IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

32 WRIT PETITION NO.4028 OF 2019
WITH WP/4029/2019 WITH WP/4030/2019
WITH WP/4031/2019 WITH WP/4032/2019
WITH WP/4033/2019 WITH WP/4034/2019

DR.CHANDRAKANT RANGNATH MAHAJAN
VERSUS
THE ASSISTANT CHARITY COMMISIONER OSMANABAD AND ANOTHER
...
Advocate for Petitioners : Mr. C.V.Dharurkar
AGP for Respondent No.1: Mr. S.P. Tiwari
Advocate for Respondent No. 2 : Mr.Tawshikar Swapnil D.
...

CORAM : RAVINDRA V. GHUGE, J.
Date : July 29, 2019

ORAL ORDER :

1. In all these identical petitions, the petitioner and the respondents are common. Issue pertains to the same trust by name, Shri Rashtriya Shikshan Prasarak Sanstha, Omerga, District Osmanabad. In all these petitions, the impugned orders of the learned Assistant Charity Commissioner, Omerga, District Osmanabad (hereinafter referred to as the 'ACC' for the sake of brevity), are dated 19.1.2019, but wrongly written as 19.1.2018, by the learned A.C.C., below his signature.

2. In view of the above, since the prayer clauses carry wrong dates in the the impugned orders, the petitioners are permitted to correct the prayer clauses and mention the date of the impugned orders as '19.1.2019'.

3. In all these matters, the impugned orders have led to the rejection of applications seeking amendment, filed by the petitioner. In some matters, there are three amendments proposed and in some matters, there are two amendments proposed.

4. I have heard the learned Advocates for the respective side at length and considered the petition paper book with their assistance.

5. It is pointed out to this Court that in three matters i.e. Writ Petition Nos. 4028 of 2019, 4029 of 2019 and 4030 of 2019, hand written impugned orders are passed, which indicates that the

application for amendment was actually allowed. There are interpolations and certain new words are introduced, i.e. in the sentence "नि. क. १ वर सुचविलेल्या बदलामुळे मुळ फ्करणाचे स्वरूप बदलत नसल्याने", the last word "नसल्याने" is corrected as "असल्याने". Further at the end of the order the sentence "अर्जदाराने तसे फ्स्तूत बदल फ्करण दाखल करतानाच करणे आवश्यक होते तथापी ते अर्जदाराने तसे केले नसल्याने नैसर्गिक न्यायाचे दृष्टीने अर्जदारास रूपये ५०००/— दंड आकारून निशाणी क. १ मध्ये सुधारणा कारण्याकरीताचा सदर अर्ज मंजूर करण्यात येतो", by interpolation Rs. 5,000/- is reduced to Rs. 500/- and "अर्ज मंजूर करण्यात येतो" is changed as "अर्ज नामंजूर करण्यात येतो".

6. Though, I am not going into the details of the said interpolations, which do not even carry the signature of the learned A.C.C. and the entire meaning of the order is converted from allowing the application to rejecting the application, I find it appropriate to direct the learned Registrar

(Judicial) of this Court, to place a copy of this order before the State Charity Commissioner, (State of Maharashtra), so as to counsel the learned A.C.C., to refrain from indulging in such changes in the order and should be cautious, in future. He should be advised to dictate the orders to the Stenographer and as far as possible typed copies of the orders be issued.

7. The respective learned Advocates for respondents No. 1 and 2, in these matters vehemently opposed these petitions and pray that the petitions be dismissed with heavy costs. It is submitted that the corrections in the names of the Trustees in Writ Petition No. 4032 of 2019 and 4033 of 2019, is sought on the ground that the old body has been reproduced inadvertently. It is also submitted that due diligence in carrying such amendment is not explained and after the proceedings are made time bound by the order of this Court dated 29.1.2019, in First Appeal

No. 3647 of 2018, such amendments cannot be permitted.

8. The learned Advocate for the petitioner submits that it would be futile exercise to proceed with these proceedings before the learned A.C.C., when the mistakes have been caused in several change reports. Before it becomes too late, such mistakes are sought to be corrected. If the proceedings are prosecuted along with such mistakes, a permanent deficiency would remain in the proceedings. Instead of proceeding with such mistakes, it would be appropriate to correct such mistakes by keeping all contentions of the respondents open, to be considered by the learned A.C.C., while deciding the change report inquiries.

9. It is further submitted that as these change reports were prepared at the same time from 1975 onwards and filed in one stroke in 2005, the

petitioner and the reporting Trustees have hurriedly resorted to the preparation of such documents, while submitting the change reports. Various meeting registers have to be perused and the dictation of the change reports had to be conducted. While considering the proceeding books, some mistakes occurred and hence applications were filed in all these change report inquiries.

10. I find that in some places, a person who is living, is indicated as 'being dead'. The death certificate indicates the name of the deceased person and the name of the person, who is alive is mentioned. In some places the names of certain Trustees, who have participated in the meetings, have been wrongly mentioned. The correction sought matches with the meeting registers maintained. The amendment sought, is purely for correcting certain mistakes and not for changing the cause of action or proposing a different cause of action altogether.

11. The learned Advocate for respondents No. 2 and 3 submits that at some places in the original record, there are interpolations by way of corrections and the amendment in this regard is now proposed. This gives rise to suspicion as to whether the petitioner surreptitiously has carried out changes in the record of the learned A.C.C.

12. In my view, considering the law laid down by the Hon'ble Apex Court in the matter of ***"M/s Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & Ors., AIR 2009 SC (Supp)"***, the merits of the amendment are not to be assessed by the Courts. It is to be assessed as to whether the amendment is otherwise barred by the Law Of Limitation or that the amendment leads to a new cause of action being introduced, which is otherwise barred by the Law Of Limitation.

13. I find that the learned A.C.C. has rejected

the application for amendment in each of these matters, on the ground that there are certain scoring out in the record of the Court and appropriate reasons are not cited. I do not find that the learned A.C.C. has perused the record available, on the basis of which the mistakes occurred in writing the names of the Trustees or the names of the dead Trustees, is evident.

14. It is also well-settled that if the amendment is to avoid multiplicity of the litigation and to remove the defects, which do not change the cause of action, it would be in the interest of justice that the mistakes of such a nature should be corrected, so that the proceedings are not prosecuted with mistakes, which would strike at the root of the proceedings.

15. In view of the above, these petitions are partly allowed with the following directions :-

a) The impugned order dated 19.1.2019 passed by the learned A.C.C. on the applications filed by the petitioner seeking amendment, are quashed and set aside.

b) The amendment applications are allowed and the corrections sought in the said applications are directed to be carried out within two weeks, from today.

c) Respondents No. 2 and 3 are at liberty to file additional affidavit with respect to the amendment to be carried out and the contentions of these respondents in their affidavits would be considered by the learned A.C.C. while deciding the change report inquiry cases.

d) Directions issued by this Court in the order dated 29.1.2019, in First

Appeal No. 3647 of 2018, shall continue to bind the parties and the learned A.C.C. shall proceed with these matters as expeditiously as possible and on day to day basis, if the need so arises.

e) If the time period granted by virtue of the order dated 29.1.2019 expires or has expired, the learned A.C.C. would be at liberty to seek guidance to extend the time, from the same Court which has passed the order.

f) As the learned Advocate for respondents No. 2 and 3 submits that considering the controversy as recorded above, the costs of Rs. 500/- in each matter granted by the learned A.C.C., is a meager amount and the cost be enhanced at least to Rs. 25,000/- per proceeding, costs are enhanced to Rs.

2,500/- per proceeding.

g) The petitioner shall deposit such costs before the learned A.C.C. in these matters within four weeks from today.

h) The cost shall be withdrawn by respondents No. 2 and 3, from the Court of the learned A.C.C., in equal proportions and without conditions.

i) The parties can act upon the print out copy of this order, taken from the Official Website of the Bombay High Court.

(RAVINDRA V. GHUGE)
JUDGE

mahajansb/