

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12638/2016

Lions Nab Community Eye Care Centre

... Petitioner

V/s.

Rajendra Ganpatrao Jagdale

... Respondent

Mr. Uday P. Warunjikar for the petitioner

Mr. R. R. Naik i/b. Umesh Mankapure for the Respondent.

CORAM: K.K. TATED, J.

DATED : JUNE 29, 2017

P.C. :

1. Heard the learned counsel for the parties. By consent of the parties the matter is taken up for final hearing at the stage of admission itself.
2. The respondent No.1 has filed Affidavit-in-Reply so also the rejoinder by the petitioner.
3. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 17.10.2016 passed by the Assistant Charity Commissioner-I, Sangli Region, Sangli below Exhibit-3 in Change Report No.1576/2011 allowing the respondent No.1's application for impleading him as party to the Change Report filed by Shri Ramchandra Narsinh Pathak, of Lions Community, Trustee of Lions Nab Community Eye Care Centre, Tq. Miraj, Dist. Sangli having Trust Regn No.A-1129/Sangli.

4. The learned counsel for the petitioner submits that in the present proceedings, they filed Change Report dated 06.12.2010 u/s.22 of Maharashtra Public Trusts Act, 1950 (said Act) for deleting the name of two deceased Trustees Anant Dattatray Deshpande and Ganpat B. Jagdale. He submits that in the said change report, respondent No.1 made application dated 16.11.2015 u/s.73A of the said Act for directing the petitioner to join him as party in Change Report No.1576/2011. He submits that in that application the respondent No.1 made several allegations against the petitioner about their day to day administration of the Trust, number of trustees etc. He submits that the said application was opposed by the petitioner before the learned Assistant Charity Commissioner on the ground that respondent No.1 is not necessary party in the proceedings. He submits that they also pointed out the concerned authority that the change report is for limited purpose i.e. to delete the names of two deceased Trustees. Hence, there is no question of considering the decision taken by the Trustees of the said Trust from time to time, mismanagement etc. at the time of deciding said change report. In spite of these facts, the learned Assistant Charity Commissioner allowed the application made by respondent No.1 below Exhibit- 3 and directed the petitioner to join respondent No.1 as party in Change Report No.1576/2011. He submits that the application made by respondent No.1 was misconstrued and no sufficient particulars were disclosed by him, how he is interested person and how he is entitled for getting an opportunity of being heard in the said Change Report. He further submits that even the concerned officer has failed to give any independent reason for allowing the

respondent No.1's application for joining him as party in the proceedings. He submits that there is alternate remedy available to respondent No.1 for his grievance under the said Act. Hence, the order passed by the learned Assistant Charity Commissioner dated 17.10.2016 is liable to be set aside.

5. On the other hand, the learned counsel for respondent No.1 vehemently opposed the Writ Petition. He submits that respondent No.1 disclosed in detail the cause of action in their application dated 16.11.2015. He submits that respondent No.1 has given several instances in their application, how the petitioner has mismanaged the Trust till today. He further submits that considering the averments made by respondent No.1 in his application dated 16.11.2015 and the way in which the petitioner is conducting the day-to-day affairs of the Trust, the Authority has rightly allowed their application below Exhibit- 3 in Change Report No.1576/2011 directing the petitioner to join the respondent No.1 as party in Change Report. Therefore, the order passed by the Assistant Charity Commissioner is according to law and there is no question of entertaining the present Writ Petition. Same is required to be dismissed with costs.

6. Heard both sides at length. Bare reading of Change Report No.1576/2011 shows that same was filed by the petitioner for deleting two names of the deceased Trustees. Except the said prayer, the petitioner has not claimed any relief in the said change report. In any case, bare reading of application Exhibit- 3 dated 16.11.2015 shows that they have several other grievances against the petitioner trust.

Those grievances can be agitated by respondent No.1 by making appropriate application in accordance with law. Hence, he is not a necessary party and/or interested party in the Change Report No.1576/2011 submitted by the petitioner. Therefore, I am satisfied that the petitioner has made out a case for allowing this Writ Petition.

7. Hence, following order is passed:

- a. Order dated 17.10.2016 passed by the Assistant Charity Commissioner-I, Sangli Division, Sangli below Exhibit- 3 in Change Report No.1576/2011 is set aside.
- b. The application below Exhibit- 3 filed by respondent dated 15.11.2015 is rejected.
- c. The Assistant Charity Commissioner-1, Sangli Division, Sangli is directed to decide the Change Report No.1576/2011 on its own merits within four weeks from the date of receipt of true copy of this order.
- d. Writ Petition is allowed in terms of the above.
- e. No order as to costs.
- f. Parties to act on an authenticated copy of this order.

(K.K. TATED, J.)