

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

WRIT PETITION NO. 5080 OF 2016

1. Sakharam s/o Mahipati Mutkule
Age major, occup. Agril.,
R/o Adgaon, Tq. and
Dist. Hingoli - 421512
2. Manikrao s/o Marotrao Deshmukh,
Age : major, occup. Agril.,
R/o Shashtri Nagar, Hingoli,
Tq. & Dist. Hingoli - 421512
3. Deelip s/o Prataprao Deshmukh,
Age : Major, occup. : Agril.,
R/o New Mondha, Hingoli,
Tq. and Dist. Hingoli - 421512
4. Sakharam s/o Kanhoji Korde,
Age : 83 years, occup.: Pensioner,
R/o Malhivra, Tq. and
Dist. Hingoli - 421512
5. Shivaji s/o Rajaram Kolhal,
Age: 60 years, Occup.: Agril., .. Petitioners/
R/o Kondawada, Shengaon, Original
Tq. and Dist. Hingoli - 421512 Respondents

versus

1. Punjaji Sambhaji Gade,
Age - Major, Occup. Service,
R/o Shastri Nagar, Hingoli,
2. Prabhakar Lobhaji Kawale, .. Respondents/
Age - Major, Occup. Agril., (Nos. 1 and 2 were
R/o Dharmabad, Dist. Nanded petitioners in
Revision before

3. Sitaram s/o Namdeo Karande, Joint CC and No.
Age : 72 years, occup. Pensioner, 3 was Respdt.No.
R/o Sambhaji Nagar, Parbhani, 5 in revision
Tq. & Dist. Parbhani - 431 401 before Joint CC)

Mr. Sunil V. Warad, Advocate for petitioners
Mr. P. D. Bachate, Advocate for respondent no.1

CORAM : SUNIL P. DESHMUKH, J.
DATE : 21st June, 2018

ORAL JUDGMENT :

1. Without getting much into factual aspects which are not largely in dispute, succinctly stated, question raised in this petition on behalf of the petitioners is about validity of impugned order dated 03-03-2016 passed by joint charity commissioner, Aurangabad in revision petition no. 96 of 2004, contending that in revisional proceeding joint charity commissioner may not have power to remand, setting aside order of assistant charity commissioner, the matter for enquiry afresh.

2. Learned counsel Mr. Warad on behalf of the petitioners vehemently submits that going by the scheme of provisions under the Maharashtra Public Trusts Act, 1950 ("The Act") particularly having regard to provisions as they

would occur under sections 70, 70-A and 76, it may not be said that charity commissioner would have power to pass order of remand under revisional proceedings.

3. Mr. Warad submits that Section 70-A empowers the charity commissioner to annul, modify, reverse or confirm findings recorded or orders passed by deputy charity commissioner and would let direct further enquiry or such additional evidence as may be deemed necessary. He submits, provision does not specifically invest the charity commissioner with powers to remand the matter.

4. Mr. Warad submits that section 73 makes specific reference to the powers of civil court which can be exercised by an officer and section 76 of the Act restricts application of the Code of Civil Procedure only to the courts and not the officers.

5. He submits, in the absence of specific expression about joint charity commissioner being invested with power to remand as occurring under the provisions of the Code of Civil Procedure, 1908 particularly Order XLI rule 23, order impugned is unsustainable.

6. In order to buttress his said submission, Mr. Warad refers to and relies on a judgment of Gujarat high court in the case of *Shah Hiralal Virchand vs. Patel Vithalbhai Vaghijibhai*, reported in *AIR 1961 Guj 189*.

7. Basing his submissions on head-note A of aforesaid citation, Mr Warad purports to contend that it has been clarified by the court in the decision that the Code of Civil Procedure applies only to specified matters and not generally or otherwise.

8. It appears that the court in cited case had been faced with a situation wherein an appeal had been dismissed in default by the charity commissioner and while setting aside said order observations have been made in said context. Learned counsel for the petitioners herein fairly refers to that said case had been decided in that context and the observations as referred to in head-note A have emerged.

9. Resisting aforesaid submissions, learned counsel Mr. P. D. Bachate for respondent no. 1 refers to and relies on a decision of Honourable learned single judge of this high

court, Aurangabad Bench (R.M.Borde, J.) in the case of *Vithalrao Sambhajirao Kharpade vs. Motiram Narsingrao Birajdar*, reported in 2010 (Supp.1) Bom.C.R. 135 : 2010 (1) Mh. L.J. 977 and submits that the question raised on behalf of the petitioners is no longer *res-integra* and it has been dealt with in said case.

10. Learned counsel refers to paragraph no. 4 of decision in *Vithalrao Sambhaji Kharpade's* case (supra) and purports to point out that the question about order of remand passed by the joint charity commissioner had been specifically framed, reading thus;

" 4. At the stage of admission of the appeal, this Court formulated following substantial question of law :

A. Whether the Joint Charity Commissioner, Latur committed error in entertaining revision under section 70-A in view of Bar under sub-section (2) of section 70-A r/w section 70(1)(b) of the Bombay Public Trusts Act, 1950 and whether the order of remand passed by the Joint Charity Commissioner is sustainable in law ?

11. He further refers to sub-paragraph of paragraph 8 of said judgment, reading thus:

" 8.

On perusal of the judgment it is difficult to accept the contention raised by the appellant that limitation is prescribed for exercise of revisional jurisdiction by the authority while exercising suo motu powers or exercise powers at the instance of the party. "

12. He also refers to paragraph 9 of said judgment that while considering question as appearing under paragraph 4 referred to above, following consideration had been under focus ;

*" 9. In 1954 by virtue of section 8 of Bombay Act No.59 of 1954, section 70-A came to be added. This section gives powers to the Charity Commissioner in cases falling within section 70 to call for and examine record and proceedings of any case decided by the Deputy or Assistant Charity Commissioner. It is in this background that in much number of cases lawyers do not even appear on enquiries while in some cases they may appear. Most of the parties appear by themselves and they have no legal advice. In these circumstances, in all probabilities the Legislature must have felt that much injustice could have occurred to a large number of persons who could not present appeal in time and it was necessary to relieve the hardship caused to them and it is probably the reason for the Legislature to add section 70-A of the Act. **In short, this is a remedial provision for preventing perpetuation of injustice. This could be the object of the Legislature can be seen from the fact that though it has been called revisional power, the powers that are given to the Charity Commissioner are as wide as in case of appeal.** It is true that being a revisional jurisdiction, it is to be exercised in the interests of justice and not for technical reasons. "*

13. Having regard to aforesaid, it appears that the area of challenge raised on behalf of the petitioners has already been treaded upon, dealt with and decided. Observatgions quoted above show that section 70-A of the Act gives indication of that it is not a case that wherein it can be said that there is no semblance of power to remand a matter.

14. In the circumstances, it is not a case in present matter wherein it can be said that order impugned in this

petition is not absolutely without power and authority. Circumstances do not warrant leaning in favour of challenge to impugned order.

15. At this stage, learned counsel for the petitioners points out clause 4 of impugned order and submits that direction under clause 4 is unsustainable and enquiry afresh has been directed. Learned counsel for respondent fairly concedes to the position.

16. As such, writ petition, partly succeeds. Clause (4) of impugned order dated 03-03-2016 passed by the joint charity commissioner, Aurangabad region, Aurangabad in revision petition no. 96 of 2014 is set aside. However, challenge posed to rest of the impugned order fails.

17. Rule made partly absolute as aforesaid.

18. It is hoped, assistant charity commissioner would proceed with the matter as expeditiously as possible.

SUNIL P. DESHMUKH,
JUDGE

pnd/-