

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10406 OF 2018

Chandramohan Pillai & anr. .Petitioners

Vs.

The Charity Commissioner, Worli & ors. .Respondents

Mr. R. S. Apte, Senior Counsel i/b. Mr. S. Oka, for the Petitioners
Mr. M. J. Bhatt, Advocate, for the Respondent No. 4
Mr. S. D. Rayarikar, AGP, for the Respondent - State

CORAM : REVATI MOHITE DERE, J.

DATE : 18.09.2018

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioners have impugned the Order dated 04.09.2018 passed by the Charity Commissioner, Maharashtra State, Mumbai below Exh. 1 in Misc. Appln. No. 331 of 2018.

3. Learned senior counsel for the Petitioners submitted that the impugned Order dated 04.09.2018 is wholly without

jurisdiction. He submitted that the Charity Commissioner had no power to review his earlier order dated 21.02.2018 much less, set aside the same.

4. Learned AGP also submits that the Order dated 04.09.2018 was without jurisdiction, inasmuch as, the Charity Commissioner has no power to review his earlier order dated 21.02.2018.

5. Learned counsel for the Respondent No. 4 submitted that Misc. Appln. No. 331 of 2018 was filed by the Respondent Nos. 2 & ors., for setting aside the order dated 21.02.2018 passed by the Charity Commissioner, as the same was an ex-parte order, and as the Respondent No. 2 was not a party to the said proceeding before the Charity Commissioner.

6. Perused the papers. It appears that the Respondent No. 5 – K. Balan and Respondent No. 6 – M. Ravindra Nair in this Petition had filed Misc. Appln. Nos. 71 & 72 of 2018 respectively before the Charity Commissioner. It also appears that pursuant to

the report submitted by the Assistant Charity Commissioner, the Charity Commissioner had himself taken suo motu cognizance of the said report and the same was numbered as Suo Motu M. A. No. 102 of 2018. The learned Charity Commissioner after hearing the parties was pleased to allow the said Applications preferred by the Respondent Nos. 5 & 6 as well as the Suo Motu M. A. No. 102 of 2018 vide order dated 21.02.2018. It appears that the Respondent No. 4 was not a party to the said proceedings before the Charity Commissioner and hence, the Respondent No. 4 filed a Misc. Appln., being Misc. Appln. No. 331 of 2018 before the Charity Commissioner on 16.04.2018. It appears that two others i. e. K. Narayanan Embran and K. Muraleedharan and the Respondent No. 4 had filed Misc. Appln. No. 331 of 2018 and had prayed for quashing and setting aside of the common order dated 21.02.2018 passed by the Charity Commissioner in M. A. No. 71 of 2018, M. A. No. 72 of 2018 and Suo Motu M. A. No. 102 of 2018. The learned Charity Commissioner was pleased to allow the said Application vide Order dated 04.09.2018 and as such, the learned Charity Commissioner set aside his earlier order dated 21.02.2018. The learned Charity Commissioner had no power to

review his earlier order dated 21.02.2018 and as such, could not have quashed & set aside the earlier order passed by him. The remedy for the Respondent No. 4 and others was to challenge the order dated 21.02.2018 before the Appellate Authority and not before the Charity Commissioner. Hence, the order passed by the Charity Commissioner dated 04.09.2018 is wholly without jurisdiction and as such, is required to be quashed & set aside. Accordingly, the Petition is allowed and the impugned order dated 04.09.2018 passed below Exh. 1 in Misc. Appln. No. 331 of 2018 is quashed & set aside, solely on the said ground. Needless to state that it is always open for the Respondent No. 4 and others to challenge the Order dated 21.02.2018 before the Appellate Authority. All contentions of all parties are kept open.

7. Accordingly, the Petition is allowed in the aforesaid terms and is disposed off.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)