

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10272 OF 2017

Mr. Ashish Sawant .. Petitioner.
v/s.
Deputy Charity Commissioner
& Another .. Respondents.

Mr. Pradeep J. Thorat i/b. Ms. Gauri Jadhav, for the Petitioner.
Mrs. Vrushali Nimbalkar, AGP for Respondent-State.
Mr. A. L. Gore, for Respondent No.2.

CORAM: M.S.SANKLECHA, J.

DATE : 18th SEPTEMBER, 2017.

P.C:-

The Petitioner has moved this Petition for urgent reliefs. All the Respondents are represented on notice.

2 This Petition under Article 227 of the Constitution of India, challenges the orders dated 6th June, 2017 and 28th June, 2017 passed by the Deputy Charity Commissioner, Bombay.

3 By the impugned order dated 6th June, 2017, an affidavit dated 8th May, 2017 filed by the Petitioner (Reporting Trustees), was not taken on record on the ground that an earlier affidavit dated 18th October, 2016 filed by the very Petitioner (Reporting Trustees) had been rejected on 18th October, 2016. This rejection on 18th October, 2016 was on the ground that the Petitioner (Reporting Trustee) was not aware of the contents stated in the affidavit dated 18th October, 2016. In the above

view, Petitioner (Reporting Trustee) filed a new affidavit on 8th May, 2017 after ascertaining all the facts and sought to tender same in evidence. The order dated 6th June, 2017, did not take the affidavit dated 8th May, 2017 on record holding it would amount to review of his order dated 8th October, 2017. This, he has no power to do under the Maharashtra Public Trust Act, 1950 (Act).

4 Further, by the impugned order dated 28th June, 2107, the Deputy Charity Commissioner has closed the evidence of the Petitioner (Reporting Trustee) on the ground that he was not present. The aforesaid coupled with the fact that the proceedings are time bound as directed by the High Court.

5 Counsel for the parties, on instructions states that the issue being within a narrow compass, coupled with the directions of the Division Bench in its order dated 26th September, 2016 for expeditious disposal of the proceedings before the Charity Commissioner, the Petition itself may be disposed of finally at this stage.

6 Mr. Thorat, learned Counsel for the Petitioner submits that the impugned order dated 6th June, 2017 is unsustainable in law. This is so as receiving of new evidence in the form of a fresh affidavit cannot be refused on ground of no power of Review, even if the same person files a new affidavit. So far as the impugned order dated 28th June, 2017 is concerned, the same was passed in undue hurry, particularly in view of the order dated 6th June, 2017. A short adjournment would not have caused any prejudice, as the Petitioner was normally always present.

7 On the other hand, Mrs. Vaishali Nimbalkar, learned AGP

states that the Petition should not be entertained as in terms of Section 70 of the Act an appeal is provided against any finding/ order of the Deputy Charity Commissioner. Thus, no interference is warranted.

8 I have considered the submission. So far as the objection of the State is concerned, the question of entertaining the Petition or not would depend upon the character/ nature of the impugned order. If I find that the impugned order is one which a judicially trained mind could have passed, then even if on merits of the decision, my view is different, I will not interfere under Article 227 of the Constitution of India. However, in case, I find that the impugned order is one which is without jurisdiction or suffers from errors of law, apparent on the face of it, then in such a case, I may exercise my supervisory jurisdiction under Article 227 of the Constitution of India. This, on facts, even if an alternative remedy is available. Therefore, the sustainability of the objection by the State would depend upon the result of the examination of the impugned order.

9 So far as the impugned order dated 6th June, 2017 is concerned, I find that it refuses to even take a new affidavit dated 8th May, 2017 for consideration on the ground that an earlier affidavit dated 18th October, 2016 by the same person has been discarded. This on the basis that admitting or considering the new affidavit, will amount to Review of his earlier order dated 18th October, 2016. A Review of an order would necessarily mean varying an earlier order. In this case, the Petitioner is not in the least, seeking to disturb the earlier order dated 18th October, 2016. In fact, the Petitioner has no quarrel with the order dated 18th October, 2016 and is accepting the same. The new affidavit dated 8th May, 2017 even if made by the same person who made the affidavit dated 18th

October, 2016 which has been discarded, cannot be rejected at the threshold even without examination. An examination of the evidence tendered cannot be said to be barred on the ground of Review. The earlier order dated 18th October, 2016 rejected the affidavit dated 18th October, 2016 but did not bar the deponent of affidavit dated 18th October, 2016 from filing a fresh and/or new affidavit in support of his case. Thus, the impugned order does suffer from an error of law apparent on the face of it. This is so as it proceeds on a complete misconception of the scope of Review. Therefore, the impugned order would call for interfere under Article 227 of the Constitution of India. I, therefore, set aside the order dated 6th June, 2017 and the Deputy Charity Commissioner will on consideration of the affidavit dated 8th May, 2017 will pass a fresh order thereon, on reaching the evidence.

10 So far as the impugned order dated 28th June, 2017 closing the Petitioner's evidence is concerned, it would have to be set aside as a consequence of the order dated 6th June, 2017 being set aside. Now the Deputy Charity Commissioner is directed to consider the admissibly of affidavit dated 8th May, 2017. Therefore, the impugned order 28th June, 2017 is also quashed and set aside.

11 In view of my findings in respect of the impugned orders dated 6th June, 2017 and 28th June, 2017, the objections taken by the State to not entertain the Petition on ground of alternative remedy is not sustainable.

12 All parties before me have undertaken to co-operate with the Deputy Charity Commissioner in disposing of the dispute within the time provided by the Division Bench of this Court.

13 Accordingly, **Petition** is **allowed** in the above terms. No order as to costs.

(M.S.SANKLECHA,J.)