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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8186 OF 2015**

Bhausahab P. Gadakh & Anr	...	Petitioners
vs.		
The State of Maharashtra & Anr.	...	Respondents

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Mr. Atul G. Damle, Senior Advocate i/b. Mr. Ashok T. Gade for the Petitioners.

Mr. Manish M. Patil, AGP for the Respondent nos. 1 and 2.

Mr. V. A. Thorat, Senior Advocate a/w. Mr. P.B. Shah i/b. Mr. Kayval P. Shah for the Respondent nos. 3 and 7.

Ms. Nazim Khan i/b. Mr. Kishor S. Patil for the Respondent nos.6 and 8.

Ms. Smita G. Mane for the Respondent nos. 9 to 24.

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CORAM : A.S. OKA & A.K. MENON, JJ.

DATE : 13th APRIL, 2017

P.C.

1. The challenge in this petition is to the order dated 23rd June, 2015 passed by the learned Joint Charity Commissioner, Nashik Region by which an application made by the petitioners seeking directions under Section 41A and 41E of the Maharashtra Public Trust Act, 1950 has been rejected.

2. Substantive prayers in the application which were rejected by the impugned order read thus :

(a) The Hon'ble Authority be pleased to issue direction, directing to hold fresh election of trust under the

supervision of A.C.C. of concerned region by following due procedure of law and according to the constitution of trust.

(b) The opponent No. 2 to 22 kindly be restrained by an order of injunction to pose and function themselves as the trustees and office bearers of the Opponent No.1 trust.

(c) The Opponent No. 2 to 22 kindly be restrained to take any policy decision in respect of the immovable properties of the trust and they should be specifically restrained from alienating the properties of the trust.

(d) The specific directions for holding the fresh and new election among the legal and valid members of the trust be given in the interest of Opponent No. 1 trust.

(e) Pending the hearing and final disposal of present application, the Opponent No. 2 to 22 be restrained by an ad-interim relief from interfering in the management of trust and taking any policy decision whatsoever manner,

(f) Any other order to protect the interest and properties of the trust kindly be passed.

(g) Any other just and equitable order be passed in favour of the applicants and the trust.

3. The opponent nos. 2 to 22 in the said application are claiming to be the elected trustees. Based on their claim, a Change Report has been filed which is pending. Even going by their case, their term will expire in September, 2017.

4. The learned Senior Counsel for the petitioners submitted that

though Change Report no. 566 of 2011 seeking approval to the amendment of the Rules of the trust was rejected, about 1600 members were enrolled on the basis of the said amendment who voted in the election. His apprehension is that the said members will vote in the elections which will be held after September, 2017.

5. As far as the issue of the validity of the election is concerned, a Change Report is pending in which the said issue will be decided. Therefore, the petitioners can always raise appropriate objections in that behalf in the Change Report. Therefore, prayers (b) and (d) cannot be granted as the concerned respondents cannot be prevented from acting as trustees. Unless the issue of legality of election is decided in the Change Report, fresh elections cannot be ordered.

6. As far as prayer (a) is concerned it seeks direction to hold a fresh election which cannot be considered on merits as the Change Report is pending. As far as prayer (c) is concerned, unless it is held that the election held earlier is illegal, the relief prayed cannot be granted.

7. There is no prayer sought in the application made before the Learned Joint Charity Commissioner on the basis of the allegation that approximately 1600 members were illegally enrolled. In any case, the said contention can be raised by the petitioners by filing appropriate proceeding as and when fresh elections are declared.

8. Notice for final disposal of this petition was issued as prima facie we found that the impugned order is illegal in as much as it records only the submissions of the learned Counsel and there are not elaborate reasons recorded therein.

9. Now, no purpose will be served by remanding the matter to the Learned Joint Charity Commissioner as none of the substantive prayers in Application No. 12 of 2013 can be granted at this stage.

11. For the reasons recorded above, we are not interfering with the impugned order.

12. Hence we pass the following order :

(a) The petition is not entertained and the same is disposed of.

(b) We make it clear that we have made no adjudication on the contentions raised by the petitioners as well as the contesting respondents which can be agitated by them in appropriate proceeding at appropriate stage.

(c) We make it clear that no adjudication on merits have been made by this Court.

(A.K. MENON, J)

(A.S. OKA, J)