

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

FIRST APPEAL NO.2582 OF 2016

Tarachand Sukhlal Rathod,
Age 58 yrs., Occ. Agri.,
R/o Hotel Shimla, near Mantha Bus Stand,
Mantha, Tq. Mantha, Dist. Jalna.

... **Appellant.**

... **Versus** ...

- 1 Ganesh Harinaik Rathod,
Age : major, Occ. Service,
R/o Umarkheda, Tq. Mantha,
Dist. Jalna.
- 2 Dhondiram Harinaik Rathod,
Age : major, Occ. Social Worker,
R/o Umarkheda, Tq. Mandha,
Dist. Jalna.
- 3 Kondiram Ramnaik Rathod,
Age : major, Occ. Agri.,
R/o Umarkheda, Tq. Mantha,
Dist. Jalna.
- 4 Dagdu Dhavaji Rathod,
Age : major, Occ. Agri.,
R/o Umarkheda, Tq. Mantha,
Dist. Jalna.
- 5 Rajesh Dhondiram Rathod,
Age : major, Occ. Agri.,
R/o Umarkheda, Tq. Mantha,
Dist. Jalna.
- 6 Devidas Hari Pawar,
Age : major, Occ. Agri.,

R/o Umarkheda, Tq. Mantha,
Dist. Jalna.

- 7 Kaniram Meherban Chavan,
Age : major, Occ. Agri.,
R/o Umarkheda, Tq. Mantha,
Dist. Jalna.
- 8 Devichand Ramdas Chavan,
Age : major, Occ. Agri.,
R/o Umarkheda, Tq. Mantha,
Dist. Jalna.
- 9 Sow. Latabai Dhondiram Rathod,
Age : major, Occ. Social Worker,
R/o Umarkheda, Tq. Mantha,
Dist. Jalna.
- 10 Sow. Pratibha Subhash Pawar,
Age : major, Occ. Service – Teacher,
R/o Tirupati Apartments, 2nd Floor,
Warge, Tq. Warge, Pune,
Dist. Pune – 58.
- 11 Sou. Anita Shankar Rathod,
Age : major, Occ. Household,
R/o Umarkheda, Tq. Mantha,
Dist. Jalna.
- 12 The Assistant Charity Commissioner,
Jalna, Dist. Jalna.

... **Respondents.**

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Mr. Pathan Zareef Khan, Advocate for the appellant
Mr. V.D. Salunke, Advocate for the respondent Nos.1, 2, 4 to 11

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CORAM : SMT. VIBHA KANKANWADI, J.
DATE : 01st OCTOBER, 2019

JUDGMENT :

1 Present appeal has been filed by the original respondent challenging the Judgment and order passed by learned Principal District Judge, Jalna in Regular Civil Appeal No.50/2012 dated 16.04.2014, thereby allowing the appeal filed by the present respondents and setting aside the Judgment and order passed in Revision Application No.5/2011 by learned Joint Charity Commissioner, Aurangabad dated 27.01.2012 and thereby maintaining the order passed by learned Assistant Charity Commissioner, Jalna in Change Report No.672/2007 dated 17.12.2007.

2 The facts in nutshell giving rise to the appeal are, a change report in respect of institution by name 'Jagdamba Shikshan Prasarak Mandal, Mantha, Dist. Jalna' was filed before learned Assistant Charity Commissioner, Jalna bearing Inquiry No.672/2007 and it came to be allowed on 17.12.2007. It was contended in the said change report, that the elections have been held and the body has been changed. The present appellant had contended by filing a revision application before learned Joint Charity Commissioner, Aurangabad, that he came to know about allowing of the said

change report on 09.03.2011. According to him, in all seven change reports were presented by respondent No.1 and others, to that proceeding on 22.09.1997. No change report was filed since the establishment of the institution in the year 1982. According to him, all the applications for recording the change were on the basis of bogus documents. Change report No.617/1997 was allowed by Assistant Charity Commissioner, however, the appeal filed by the appellant was allowed by the learned Joint Charity Commissioner and the same was confirmed by this Court. It is stated, that though he was a member of the Trust, his signature was never obtained, in fact, by forging his signature the application for change was filed. Even after the change report was filed, no notice was issued to him and therefore, the decision by the learned Assistant Charity Commissioner was wrong.

3 The revision before the learned Joint Charity Commissioner was resisted by the present respondents, on the ground that the revision is barred by limitation, so also, the membership of the appellant has been cancelled, as he used to remain absent continuously. He appeared before the Trial Court on 17.12.2007 and gave No Objection to the change report. The elections were held on 28.02.2007 and the duration of the committee, thereby appointed, was five years. No Objection was ever raised within the said period and therefore, the revision itself was not maintainable.

4 After hearing both sides, the learned Joint Charity Commissioner had allowed the revision, which was filed by the present appellant and the Change Report No.672/2007 was cancelled.

5 Being dissatisfied with the said Judgment and order the present respondents had approached the learned Principal District Judge, Jalna by filing an appeal under Section 72(2) of the Bombay Public Trusts Act, 1950 and after hearing both sides the said appeal was allowed and the order passed by the learned Joint Charity Commissioner, Aurangabad came to be set aside. Hence, present appeal. It will not be out of place to mention here, that though initially the appeal was registered as Second Appeal, yet, in view of the decision by the Division Bench of this Court, it has been converted into First Appeal.

6 Heard learned Advocate Mr. Pathan Zareef Khan for the appellant and learned Advocate Mr. V.D. Salunke for the respondent Nos.1, 2, 4 to 11.

7 It has been vehemently submitted on behalf of the appellant, that the appellant was permanent member of the Trust. It was contended, that elections were held on 25.03.2007 and the present respondents were elected on the Trust. Thereafter, the change report was submitted. However,

no notice was issued to the present appellant. In fact, there were three categories of members of the Trust, one was Ashraydata (provider of shelter), another was Aajivan Sadasya (life member) and the third one is Sarvsadharan (general). The appellant being Ashraydata member had right to vote. There was breach of terms of Rule 4 to 7 and 10 of the By Laws. Further, a false signature of the appellant was obtained on consent letter, when the change report was submitted. Further, the change report application was beyond the period of limitation i.e. 90 days and it is stated to have been filed, but actually it was not filed. It was then casually decided, which was against the decision in Jagatnarayansingh Swarupsingh Chithere and others vs. Swarupsingh Education Society and another, 1980 Bom C.R., 837. The change report was hurriedly decided by the learned Assistant Charity Commissioner on the same day. All these facts were considered by the learned Joint Charity Commissioner. It was rightly considered by the learned Joint Charity Commissioner, that in order to give counter blast to the application under Section 41 (D) of the Trust Act it was shown, that the appellant's membership has been cancelled on 25.08.1991 and for that purpose the change report was filed by Inquiry No.645/1997, which was dismissed on 13.05.2004 by the Trial Court. The revision was allowed and the applicant was held to be the legal member. No notice was issued to the appellant in respect of any meeting and only signatures have

been obtained, which has been disputed by the appellant. Therefore, the said revision was allowed. The learned Principal District Judge went wrong in allowing the appeal. The appellant had in fact challenged the election process itself. While deciding the First Appeal, points were not framed, no discussion was made, as to how the discussion of Joint Charity Commissioner is illegal or there is any error, and therefore, the perversity can be seen from the contents of the appeal itself. Learned Principal District Judge relied on the decision in **Ashok Nagorao Jadhav vs. Shivajirao Nagorao Jadhav** in **Second Appeal No.832 of 2009** decided by this Court on 11.03.2010. However, the learned Principal District Judge failed to consider that the said decision was not applicable at all. In this case, the legality and validity of the change report ought to have been considered and merely because the time has lapsed, it cannot be stated that the matter has become stale. The entire election process was in fact wrongly held by appointing a Headmaster as Election Officer, which was against the By Laws of the Trust. The said process, which was challenged, was not at all touched by the learned Principal District Judge. The learned Advocate appearing for the appellant reiterated again and again, that the reasons given by the learned Joint Charity Commissioner, Aurangabad while allowing the said revision are correct.

8 Per contra, the learned Advocate appearing for the respondents submitted that the change report was uncontested and therefore, it was allowed. There was no question of issuing any notice to anybody. Further, Section 22 of the Maharashtra Public Trust Act does not make it mandatory to issue notice to all the members, when the change report is submitted. Appellant was not a member at all, and he was removed. Learned Joint Charity Commissioner erred in allowing the appeal, on the ground, that no notice was issued. But in fact, the learned Joint Charity Commissioner could not have gone into the aspect, as to whether the appellant is still a member or not, when that fact is not under challenge. In which capacity the appellant was entitled to get notice, was not clarified. Further, the revision itself was not maintainable before the learned Joint Charity Commissioner, when in fact, only appeal could have been maintainable. It was rather time barred also. The appellant was challenging the change report after many years, when thereafter two change reports were accepted by the learned Assistant Charity Commissioner and they were not challenged by the appeals. Thereafter, also two elections have been held and the change reports in respect of those changes have been accepted by the competent authority. Therefore, the ratio laid down in **Jagatnarayansingh Swarupsingh Chithere and others vs. Swarupsingh Education Society and another, 1980 Bom C.R., 837** was applicable here. The learned Principal District Judge was right

in allowing the appeal. After a long lapse of time, no interference was required by the learned Joint Charity Commissioner and further absolutely there was no evidence before the Joint Charity Commissioner to prove that the signature was forged or not. There was no substantial question of law has been shown in First Appeal, though it is styled as 'First Appeal'.

9 At the outset, it is not in dispute, that what present appellant was challenging in his revision application No.5 of 2011 under Section 70(A) of the then Bombay Public Trusts Act, was the change report which was allowed by Assistant Charity Commissioner on 17.12.2007 i.e. the Inquiry No.672/2007. He had come with a case that he came to know about the said decision by the learned Assistant Charity Commissioner on 09.03.2011. That implies that was time barred. The learned Joint Charity Commissioner has not addressed the point of limitation, which was raised by the present respondents before him in proper way. Merely because, even if for the sake of argument if it is accepted that learned Joint Charity Commissioner found some fault in the entire procedure, that does not mean that he can give a go bye to the point of limitation, that has been raised by the party before him. Point for determination in respect of limitation was not at all framed. Further, though while giving gist of the objections raised by the respondents before him, the said point was mentioned, but in the reasons part it is

absolutely not addressed. On the contrary, how the report in the change is time barred and how the alleged application for condoning the delay has been wrongly decided by the learned Assistant Charity Commissioner, has been discussed. If the present appellant was so called active member or was concerned with the Trust, then he could have got knowledge about the said decision by learned Assistant Charity Commissioner dated 17.12.2007, immediately thereafter, and there appears to be absolutely no substance in the say of the appellant, that he came to know about the said decision, for the first time on 09.03.2011. This is in the backdrop of the earlier round of litigation, which the appellant had fought. According to him, his membership was cancelled and then he had filed appeal challenging the said change report. If any adverse step was taken in respect of his membership, then he would have been alert. He comes with a case that he was not aware about the decision for about 3½ years.

10 Now, turning to the another point, that though the decision by the learned Principal District Judge, as cryptic as it can be, however, it is to be noted, that since the change report or the revision in respect of an election, that had taken place long back and the duration of the said committee was only five years, those five years had come to an end. Two more elections had taken place thereafter, and the change reports in respect

of the same have been accepted. The learned Principal District Judge, therefore, felt that it cannot be only academic to go into the aspect and no fruitful purpose would be there to decide the appeal on its merits. Hence, the appeal was allowed. As it has been held, the legal position is concerned in **1980 Bom C.R., 837** (supra), taking into consideration the subsequent developments, this Court held that *the Court cannot ignore the relevant subsequent developments occurring during the pendency of the appeal and must in the ends of justice mould its order in the light thereof*. In that case also subsequently elections were held. The new committee had taken charge and therefore the Court held, that it is not necessary to go into the merits. Similar view was then taken in **Ashok Nagorao Jadhav v. Shivajirao Nagorao Jadhav, Second Appeal No.832/2009**. Similar view was also taken in **Nagnath Abasaheb Kakade v. Ankush Nivartirao Kachwe and others in Second Appeal No.113 of 2008** decided by this Court on 25.11.2008. Thus, in catena of Judgments, this Court has held that if there are subsequent developments and taking into consideration those developments it would be only academic interest, then the validity or legality of a change earlier taken place need not be gone into. This observation will have to be made with a rival that it would depend upon the facts and circumstance of each case, as in some cases it may have impact on the subsequent changes. Here, especially the fact is, that when the further

subsequent changes occurred the present appellant did not challenge those changes. Therefore, though this is a First Appeal, yet, taking into consideration the provisions of law it will have to be treated as Second Appeal. No substantial question of law is arising in this case requiring any interference in the Judgment and order passed by the learned Principal District Judge, though a very cryptic order has passed. Ultimate result is the same. Hence, no merit in the present appeal. Appeal is, therefore, dismissed. No order as to costs.

(Smt. Vibha Kankanwadi, J.)

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