

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 26009 OF 2017

Kolhapur Zilla Madhyamik V. Uccha
Madhyamik Shala and ors. .. Petitioners
vs.
Chhatrapati High School, Rakshi and anr. .. Respondents

Mr. Prashant Bhavake for the Petitioners.
Mr. S.S.Patwardhan for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 19 SEPTEMBER 2017.

P.C. :-

- 1] Not on board. In view of urgency, taken on production board.
- 2] Heard learned counsel for the parties.
- 3] Mr. Bhavake, learned counsel for the petitioners, submits that though the initial term of the petitioners pursuant to their election in the year 2013 was only three years, on account of amendment to the constitution of the term, this term stands extended to five years, i.e., up to 2018. He submits that the Change Report in this regard is pending before the Deputy Charity Commissioner. He submits that pending adjudication upon such Change Report, the respondents have no right to take out proceedings under Section 41-A of the Maharashtra Public Trusts Act, 1950 (said Act) seeking for fresh

election. He relies upon the decision of this Court in *Dinkar Shankarrao Patil and ors. vs. Sheshrao S. Patil (Dr.) and ors. - 2008 (3) Bom.C.R. 676* in support of this contention.

4] Further Mr. Bhavake submits that this Court, in several cases has held that under Section 41-A of the said Act, no directions can be issued for holding fresh elections. In support of this contention, he relies upon the decisions of this Court in *Gram Vikas Samittee, Shahapur vs. Darshanlal s/o. Nandlal Malhotra and ors. - 2009 (5) Mh.L.J. 457*, *Raghunath M. Patil vs. State of Maharashtra and ors. - 2007 (6) Bom.C.R. 660*, *Asaram B. Shinde and ors. vs. State of Maharashtra and ors - 2002(3) Bom.C.R. 16*, *Ramdas s/o. Shivaji Sakhare and ors vs. Karuji s/o. Dago Ambade and ors. - 2002 (3) Bom.C.R.20* and *Chembur Trombay Education Society and ors. vs. D.K. Marathe and ors. - 2002 (3) Bom.C.R. 161*.

5] Now, the impugned order has merely declined to stay the proceedings under Section 41-A of the said Act. If, as contended by Mr. Bhavake, under Section 41-A of the said Act, the reliefs applied for by the respondents cannot be granted, it is always open for the

petitioners to contend the same before the authority before whom the proceedings under Section 41-A of the said Act are pending. There is no necessity to stay such proceedings, rather it will be in the interest of both the petitioners as well as the respondents that such proceedings are disposed of expeditiously one way or the other.

6] Insofar as the decision of this Court in *Dinkar Patil (supra)* is concerned, the fact situation in the said case is not comparable to the fact situation in the present case. There is no dispute that the petitioners were elected as Trustees in the year 2013. At the highest, the dispute is whether the term of the petitioners has come to an end in 2016 as contended by the respondents or whether the same extends upto 2018 as contended by the petitioners. In proceedings under Section 41-A of the said Act, the authority concerned can very well look into this matter and make appropriate orders. The proceedings under Section 41-A of the said Act are not required to be stayed merely because the Change Report is pending.

7] In fact, it is necessary to ascertain as to whether the term of the petitioners has concluded, as otherwise the petitioners may insist to continue in office despite the expiry of their term. If the term has

not expired, then obviously there will be no question of issuing directions for holding of fresh election. Either way, it is necessary, proceedings under Section 41A are to be concluded expeditiously.

8] At this stage, Mr. Bhavake, learned counsel for the petitioners, states that he has not pressed for expeditious disposal of the proceedings under Section 41-A of the said Act. Obviously, the petitioners are interested in clinging to Office on basis of their own interpretation that their term extended upto 2018. If their interpretation is found to be correct, then there can be no difficulty. However, if their interpretation is found to be incorrect, then there is no question of the petitioners resisting the holding of fresh election. The application seeking stay of proceedings under Section 41-A of the said Act appears to have been directed to stall any adjudication as regards the correct position with regard to the petitioners' tenure. The writ Court, acting under Articles 226 and 227 of the Constitution of India, cannot therefore grant any assistance to such petitioners. Similarly, there is no bar to directing the expeditious disposal of the proceedings under Section 41-A of the said Act merely because the petitioners may not have requested for any such relief.

9] There is no merit in this petition. The petition is accordingly dismissed. The Deputy Charity Commissioner is directed to dispose of the said proceedings under Section 41-A of the said Act as expeditiously as possible and within a period of three months from today.

(M. S. SONAK, J.)