**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.10988 OF 2013**

**Seth Meghji Vallabhdas Charitable Trust ..Petitioner**
**Versus**
**State of Maharashtra and others ..Respondents**

**Mr. Rajesh B. Jain i/by Legal Juris for the Petitioner.**
**Mr. A. B. Vagyani, GP a/w Mr. S. D. Rayrikar, AGP for the Respondent Nos.1 & 2.**
**Mr. A. A. Alaspurkar for the Respondent Nos.3 & 4.**

**CORAM : R. M. SAVANT, J.**
**DATE : 20th MARCH, 2017**

**P.C.**

1 The writ jurisdiction of this Court has been principally invoked against the order dated 31.12.2010 passed in change report proceedings being No.DYCC/5659 of 2010. By the said order, the said change report came to be accepted and consequently four persons i.e. Respondent Nos.3 to 6 came to be appointed as the trustees of the Petitioner-Trust.

2 The Petitioner is a public trust registered under the Bombay Public Trusts Act, 1950 bearing PTR No.A-323, having its address at Kabali Wadi, Laxmi Narayan Mandir, Meghji Vallabhdas Trust Building, M. G. Road, Opp. Gandhi Market, Ghatkopar (East), Mumbai-400 077. Initially, one Shri. Mulraj P. Kabali alongwith his wife Smt. Bhanumati M.

Kabali and daughter Mrs. Kiran M. Raja were trustees of the Petitioner-Trust. It appears that the said Shri. Mulraj P. Kabali expired on 14.12.2010. After the death Shri. Mulraj P. Kabali, only two trustees remained i.e. his wife Smt. Bhanumati M. Kabali and daughter Mrs. Kiran M. Raja. It appears that on 15.05.2012, in a pending proceeding before the Learned Joint Charity Commissioner one Mr. Umesh Manek made an application before the said authority contending that he is the trustee of the said Trust. The Petitioners were surprised by the said claim, as except them, there were no other surviving trustees of the said Trust. The Petitioners therefore made inquiries, and on such inquiries, it was revealed that the said Mr. Umesh Manek alongwith three other persons have got their names included in Schedule-I of the Petitioner-Trust by fabricating the records with an intention to grab the properties of the Trust by unlawful means. It was further revealed that the said Mr. Umesh Manek and three others had got their names included in Schedule-I of the said Trust on the basis of the order dated 31.12.2010 passed by the Assistant Charity Commissioner. On coming to know of the said fact, the Petitioner applied for being provided a certified copy of the said Schedule-I from the office of the Learned Charity Commissioner which came to be issued on 04.06.2012. On receipt of the certified copy, the Petitioner became aware that the said Mr. Umesh Manek alongwith three other persons had got their names entered in Schedule-I as trustees of the Petitioner-Trust pursuant to the order dated 31.12.2010 passed in Change Report No.5659 of 2010. The Petitioner thereupon made an application in June 2012 to the office of the Learned Charity Commissioner to be provided with the certified copies of the change report proceedings whereby the said Mr. Umesh Manek alongwith said three other persons have got entered their names as trustees, however, the same was not made available to the Petitioner. The Petitioner again made another effort on 11.09.2012. However the said effort also proved to be futile as no copy of the change report was furnished to the Petitioner. In fact, the Respondent No.2 by letter dated 01.10.2012 stated that the records of the said change report are not traceable in its office and search is being conducted. However, the fact remains that till date no certified copies of the said records are made available to the Petitioner. In view of the fact that the certified copies of the change report bearing No.5659 of 2010 were not provided to the Petitioner, the Petitioner was handicapped in challenging the order passed in the Change Report No.5659 of 2010 without getting the entire record. The Petitioner therefore by way of prayer clause (a) in the above Petition has sought the relief that it be provided with the copy of the change report proceedings. The Petitioner has filed the instant Petition for the reliefs claimed therein. This Court considering the nature of the controversy had directed the Learned Charity Commissioner to conduct an inquiry and submit a report.

3 The Learned Charity Commissioner accordingly submitted a report that the said change report has been misplaced or stolen, in respect of which a complaint has been made with the Worli Police Station, Mumbai. An FIR accordingly came to be recorded by the Worli Police Station on 09.07.2016 at the behest of Smt. Bhanumati M. Kabali. Pursuant to the said FIR, CR No.250 of 2016 came to be registered under Sections 419, 420, 465, 467, 218, 380 r/w 34 of the Indian Penal Code (For short “IPC”). It seems that the record room was raided by the Police, however, the said Change Report No.5659 of 2010 could not be found.

4 The office of the Learned Charity Commissioner accordingly submitted a report to this Court. This Court had directed the Worli Police Station to record the statements of the employees in the office of the Learned Joint Charity Commissioner. The Worli Police Station thereafter recorded the statement of Smt. Alka Sarode from the office of the Learned Charity Commissioner on 22.07.2016 and registered CR No.267 of 2016 under Sections 380, 34 of the IPC. This Court thereafter directed that Sections 419, 420, 465, 467 and 218 be also applied. This Court thereafter directed that the investigation of CR No.267 of 2016 be

entrusted to a Police Station outside Zone-3 of the Mumbai Police. The Additional Commissioner (Law and Order) thereafter issued orders to transfer CR No.267 of 2016 to the Lokmanya Tilak Marg, Police Station, Mumbai which Police Station has been thereafter involved in investigating the offence. The Investigating Officer recorded the statements of Smt. Bhanumati M. Kabali and her daughter Smt. Kiran M. Raja. The said Lokmanya Tilak Marg Police Station has been submitting reports to this Court from time to time as regards the progress of investigation as also the fate of the application for bail filed by the accused. The last of such reports is the report dated 15.03.2017 wherein the Investigating Officer, Lokmanya Tilak Marg Police Station has mentioned that the accused Mr. Anil Shingane, Assistant Charity Commissioner was arrested on 10.03.2017 and was remanded to Police custody till 12.03.2017. The residence of Mr. Anil Shingane was also raided however Change Report No.5659 of 2010 could not be found. The accused was thereafter produced on 12.03.2017 before the Learned Metropolitan Magistrate Court, who remanded the accused Mr. Anil Shingane to Police custody upto 18.03.2017. In so far as the accused Mr. Umesh Manek and Mr. Ankit Manek are concerned, the said two accused had applied for bail, which came to be rejected by the Learned Metropolitan Magistrate, Bhoiwada on 09.02.2017. Thereafter the said accused moved the Sessions Court on 24.02.2017. The Sessions Court also rejected their bail application. The said accused once again applied for bail on 01.03.2017 which application was also rejected by the Learned 67th Metropolitan Magistrate, Bhoiwada, Mumbai on 01.03.2017. The said accused are therefore in judicial custody as of date. In so far as the other two persons i.e. Respondent Nos.5 and 6 are concerned, their whereabouts are not known and they are not represented before this Court, though notice was published in the local newspapers. The aforesaid facts therefore speak volumes as regards the credentials of the persons who have been appointed as trustees in view of the order dated 31.12.2010 passed in the change report proceedings.

5 In so far as the change report is concerned, the Learned Charity Commissioner had directed the Joint Charity Commissioner to conduct an investigation in the matter and submit a report. The Joint Charity Commissioner Smt. A. S. Kolhe had submitted a report on 31.08.2015, wherein she has stated that the said Mr. Anil Shingane, Assistant Charity Commissioner dealt with the said Change Report No.5659 of 2010 when the same was not assigned to him. She has further reported that though the said change report was disposed on 31.12.2010 the entry of the same is not on the daily board and that there was not a single matter on the said date 31.12.2010 on the board of Mr.

Anil Shingane. She has further stated that from the statement of the concerned employees, it is not clear as to how the said change report was sent to Mr. Anil Shingane for inquiry and as to how the same appeared on his board. In so far as Mr. Anil Shingane is concerned, he has stated that it would not be possible for him to make any statement without seeing the original record of the said change report. The Learned Joint Charity Commissioner thereafter has concluded that though the change report was not transferred to Mr. Anil Shingane he has disposed of the said change report on 31.12.2010 purposely and dishonestly and it appears that there is a strong possibility that he might have been involved in making entry of the said order in Schedule-I on the very day itself. The Learned Joint Charity Commissioner further mentioned that on the said date i.e. on 31.12.2010, Mr. Bansode, the then Deputy Charity Commissioner, Mumbai before whom the said proceedings ought to have been placed was very much available in office. The Learned Joint Charity Commissioner has observed that it would be impossible to decide the extent of involvement of the employees in the office of the Charity Commissioner in misplacing the records. However it is established that Mr. Anil Shingane is involved because although the said matter was not transferred to him, he disposed of the said matter and even sent the same for making the entries in Schedule-I on the same day. She has further stated that the dishonest intention of Mr. Anil Shingane is proved and since the said record is misplaced his dishonesty is clearly seen. She has lastly stated that pursuant to the order passed by this Court Mr. Anil Shingane is dismissed from service on the ground of integrity being doubtful whilst working in the Charity Commissioner's office.

6 The aforesaid material therefore prima-facie indicates that the entry in Schedule-I of the said Mr. Umesh Manek and three others was manipulated and got done probably with the dishonest intention of dealing with the property of the Trust having found that there were only two surviving trustees and that to ladies. The fact that there is absolutely no record available in respect of the said Change Report No.5659 of 2010 leads to an irresistible conclusion that the entire thing was manipulated by the proponents of the change report in collusion with Mr. Anil Shingane. The said suspicion becomes further compounded in view of the fact that Shri. Mulraj P. Kabali died on 14.12.2010 whereas he is shown as being the reporting trustee in the said Change Report No.5659 of 2010 on 21.12.2010. The entries made in the Schedule-I are therefore vitiated on the ground that they have been inserted on account of fraud and dishonest means adopted by the proponents thereof. The impugned order also stands vitiated on the said ground. The same is therefore required to be quashed and set aside and is accordingly quashed and set aside.

Resultantly, the entries in Schedule-I in the name of Mr. Umesh Manek and three others would stand set aside and the status-quo ante as on 31.12.2010 would be restored. The remaining trustees i.e. Smt. Bhanumati M. Kabali and her daughter Mrs. Kiran M. Raja may take steps to fill up the remaining posts of trustees in terms of the scheme. If they fail to do so, the Charity Commissioner then may take steps to fill up the posts of trustees keeping in mind the requirements and qualifications that are stipulated in the scheme for appointment of the trustees. The Petition is allowed to the aforesaid extent and is disposed of.

7 Since the Lokmanya Tilak Marg Police Station is carrying out the investigation, the above Petition to be shown in the caption of orders on 12.06.2017, so as to ascertain the status of the investigation.

**[R.M.SAVANT, J]**