

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

**925 FIRST APPEAL NO.1681 OF 2017
WITH
CA/7578/2017 IN FA/1681/2017**

- 1 Balaji Gyanoba Chikhale,
 Age yrs, Occ. Agri.,
 R/o Narsiphata, Tq. Naikgaon,
- 2 Gyanoba Ramchandra Chikhale,
 Age yrs., Occ. Agri.,
 R/o Marwali, Tq. Naigon,
 Dist. Nanded.
- 3 Sow. Kaushalya w/o Balaji Chikhale,
 Age yrs., Occ. Household,
 R/o Narsiphata, Tq. Naigaon,
 Dist. Nanded.
- 4 Sangram Madhavrao Kshtriya,
 Age yrs., Occ. Agri.,
 R/o Guthur, Tq. Kandhar,
 Dist. Nanded.
- 5 Sulochana w/o Baburao Chikhale,
 Age yrs., Occ. Agri.,
 R/o Marwali, Tq. Naigaon,
 Dist. Nanded.
- 6 Madhav Dhondiba Kshtriya,
 Age yrs., Occ. Agri.,
 R/o Guthur, Tq. Kandhar,
 Dist. Nanded.

... Appellants.

... Versus ...

- 1 Uttamrao Ganpatrao Patil,
 Age 63 yrs., Occ. Agri.,
 R/o Waiphana, Tq. Hadgaon,

Dist. Nanded.

- 2 Balwantrao Kishanrao Amrute,
Age 51 yrs., Occ. Agri.,
R/o Umri (J), Tq. Hadgaon,
Dist. Nanded.
- 3 Kondbarao Haribhau Pawar,
Age 61 yrs., Occ. Agri.,
R/o Gurphali, Tq. Hadgaon,
Dist. Nanded.
- 4 Sheshrao Kishanrao Amrute,
Age 63 yrs., Occ. Agri.,
R/o Umri (J), Tq. Hadgaon,
Dist. Nanded.

... **Respondents.**

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Mr. N.P. Patil Jamalpurkar, Advocate for the appellants

Mr. G.D. Kale, Advocate for the respondent Nos.1 to 5

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 05th SEPTEMBER, 2019

JUDGMENT :

1 Present appeal has been filed by the original respondent Nos.1 to 6 challenging the Judgment and order dated 07.04.2017 passed by learned District Judge-6, Nanded in Miscellaneous R.J.E. No.40/2015 under Section 72(5) of the Maharashtra Public Trusts Act, 1950, whereby the said appeal filed by the present respondents/applicants came to be allowed.

2 The facts giving rise to the present appeal are, the applicants/appellants before the District Court were the founder members and office bearers of Public Trust by name Priyadarshani Shikshan Sansthan, Gurphali, Tq. Hadgaon, Dist. Nanded, which runs a primary school at Hadgaon. As per the By Laws of the Trust, elections were to be held after every five years. According to the appellants, the founder secretary one Sakharam Pimparkhede had created false and fabricated documents showing resolution passed by the Managing Committee on 28.12.2008, election of Managing Committee in the said General Body meeting dated 10.01.2010 and change in the Managing Committee by way of election dated 04.02.2010. On the basis of these documents he had submitted a change report before the learned Assistant Charity Commissioner under Section 22 of the Maharashtra Public Trusts Act. Thereafter, as per the procedure, inquiry was initiated under inquiry No.903/2010. The applicants were served with the notice and then they came to know about the false documents produced. It is stated that by resolution dated 03.08.2010 passed by the Managing Committee they had decided to withdraw the change report and ask Sakharam Pimparkhede to withdraw the change report. It is stated that accordingly he had made application on 26.08.2010 before learned Assistant Charity Commissioner for withdrawal of the change report and therein the notices were issued to the incoming trustees. Thereafter, respondents before

the First Appellate Court appeared in the matter through Advocate on 04.10.2010 and a pursis was filed that they were under the impression that the proceeding of the change report might have been closed when Sakharam had filed pursis. Thereafter, it was contended that on 20.01.2013 the respondent No.1 had instructed the Headmaster of the school to display the board of new Managing Committee of the Trust, whereupon the Headmaster had intimated the said fact to the applicants before the First Appellate Court and they came to know about the proceedings, which have been initiated. It is stated that Sakharam Pimparkhede had given an application Exh.27 for condonation of delay and the application notarized before the Notary Public on 26.09.2012, but it was shown that it has been filed before the learned Assistant Charity Commissioner on 16.09.2012. It was shown that the matter has been settled before the Lok Adalat, that was held on 16.09.2012, of which no notices were given to the applicants before the First Appellate Court. It is stated that the Lok Adalat could not have decided the matter and therefore, after getting knowledge and collecting all the documents, the applicants before District Court had filed revision petition No.5/2014 before learned Joint Charity Commissioner, Aurangabad.

3 After hearing both sides the learned Joint Charity Commissioner, Aurangabad has dismissed the revision petition No.5/2014 on 22.12.2014.

4 The applicants before the District Court had challenged the dismissal of the revision and after hearing both sides, the learned District Judge-6, Nanded had allowed the application and thereby set aside the order passed by learned Joint Charity Commissioner dismissing the said application, which was filed before him and then the learned District Judge-6, Nanded has restored the inquiry application and directed the learned Assistant Charity Commissioner to decide the matter afresh as per the provisions of law. This order is under challenge, in this appeal.

5 Heard learned Advocate Mr. N.P. Patil Jamalpurkar for the appellants and learned Advocate Mr. G.D. Kale for the respondent Nos.1 to 5.

6 It has been vehemently submitted on behalf of the appellants that the learned District Judge erred in setting aside the order passed by learned Joint Charity Commissioner, when in fact, the learned Joint Charity Commissioner has rightly held that when the matter is decided before the Lok Adalat, then it will become final and it cannot be questioned in any appeal or other proceedings by virtue of Section 21 of the Legal Services Authorities Act. The learned Advocate appearing for the present appellants submitted that the reasons given by the learned Joint Charity Commissioner, Aurangabad, Region Aurangabad while dismissing the revision petition are correct, proper assessment of Section 21, 22(c) of the Legal Services

Authorities Act has been considered and therefore, the learned District Judge-6, Nanded ought not to have interfered with the findings and dismissal of the revision by learned Joint Charity Commissioner.

7 Per contra, the learned Advocate for the respondents has supported the reasons given by learned District Judge-6, Nanded.

8 At the outset, it can be seen that several proceedings were pending before learned Assistant Charity Commissioner were under Section 22 of the Bombay Public Trusts Act. The perusal of the record would show that on the day of the Lok Adalat the said change report was pending before the concerned Court for inquiry. The learned District Judge has relied on the decision of Division Bench of this Court at Principal Seat in **Rajabhau Damodar Raikar vs. Assistant Charity Commissioner, Pune, 2015 (3) ALL M.R. 508**, wherein the question before the Division Bench that, *Whether a Lok Adalat constituted under the Legal Services Authority Act is empowered to adjudicate upon a change report filed under Section 22 of the Bombay Public Trusts Act, 1950 on merits ?* was answered in the negative. That means, it was held by this Court that application under Section 22 of the Bombay Public Trusts Act which requires holding of an inquiry as mandatory act cannot be given a go-by by placing the matter before Lok Adalat and it cannot be settled by way of compromise. It was specifically observed in the said

decision that Lok Adalat has no jurisdiction to decide the change report on merits. Here, in this case, the application, which was pending under Section 22 of the Maharashtra Public Trusts Act for accepting the change report, was referred before the Lok Adalat and it can be observed, that this is the mistake which was done by the learned Assistant Charity Commissioner for referring the said matter to the Lok Adalat. It has also been rightly observed by the learned District Judge-6, Nanded that unless all the parties to the proceedings agree to place a matter before Lok Adalat, the Lok Adalat will not get jurisdiction to decide or take it for arriving at a settlement. In this case, all the trustees were not before the Panel of the Lok Adalat and there was no record produced showing that all the parties to the Trust or inquiry proceeding were given due notice of the Lok Adalat and prior to that for referring the case itself they had given consent. Under such circumstance, if the jurisdiction of the Lok Adalat was wrongly utilized or invoked, then whatever order has been passed would be non est.

9 It appears that the learned Joint Charity Commissioner had only seen the provisions of Section 21 of the Legal Services Authorities Act, but then did not consider Section 20 of the said Act in detail though a cursorily reference has been made. It was not considered by the learned Joint Charity Commissioner that some of the trustees had not given consent for placing the

said matter before the Lok Adalat and on this count itself the Lok Adalat panel or Lok Adalat had no jurisdiction to entertain the said inquiry report. Therefore, the learned District Judge has rightly set aside the order passed in the revision and had directed the learned Assistant Charity Commissioner, Nanded to proceed with the matter afresh and decide it as per the provisions of the law.

10 It was tried to be submitted on behalf of the present applicants/appellants that since the tenure which was of 5 years of the body which had filed the change report and was the incoming trustees had expired, it would be only an academic question. It is to be noted that if the time has been consumed for the legal battle, then even if the matter is rendered for so called academic issue, yet, it has to be gone into and no further comments can be made, taken into consideration the fact that it may affect the further merits of the case.

11 Therefore, taking into consideration all these aspects, no fault can be found in the Judgment and order passed by the learned District Judge-6, Nanded. There is no merit in the present appeal. Hence, appeal is dismissed. No order as to costs. Civil Application stands disposed of.

(Smt. Vibha Kankanwadi, J.)