

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4520 OF 2018

**Ramdas Athawale,
Chairman, Peoples' Education Society,
Mumbai & Ors.**

..... Petitioners

VERSUS

Dr.S.P.Gaikwad & Ors.

..... Respondents

Ms.Rajani Iyer, Senior Advocate, a/w. Mr.Susheel Mahadeshwar, i/b.
Ms.Ranjana Todankar for the Petitioners.

Mr.Amit B.Borkar for the Respondent no.1.

CORAM : R.D. DHANUKA, J.

DATE : 18th APRIL, 2018

P.C.

By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 21st February,2018 passed by the learned Assistant Charity Commissioner Ex.69 in the Change Report No.1245 of 2010.

2. Change Report No.1245 of 2010 is filed by the respondent no.1 under section 22 of the Maharashtra Public Trust Act, 1950. In the said change report filed by the respondent no.1, some of the petitioners have filed affidavit in reply pursuant to the liberty granted by the learned Assistant Charity Commissioner. During the pendency of the said change report and after filing of the affidavit in reply by some of the petitioners as far back as in the year 2010, the respondent no.1 filed an application in the said Change Report No.1245 of 2010(Ex.69)

inter alia praying for an order and direction that unless and until the proper application under section 73A of the Maharashtra Public Trust Act, 1950 is made by these petitioners, they cannot be allowed to join and participate in the said Change Report No.1245 of 2010. The said application was opposed by the petitioners by filing a detailed reply.

3. The learned Assistant Charity Commissioner passed an order on 21st February, 2018 allowing the said application (Ex.69) and held that the persons who seek to join proceedings, shall invoke the remedy under Section 73A of the Maharashtra Public Trust Act 1950. This order of the learned Assistant Charity Commissioner is impugned by the petitioners in this petition under Article 227 of the Constitution of India.

4. Ms.Iyer, learned senior counsel for the petitioners invited my attention to various annexures in the petition including the application made by the respondent no.1, affidavit in reply filed by the petitioners and the findings rendered by the learned Assistant Charity Commissioner in the impugned order dated 21st February, 2018.

5. It is submitted by the learned senior counsel that the petitioners have been participating in the various proceedings filed by the respondent no.1 and also have filed separate change reports which are also pending. Affidavit in reply was filed by the petitioner pursuant to the liberty granted by the learned Assistant Charity Commissioner in the year 2010 itself. The respondent no.1 belatedly filed an application raising an issue against the petitioner objecting to the participation of

the petitioners in the said Change Report No.1245 of 2010 on the ground that they were not the persons interested and unless an application is made under section 73A of Maharashtra Public Trust Act and the same is decided in favour of the petitioners, they cannot be allowed to participate in the change report filed by the respondent no.1.

6. Without prejudice to her aforesaid submissions, learned senior counsel invited my attention to the applications made by the petitioners (Ex.16 and 24) under section 73A of the Maharashtra Public Trust Act which are already pending before the learned Deputy Charity Commissioner and would submit that those applications can be decided by the authority.

7. Mr.Borkar, learned counsel for the respondent no.1 on the other hand opposes this petition on the ground that the petitioners however have alternate remedy under section 70A of the Maharashtra Public Trust Act, 1950 against the order dated 21st February,2018 and thus this writ petition shall not be entertained by this court.

8. The next submission of the learned counsel is that the impugned order dated 21st February,2018 directing the petitioners to invoke the remedy under section 73(A) of the Act does not affect any legal rights of the petitioners.

9. Insofar as first submission of the learned counsel for the respondent no.1 that the order passed by the learned Assistant Charity Commissioner is appealable under section 70(A) of the Maharashtra

Public Trust Act, 1950 is concerned, in my view on perusal of the order dated 21st February, 2018 on application below Ex.69 thereby directing the petitioners to invoke the remedy under section 73A of the Maharashtra Public Trust Act, 1950 cannot be construed as an order under section 22 and thus would not fall under section 70A of the Maharashtra Public Trust Act.

10. Be that as it may, considering the nature of the impugned order, remedy under section 70A would not be an efficacious remedy. In my view this court thus can entertain this writ petition filed under Article 227 of the Constitution of India.

11. Insofar as second submission of the learned counsel for the respondent no.1 that the directions issued by the learned Assistant Charity Commissioner to invoke the remedy under section 73A of the Maharashtra Public Trust Act, 1950 is concerned, since in my view the petitioners have already filed such application under section 73A being Exs.16 and 24, this objection does not survive.

12. I, therefore, pass the following order :-

(a) Mr.Jagdale, the Assistant Charity Commissioner, Greater Mumbai shall hear the applications (Exs.16 and 24) filed by the petitioners in accordance with law expeditiously and not later than 8 weeks from today.

(b) Respondent no.1 would be at liberty to file affidavit in reply opposing the said application under section 73A within one week from today if the same is not filed so far.

(c) Learned Assistant Charity Commissioner shall also decide the issue as to whether the petitioners are at all required to file such application under section 73A of the Maharashtra Public Trust Act, 1950.

(d) It is made clear that till such time, the applications (Exs.16 and 24) are decided by the learned Assistant Charity Commissioner under section 73A, the hearing in Change Report No.1245 of 2010 shall remain stayed.

(f) If any adverse order is passed against the petitioners by the learned Assistant Charity Commissioner below Exs.16 and 24, the hearing of the Change Report No.1245 of 2010 shall not be proceeded for a period of six weeks from the date of communication of the order by the learned Assistant Charity Commissioner in the applications under section 73A of the Maharashtra Public Trust Act.

(g) The impugned order dated 21st February, 2018 passed by the learned Assistant Charity Commissioner is substituted by this order.

13. Writ petition is disposed of in the aforesaid terms. No order as to costs.

14. The parties to act on the authenticated copy of this order.

[R.D. DHANUKA, J.]