

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.2385 OF 2017**

Abu Saleh Ansari

The trustee of Yateemkhana & Madrasa
Anjuman Khairul Islam (Trust) situated
at 1st floor, Baitul Aman C.H.S.Ltd,
Maulana Azad Road, Nagpada Junction,
Mumbai 400 008.

... Petitioner

V/s.

1. Hussein Usman Merchant
Age : 75 years, R/a "Dreamland",
Flat No. 403, Opp. Ruby Hospital,
Off S.V.Road, Jogeshwari (W),
Mumbai 400 102.

2.The Charity Commissioner,
Maharashtra State, Mumbai,
Presided over by Mr. S.B.Savale,
3rd floor, 83, Dr. A.B.Road,
Worli, Mumbai 400 008.

... Respondents

Mr.Sagheer A. Khan with Mohammad Soheb i/by M/s Judicare Law
Associates, Advocate for the Petitioner.

Mr.Hussein U.Merchant, Respondent No.1 in person present.

Mr. M.M.Gohar, Advocate for the Caveator.

CORAM : V.M.KANADE AND

P.R.BORA, JJ.

ORDER RESERVED ON : 24th FEBRUARY, 2017.
ORDER PRONOUNCED ON : 7th MARCH, 2017.

P.C. :

1) The present Petition is filed taking exception to the Order
dated 30th August, 2016 passed by Charity Commissioner,

Maharashtra State, Mumbai, whereby the learned Charity Commissioner has directed to hear and decide certain Change Reports by the Joint Charity Commissioner at head office. The Petitioner has prayed for direction against the Charity Commissioner to assign the concerned Change Reports for adjudication to the Deputy Charity Commissioner instead of the Joint Charity Commissioner.

2) The material on record reveal that in Writ Petition No. 2726 of 2016 this court had passed an order on 29th July, 2016, thereby, directing the Charity Commissioner to nominate a suitable Deputy Charity Commissioner to deal with and dispose of Change Reports referred to in paragraph No.2 of the said order, within the period of 15 days from the date of receipt of the said order. After passing of the aforesaid order, an application was made by the Petitioner for speaking to the minutes of the said order. It was the contention of the Petitioner, that the reliefs claimed in prayer clauses (a) and (b) in Writ Petition No. 2726 of 2016 were not granted though the Petition was allowed by the Court. This Court therefore, passed the following order:-

“In our view, it is not necessary to modify the said order, since in paragraph 5 of the order, we have clarified that the petitioner has filed writ petition in this Court seeking same direction and this court has directed the Charity Commissioner to consider all the applications filed under Sections 41A to 41E. We have observed in paragraph 5 that the Charity Commissioner could not have sat in

appeal over our order, he should have examined and decided all these applications. Strictly speaking therefore we have already allowed the petitioner's prayer in terms of prayer clause (A)(b). However, by way of abundant caution, we clarify that three applications filed under Section 41D and which were mentioned in prayer clause (A)(b) are also granted."

3) In pursuance of the orders passed by this court on 29th July, 2016 and 10th August, 2016 the learned Charity Commissioner passed the order dated 30th August, 2016 and thereby, withdrew from the file of the Joint Charity Commissioner-1 at head office, the applications under Section 41(d) of the Maharashtra Public Trust Act detailed in Annexure-I to the said order and transferred the same to the Joint Charity Commissioner-2 at head office for disposal according to law. Vide the same order the learned Charity Commissioner withdrew from the file of the Deputy Charity Commissioner, G.B.R. the Change Report Applications delineated in Annexure-II of the said order and transferred the same to the Joint Charity Commissioner-1 at head office for disposal according to law.

4) In the present Petition, it is the limited grievance of the Petitioner, that the learned Charity Commissioner should not have allocated the Change Report Applications for disposal to the Joint Charity Commissioner. The learned counsel, inviting our attention to Section 22, Section 70 and Section 72 of the Act, submitted that

the Change Reports filed under Section 22 of the Act are to be decided by the Deputy Charity Commissioner or Assistant Charity Commissioner and the Appeal is provided under Section 70 of the Trust Act, against the order passed by the Assistant or Deputy Charity Commissioner, as the case may be to the Charity Commissioner, which expression include the Joint Charity Commissioner. It was therefore, the contention of the learned counsel for the petitioner that because of the impugned order the Petitioner as well as the Respondents will be losing one opportunity of filing an Appeal under Section 70 of the Maharashtra Public Trust Act, if the Change Report Applications are decided by the Joint Charity Commissioner. The learned counsel for the Petitioner therefore, prayed for allowing the Petition, in terms of prayer clause (a) of the Petition.

5) The Respondent No.1, who is appearing in person and the learned counsel appearing for the Caveator opposed the request so made on behalf of the Petitioner. It is submitted that the impugned order has been passed by the learned Charity Commissioner, in view of the order passed by the High Court in Writ Petition No. 2726 of 2016 on 10th August, 2016 and does not require any interference.

6) Material on record reveals that, in fact on request of the present petitioner, the direction was issued by this Court to club the matters pertaining to the Yatim Khan Trust which include 19 Change Report applications and three applications under Section 41(D) of the Trust Act and to assign all those matters to one presiding

officer for their disposal in accordance with law. In view of the fact that, applications under Section 41(D), in no case could have been decided by the Deputy Charity Commissioner for want of jurisdiction, the learned Charity Commissioner thought it proper to transfer the aforesaid matters i.e. applications under Section 41(D) and the Change Reports under Section 22, for their disposal in accordance with law to Jt. Charity Commissioner-II, at the Head Office at Mumbai. As has been observed by the learned Charity Commissioner in his order dated 17th January, 2017, there is no jurisdictional error in making such order directing the Jt. Charity Commissioner to even decide the Change Reports filed under Section 22 of the Act.

7) Before adverting to the controversy raised in the present petition, we would like to note the subsequent developments in the matter, which are brought to our notice by the learned Counsel appearing for the parties during the course of hearing of the petition. It is informed that the learned Jt. Charity Commissioner-II at the Head Office at Mumbai has disposed of the applications under Section 41(D) which were assigned to it by the Charity Commissioner vide order dated 30th August, 2016. It is further informed that the said Jt. Charity Commissioner-II has now been transferred to Nagpur from the Head Office at Mumbai and has already resumed at Nagpur. In view of the subsequent development as above, without entering into the controversy whether the Change Reports could have been assigned for their disposal in accordance with law to the Jt. Charity Commissioner, we deem it appropriate to direct the learned Charity Commissioner to assign the Change Report Applications concerning to the Yatim Khan Trust which are referred

to in paragraph 2 of the order passed by this Court on 29th July, 2016 in Writ Petition No.2726 of 2016 to suitable Deputy Charity Commissioner within the period of 15 days from the date of production of authenticated copy of this order. The Deputy Charity Commissioner who may be nominated by the Charity Commissioner shall endeavour to dispose of the Change Report Applications, as expeditiously as possible, and preferably within the period of one year from the date of such nomination. All parties to cooperate for expeditious disposal of the said matters and not to seek unnecessary adjournments in the matter. Parties to appear before the Charity Commissioner on 14th March, 2017 and produce the authenticated copy of this order. All concerned to act on the authenticated copy of this order.

(P.R.BORA,J.)

(V.M.KANADE,J.)

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