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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9923 OF 2017

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|----|---|-------------|
| 1. | Nagorao s/o Manikrao Sarowar
Age - 46 years, Occ - Business
R/o Plot No. 51, New ST Colony,
N-2, CIDCO, Aurangabad | PETITIONERS |
| 2. | Vyankatesh s/o Gangadhar Kakade
Age - 38 years, Occ - Business
R/o Plot No. 42, N-3, CIDCO, Aurangabad | |
| 3. | Kalyan s/o Sadashivrao Nalawade
Age - 42 years, Occ - Agriculture & Social Work
R/o Naralibagh, Aurangabad | |
| 4. | Ganesh s/o Ramrao Waghchaure
Age - 42 years, Occ - Agriculture
R/o Dhoopkheda, Taluka - Paithan,
District - Aurangabad | |
| 5. | Sanjay Rameshlal Bhandari,
Age - 45 years, Occ - Business
R/o New Shreya Nagar, Osmanpura
Aurangabad | |
| 6. | Pravin Sanjay Sarowar,
Age - 29 years, Occ - Business,
R/o Pundliknagar, Aurangabad | |
| 7. | Bhagwan Dattatraya Meghale,
Age - 36 years, Occ - Service
R/o Hanuman Nagar, Aurangabad | |
| 8. | Ajit Ramniwas Navandar,
Age - Major, Occ - Business
R/o Sitasada, Dhanmandi Bagh
Juna Bazar, Aurangabad | |
| 9. | Atul Namdevrao Thote,
Age - Major, Occ - Business
R/o Plot No. 15, Samarth,
Shrinagar, Garkheda, Aurangabad | |

10. Ajay Ramdas Patil (Dighule)
Age - Major, Occ - Business
R/o Ramniwas, Near Sachin Hospital,
Khadkeshwar, Aurangabad
11. Fakirrao Ramkrishna Londhe,
Age - Major, Occ - Business
R/o Plot No. 1, Jaybhavani Nagar
Aurangabad
12. Dilip Bhanudas Jadhav,
Age - Major, Occ - Business
R/o Pachpirwadi, Post - Divashi Pimpal
Taluka - Gangapur, District - Aurangabad
13. Kewal Dattatraya Meghale
Age - Major, Occ - Business
R.o Ramniwas, Near Sachin Hospital,
Khadkeshwar, Aurangabad
14. Digambar Vithoba Jethe,
Age - Major, Occ - Business,
R/o Plot No. 64, Near Santoshimata Mandir
Rajiv Gandhi Nagar, N-2
CIDCO, Aurangabad
15. Gorakh Bhimrao Mohare,
Age - Major, Occ - Business
R.o Pachpirwadi, Post - Divshi
Taluka - Gangapur, District - Aurangabad
16. Prakash Keshav Patil,
Age - Major, Occ - Agriculture
R/o Dhakar Printer's Font of
Osmanpura Police Station,
Pirbazar, Aurangabad
17. Sanjay Jagannath Poddar,
Age - Major, Occ - Business
R/o Plot No. 42, N-3, CIDCO,
In front of High Court Gate
Aurangabad
18. Sahebrao Dashrath Pole
Age - Major, Occ - Agriculture
R/o Near Maroti Temple,

Mukundwadi, Aurangabad

19. Bhausahab Kisan Mohre
Age – Major, Occ – Business
R/o Plot No. C/8, Lane No. 6
Pundliknagar, Aurangabad

VERSUS

- | | |
|---|-------------|
| 1. Laxmanrao Eknathrao Manal
Age – Major, Occ – Business
R/o Kusum Kunj, Khadkeshwar,
Aurangabad | RESPONDENTS |
| 2. Bhalchandra Aabaji Vaidya
Age – Major, Occ – Business
R/o Plot No. 818, Sahyadri Nagar
N-5, CIDCO, Aurangabad
At present near Hotel Vishvkarma
Ausa Road, Latur | (DELETED) |
| 3. Dr. Pramod Kashinathrao Joshi
Age – 55 years, Occ – Service
R/o Plot No. 818, Sahyadri Nagar
N-5, CIDCO, Aurangabad | |
| 4. Sau. Kusum Laxmanrao Manal
Age – Major, Occ – Household
R/o Kusum Kunj, Khadkeshwar
Aurangabad | |
| 5. Sau. Shailaja w/o Pramod Joshi
Age – Major, Occ – Household
R/o Plot No. 818, Sahyadri Nagar
N-5, CIDCO, Aurangabad | |
| 6. Smt. Indumati w/o Sahebrao Patil Dongaonkar
Age – 65 years, Occ – Household
R/o Khadkeshwar, Aurangabad | |
| 7. Shantaram Ganpatro Sawant
Age – 81 years, Occ – Pensioner
R/o Plot No. 811, Sahyadri Nagar
N-5, CIDCO, Aurangabad | (DELETED) |
| 8. Harshad s/o Dattaram Salunke | |

Age - Major, Occ - Service
R/o Abhuday Nagar, Kalachowki
Parel, Mumbai

.....
Mr. V. D. Salunke, Advocate for the petitioners
Mr. S. V. Dixit, Advocate for respondents No. 1, 3, 4 and 5
Mr. S. C. Arora, Advocate for respondents No. 6 to 8
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WITH
WRIT PETITION NO. 13807 OF 2017

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|----|---|-------------|
| 1. | Nagorao s/o Manikrao Sarowar
Age - 46 years, Occ - Business
R/o Plot No. 51, New ST Colony,
N-2, CIDCO, Aurangabad | PETITIONERS |
| 2. | Vyankatesh s/o Gangadhar Kakade
Age - 38 years, Occ - Business
R/o Plot No. 42, N-3, CIDCO, Aurangabad | |
| 3. | Kalyan s/o Sadashivrao Nalawade
Age - 42 years, Occ - Agriculture & Social Work
R/o Naralibagh, Aurangabad | |
| 4. | Ganesh s/o Ramrao Waghchaure
Age - 42 years, Occ - Agriculture
R/o Dhoopkheda, Taluka - Paithan,
District - Aurangabad | |
| 5. | Sanjay Rameshlal Bhandari,
Age - 45 years, Occ - Business
R/o New Shreya Nagar, Plot No. 9, Osmanpura
Aurangabad | |
| 6. | Pravin Sanjay Sarowar,
Age - 29 years, Occ - Business,
R/o Galli No. 2, Pundliknagar, Aurangabad | |
| 7. | Bhagwan Dattatraya Meghale,
Age - 36 years, Occ - Service
R/o Galli No. 8, Hanuman Nagar, Aurangabad | |
| 8. | Ajit Ramniwas Navandar,
Age - Major, Occ - Business | |

R/o Sitasada, Dhanmandi Bagh
Juna Bazar, Aurangabad

9. Atul Namdevrao Thote,
Age - Major, Occ - Business
R/o Plot No. 15, Samarth,
Shrinagar, Garkheda, Aurangabad
10. Ajay Ramdas Patil (Dighule)
Age - Major, Occ - Business
R/o Ramniwas, Near Sachin Hospital,
Khadkeshwar, Aurangabad
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R/o Plot No. 1, Jaybhavani Nagar
Aurangabad
12. Dilip Bhanudas Jadhav,
Age - Major, Occ - Business
R/o Pachpirwadi, Post - Divashi Pimpal
Taluka - Gangapur, District - Aurangabad
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Rajiv Gandhi Nagar, N-2
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Age – Major, Occ – Business
R/o Plot No. 42, N-3, CIDCO,
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18. Sahebrao Dashrath Pole
Age – Major, Occ – Agriculture
R/o Near Maroti Temple,
Mukundwadi, Aurangabad

19. Bhausahab Kisan Mohre
Age – Major, Occ – Business
R/o Plot No. C/8, Lane No. 6
Pundliknagar, Aurangabad

VERSUS

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|----|--|-------------|
| 1. | Laxmanrao Eknathrao Manal
Age – Major, Occ – Business
R/o House No. 39, Kusum Kunj, Khadkeshwar,
Aurangabad | RESPONDENTS |
| 2. | Bhalchandra Aabaji Vaidya
(Deceased) | |
| 3. | Dr. Pramod Kashinathrao Joshi
Age – 55 years, Occ – Service
R/o Plot No. 818, Sahyadri Nagar
N-5, CIDCO, Aurangabad | |
| 4. | Sau. Kusum Laxmanrao Manal
Age – Major, Occ – Household
R/o House No. 39, Kusum Kunj, Khadkeshwar
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| 6. | Smt. Indumati w/o Sahebrao Patil Dongaonkar
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Age – 81 years, Occ – Pensioner | (DELETED) |

R/o Plot No. 811, Sahyadri Nagar
N-5, CIDCO, Aurangabad

8. Harshad s/o Dattaram Salunke
Age – Major, Occ – Service
R/o Abhuday Nagar, Kalachowki
Parel, Mumbai

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Mr. V. D. Salunke, Advocate for the petitioners
Mr. S. V. Dixit, Advocate for respondents No. 1, 4 and 5
Mr. S. R. Choukidar, Advocate for respondent No. 3
Mr. S. C. Arora, Advocate for respondents No. 6 to 8
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 29th AUGUST, 2018

ORDER :

1. These two writ petitions have been preferred by the petitioners against decision rendered by Joint Charity Commissioner, Aurangabad, under a common order dated 30th June, 2017 on Exhibit-1 in Miscellaneous Applications No. 119 of 2017, 120 of 2017, 121 of 2017 and 122 of 2017.
2. Writ petition No. 9923 of 2017, is confined to order on Miscellaneous Application No. 121 of 2017, which in turn arises out of an order passed by the Deputy Charity Commissioner, on Exhibit-14 in Inquiry No. 159 of 2009. Writ petition bearing No. 13807 of 2017, similarly is preferred against the same order confining itself to Miscellaneous Application No. 122 of 2017, which in turns arises out of order on Exhibit-7 in Inquiry No. 152

of 2014 passed by Deputy Charity Commissioner.

3. Inquiry No. 159 of 2009 and 152 of 2014 before Deputy Commissioner were at the instance of present petitioners seeking intervention in proceedings pursuant to section 22 of the Maharashtra Public Trusts Act, 1950 (hereinafter will be referred to as "the MPT Act"). These applications were moved invoking section 73A of the MPT Act.

4. These applications were decided by Deputy Charity Commissioner under his order dated 26th May, 2017. Said orders were appealed from invoking section 70 of the MPT Act under aforesaid Miscellaneous Applications No. 121 of 2017 and 122 of 2017. The Miscellaneous Applications, as referred to above, stood dismissed under the impugned order dated 30th June ,2017 and as such, the present writ petitions.

5. Succinctly referred to, submissions on behalf of the petitioners made by Mr. V. D. Salunke are that, so far as petitioners are concerned, they had applied for joining in the proceedings pending pursuant to section 22 of the MPT Act. In said proceedings, so far as petitioners are concerned, their inclusion being declined by passing orders on applications pursuant to section 73A of the MPT Act, are the final orders and cannot be termed as interlocutory ones. He submits, the

applications filed by them under section 73A of the MPT Act become part and parcel of proceedings under section 22 of the MPT Act and as such, since finality has been incurred to their extent, terming the order to be interlocutory is erroneous and it would not be proper. They are blocked from joining in the proceedings. He submits that there may not be any express provision ostensibly appearing under the Maharashtra Public Trusts Act, however, since applications had been made in the proceedings under section 22 of the Act, orders passed therein will have to be put construction and construed as orders in proceedings under section 22 of the Act. Since finality has been incurred, so far as petitioners are concerned, the orders cannot be characterized as interlocutory orders.

6. He submits that analogy being drawn from the decisions, referred to under the impugned order, particularly from the case of *“Mukesh Nashikrao Tirpude and Another V/s Wamanrao Tatobaji Kombade and Others”* reported in 2008 (4) Bom. C. R. 309, is difficult to be applied to present matters.

In said case, factual aspects had been, proceedings under section 22 of the MPT Act had been decided and an application pursuant to section 70 of the MPT Act had been pending, wherein application for stay had been rejected and in those

circumstances, it has been the submission on behalf of the petitioners that such an order being capable of further challenge, under section 72 of the MPT Act, writ petition may not be entertained. Court had considered under paragraphs No. 5 and 6,

“ 5. *Any express provision of a challenge to interlocutory order is not seen in the scheme of Bombay Public Trusts Act. However, carving out revisional jurisdiction is done in section 70-A of the Bombay Public Trusts Act, which would essentially imply that the interlocutory order, as prescribed therein, can be challenged by filing a petition under section 70.*

6. *In the present case, order impugned is passed by Joint Charity Commissioner. Even a revision against that order under section 70-A is not provided by this section.*

and thereafter had observed as referred to in paragraph No. 8,

8. *The appeal is a creation of a statute. It cannot be inferred by implication, nor ought be included in a definition / scheme of appellable orders in absence of express permission by a statute. Going by this yardstick, though the Bombay Public Trusts Act does not make distinction between final order and interlocutory order as to appellable decisions, it follows that the decision to be appealed against is a final decision and not the interlocutory order. The Court cannot enlarge the scope of appellable decision, including interlocutory orders to be appellable when law does not so spell out. ”*

7. It is in those circumstances, objection raised by respondents to maintainability of the writ petition had been overruled. Presumably, for the reason that remedy in appeal had

not been provided for.

8. In present matters, while arguments are advanced as aforesaid, those are being countered on behalf of the respondents by Mr. S. R. Choukidar submitting that undeniably petitioners' attempt had been to go and prefer appeal pursuant to section 70 of the Act based on arguments as advanced now. In such a case, order passed in said proceedings are amenable for a further appeal / application pursuant to section 72 of the MPT Act. He purports to point out that section 70 of the MPT Act has place in the same and thus further appeal before district court would be possible. His thrust of submissions is in such a case, where alternate remedy is possible to be prosecuted, writ petition may not be entertained.

9. These submissions, on behalf of the respondents are sought to be repelled by Mr. Salunke, learned advocate for the petitioners stating that while decision rendered by the authority shows that although an attempt had been to invoke section 70 of the Act, yet authority has refused to invoke said jurisdiction and since there is refusal to exercise powers, authority, jurisdiction under the provisions, the order cannot be branded as under exercise of powers under section 70 of the Act and in such a case, if the order is not in the exercise of powers of section 70 of

the Act, writ petition cannot be resisted stating that an appeal is available. He, therefore, urges to consider request and intervene in the matter quashing and setting aside impugned orders and remitting matters for consideration, pursuant to section 70 of the Act.

10. Section 73A of the MPT Act, reads, thus -

“ 73A. Power of Inquiry Officer to join persons as party to proceedings: In any proceedings under this Act, any person having interest in the public trust may be joined as a party to such proceedings on an application made by such person on such terms and conditions as the officer holding the inquiry may order. ”

11. Aforesaid provision opens an avenue for the persons interested to have inclusion in the pending proceedings. It appears to be a provision which holds for any proceedings under the Maharashtra Public Trusts Act and does not necessarily confine it to section 22 of the MPT Act. An order thereon in such a case would generally have trappings of an order which to the extent of inclusion or not of the person concerned attains to said extent finality. Although this may be the character of the order appearing, section 70 provides as under:

“ 70. Appeals from findings of Deputy or Assistant Charity Commissioner.—

(1) An appeal against the findings or order of the Deputy or Assistant Charity Commissioner may be filed to the Charity

Commissioner in the following cases :

- (a) the finding and order, if any, under section 20;*
- (b) the finding under section 22;*
- (b-1) the finding under section 22A;*
- (c) the finding under section 28;*
- (c-1) the order under section 41C;*
- (c-2) the order under section 50A;*
- (d) the order under subsection (3 of Section 54);*
- (d-1) an order under sub-section (1) of section 79;*
- (e) an order confirming or amending the record under section 79AA.*

(2) No Appeal shall be maintainable after the expiration of sixty days from the recording of the finding or the passing of the order, as the case may be.

(3) The Charity Commissioner may, after hearing the appellant or any person appearing on his behalf for reasons to be recorded in writing either annul, reverse, modify or confirm the findings or the order appealed against or he may direct the Deputy or Assistant Charity Commissioner to make further inquiry or to take such additional evidence as he may think necessary or he may himself take such additional evidence.”

12. Presently, we are concerned with clause 1-b, thereunder, which is in respect of finding under section 22 of the MPT Act. Section 22 of the MPT Act, in turn provides for incorporation of change occurring in record and register to be kept under section 17 of the MPT Act. It is the provision for incorporation of change

and object underlying the same is of maintaining record pursuant to section 17 of the MPT Act.

13. Looking at the nature of order passed in the present matters, it would be difficult to say that it would be an order in the proceedings under section 22 of the MPT Act. Inclusion had been sought by the petitioners by making applications as referred to above. The request has been declined and remedial measure in the form of appeal was sought, pursuant to section 70 of the MPT Act. Section 70 of the MPT Act, as referred to above, does neither expressly provide for an appeal from an order under section 73A of the MPT Act nor suggests any implication for an appeal. It is trite to refer to that a settled legal position is that an appeal is a creation of statute, it can neither be invented by interpretation nor can be included in any definition or scheme of appellable order in the absence of provisions in the statute. In the circumstances, whether order is interlocutory or final is a matter which would not significant to be considered. What is required to be considered as to whether an appeal is provided under the scheme of the statute against orders under section 73A of the Act. Since the MTP Act does not expressly provide for an appeal in resepct of orders under section 73A, by interpretation as argued on behalf of the petitioners, an access can seldom be said to be available for an appeal, much

less by putting overstretched construction on the events occurring.

14. In the circumstances, although the petitioners appear not to be satisfied with the reasons, which went into rejection of their request to entertain appeal, final outcome of the order would not be liable to be faulted with. Writ petitions, therefore, are difficult to be entertained and thus, are rejected.

15. It would not, however, undermine or foreclose remedies, as may be sought to be resorted to as would be available in law.

Dinesh
Ramrao
Pawar

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[SUNIL P. DESHMUKH, J.]

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