

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

911 WRIT PETITION NO.4434 OF 2018

Shivraj S/o Madolappa Udage ... Petitioner.

Versus

The Joint Charity Commissioner
and others ... Respondents.

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Mr. Girish L. Awale, Advocate for the Petitioner.
Mr. S.R. Yadav Lonikar, A.G.P. for Respondent No.1.
Mr. Jayant R. Patil, Advocate for Respondent No.3.

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CORAM : V.L. ACHLIYA, J.

DATED : 03rd MAY, 2018

PER COURT:-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has challenged the order dated 02.02.2018 passed by the Joint Charity Commissioner, Latur Division, Latur. By the impugned order, the learned Joint Charity Commissioner has rejected the application moved by the petitioner raising preliminary objection to maintainability of the application moved by respondent nos. 2 and 3.

2. At the outset, the learned counsel for the petitioner submit that though in the petition the challenge is raised to impugned order dated 02.02.2018 passed by Joint Charity Commissioner, Latur, the petitioner confines the challenge raised in petition to observations made in para 6 of the order. It is contended that the observations made by the learned Joint Charity Commissioner while deciding the application (Exhibit 26) are totally unwarranted

and not necessary for disposal of application Exhibit 26. It is contended that the proceedings filed under Section 22 of the Maharashtra Public Trust Act, 1950, filed by the petitioner as well as respondent nos. 2 and 3 are pending for consideration before the Assistant Charity Commissioner, Latur. The observations made in para 6 of the order may adversely affect the case of the petitioner and may prejudice the Assistant Charity Commissioner before whom the proceeding in respect of acceptance of change reports are pending.

3. On the other hand, the learned counsel representing the respondent no.3 submit that the observations as made in impugned order are not irrelevant but based upon the order passed by the Joint Charity Commissioner in Appeal No.19/2013.

4. In my view, the observations made in para 6 of the order as against the petitioner though may be based upon the decision in Appeal No.19/2013, but same were not relevant in deciding the application moved vide exhibit 26, which was confined to maintainability of the application filed under Section 41A and 41 of Maharashtra Public Trust Act by respondent nos. 3 and 4. By the application filed vide Exhibit 26, the petitioner has raised objection as to the *locus standi* of respondent nos. 3 and 4 to file application under Sections 41-A and 41-E. While deciding the application (Exhibit 26), the Joint Charity Commissioner was expected to have confined himself to examine the issue of maintainability of application filed by respondent nos. 3 and 4 raised by petitioner. Since the proceeding in respect of the change report is pending before the Assistant Charity Commissioner, the Joint Charity Commissioner should have avoided to make observations as to eligibility of the petitioner to be member of the trust as well as trustee. The issue relating to eligibility, entitlement of petitioner as a member of trust or

trustee was not subject matter of hearing and decision before Joint Charity Commissioner. It is the contention of the petitioner that as per resolution passed in the meeting of trust, 13 persons were made member of trust and the petitioner is one of such person who is admitted as a member of the trust.

5. In the result, the petition stands dismissed to the extent of challenge raised to order dated 2.2.2018 passed by Joint Charity Commissioner to reject the application Exhibit 26. However, the observations as made in para 6 of order against the petitioner being irrelevant for deciding the application Exhibit 26, same stands expunged. The observations made in para 6 in the impugned order shall not be referred, relied and used in any proceeding against petitioner dealing with his eligibility, entitlement to become member or trustee of trust. Petition stands disposed of in above terms.

(V.L. ACHLIYA)
JUDGE

SPR