an independent issue of validity of the membership of any person can be decided in an enquiry under section 22 of the Maharashtra Public Trust Act, when the validity and legality of the occurrence of change report is not in dispute. My finding thereon is in the negative for the reasons to follow:

5. Mr. N. P. Patil Jamalpurkar, learned counsel appearing for the appellants has argued that on 20.02.1996, the membership was given to in all 30 members including the present appellants. The appellants have deposited the membership fees and the

receipts of acceptance of the of fees were issued to the appellants. Therefore, according to Mr. Patil-Jamalpur, this was the last stage to complete the membership of the present appellants. The learned counsel submits that the moment, when the trust had accepted the membership, the present appellants became legal and valid members of the trust. Mr. Patil-Jamalpurkar, further argued that the receipts issued in favour of the present appellants were first in time and subsequently receipts of membership fees were issued in favour of the objectors. The membership of the present appellants was approved in the meeting dated 20.02.1996.

6. As against this, Mr. S. S. Thombre, the learned counsel for respondent No. 2 argued that subject of membership of the present appellants was kept on record in first meeting, and it was to be confirmed in the next meeting. However, in the next meeting, membership of the present appellants was not confirmed. Hence, the appellants are not members of the trust. The most important aspect in this case is, whether validity of the membership can be examined in the enquiry under section 22 of the Maharashtra Public Trust Act and such aspect can be termed as change within the meaning of

section 22 of the Maharashtra Public Trust Act. This is the the only issue to be determined by this Court.

7. Mr. Patil Jamalpurkar, the learned counsel for the appellants relied on the observations of this Court in unreported judgment F.A. No. 1087/2014 (Baburao Sopanrao Palmate & ors. Vs. The Joint charity Commissioner, Latur Region). I have gone through the observations, recorded in the above case, from which, it reveals that the occurrence of change or the election of the office bearers itself is challenged by the interested person on the ground of illegal electorate and not when the election is challenged by anybody. In this Context, this Court has directed the learned Assistant Charity Commissioner to examine and decide validity of the membership of the 25 persons enrolled in the year 2002 and also the validity of the 45 persons enrolled in the year 2007. In the present case, the change report is not opposed by anybody and therefore it was not necessary to have enquiry under section 22 of the Maharashtra Public Trust Act so as to accept or reject the change report. Examination of the validity or invalidity of the membership of the trust is not a change within the meaning of section 22 of the Act.

8. Considering the rival submissions of both the sides, it appears that when the question of jurisdiction of Deputy Charity Commissioner or Joint Charity Commissioner is raised regarding issue of Membership and its validity, when the validity and legality of change occurred is not disputed by anybody, then we have to see the scope of the provisions of section 22 of the Act. Undisputedly, the Charity Commissar has jurisdiction to decide the validity of the membership because the question would be always there whether the office bearers who assume the office of trustee-ship were elected by the valid members or not. For that purpose, the Joint Charity Commissioner has certainly jurisdiction to decide the validity of the members. However, Deputy Charity Commissioner or the Joint Charity Commissioner has got such jurisdiction only when the occurrence of change or the election of the office bearers itself is challenged by the interested person on the ground of illegal electorate and not when the election is not challenged by any body.

9. Mr. Thombre, the learned counsel has rightly riled upon the observations of this Court in unreported judgment in Writ Petition No.8651/2012

(Eknath Keshav Teli&ors.**Vs.**Ajit Pandurang Gogte & ors),
wherein, in para 17, it is observed that:

"17. While disposing of this writ petition by setting aside the direction in clause (3) of the order of the Principal District Judge dated 27th March, 2012, I once again clarify that it would be open for the respondent No.1 to assail enrollment of 498 members by approaching a competent Court. As has been already clarified and that aspect does not require any further elucidation that the enquiry under section 22 of the Bombay Public Trust Act, 1950 read with Rule 7 of the Bombay Public Trust Rules, 1951, would not enable the Assistant Charity Commissioner to pass substantive orders and directions and particularly beyond the scope of the enquiry before him. This Court, has already clarified that the Assistant Charity Commissioner does not possess any incidental, implied or inherent powers during the course of such enquiry so as to take note of every grievance in relation to the management and administration of the Trust and its finances."

Mr. Thombre, the learned counsel has also relied on judgment of this court, reported in **2016 DGLS(Bom)691 (Vidarbha Youth Welfare Socceity and othrs Vs. Sandip Ram Moghe and others)**, wherein, it is observe that:

"The Assistant Charity Commissioner is thus required to decide or deal with any question as

to change under section 22 of the Act. It is thus clear from the above that the question; whether the plaintiffs were legally dismembered from the life membership or not and whether the act of their dismemberment was legal, null and void, malafide or contrary to law are the questions which cannot become change in order to attract Section 22 enquiry proceedings and, therefore, the grievance made by the plaintiffs consequently was their individual or private grievance unconcerned with the administration of the trust and its properties. Section 80 of the Act reads thus:

"80. Save as expressly provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act and in respect of which the decision or order of such authority has been made final and conclusive."

Thus, the bar to invoke jurisdiction of civil court provided in this provision will not be attracted as the Assistant charity Commissioner is not required to decide or deal with any question other than the change within the meaning of section 22 read with section 17 and Rule 5, Schedule I.

From the aforesaid observation, it is crystal clear that the Deputy Charity Commissioner has no

jurisdiction to decide the legality and validity of the inquiry under section 22 of the Maharashtra Public Trust Act.

10. In view of the above, I am of the opinion that examination of the validity and legality of the membership of the trust is not a change within the meaning of section 22 of the Maharashtra Public Trust Act and the Deputy Charity Commissioner and Charity Commissioner shall have no jurisdiction to decide the legality and validity of the membership in an enquiry under section 22 of the Act.

11. I have gone through the reasons recorded by the Joint Charity Commissioner as well as the learned District Judge. I do not find any perversity with the findings recorded by them. Consequently, there is no substance in the appeal. The first appeal is dismissed. No order as to costs.

12. Pending civil application stands disposed of.

(K. L. WADANE, J.)

JPC