

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

951 FIRST APPEAL NO.3647 OF 2018
WITH
CA/14869/2018 IN FA3647/2018

CHANDRAKANT RANGNATH MAHAJAN AND ORS.
VERSUS
THE STATE OF MAHARASHTRA AND ANR

....

Advocate for Appellant : Mr. D.A. Madke and Y.R. Mahajan
APP for Respondent No.1-State: Mr. S.J. Salgare
Advocate for Respondent Nos.2 and 3 : Mr. S.D. Tawsikar

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CORAM : P.R. BORA, J.

DATED : 29th JANUARY, 2019

PER COURT:-

1. The order passed on 05.11.2018 by the Joint Charity Commissioner, Latur Region, Latur is questioned in the present appeal. The maintainability of the appeal itself is objected by the Respondents. Whereas, the learned counsel for the appellants has questioned the impugned order being without jurisdiction and against the provisions of law. It was his contention that the Joint Charity Commissioner does not have any power and authority to pass such order either under Section 41-A or Section 41-E. During the course of arguments, it is revealed that there were certain other rounds of litigation up to the High Court.

2. After having heard the arguments of the learned counsel appearing for the parties, it has transpired that the dispute relates to the number of members who have been enrolled in the said

trust. According to the appellants, the voters list was published and every person who is now included in the said voters list is a valid member of the said trust. Whereas, it is the contention of the respondent nos. 2 and 3 that many of the persons are illegally made the members and the said issue has been raised in the pending change reports. It is further contention of the respondents that since 1975 to 2003, no change report was submitted by the body who was in power i.e. the present appellants and the said aspect has been vehemently argued by the learned counsel stating that without submitting the change report, and without getting them approved by the Assistant Charity Commissioner, since the elections were declared, the present respondents were required to approach the Joint Charity Commissioner to obtain necessary orders.

3. During the course of arguments, it is further revealed that the present appellants do not have any objection to the expeditious decision in the change reports, which are pending before the Assistant Charity Commissioner, however, it is the apprehension, expressed by the learned counsel appearing for the appellants that the present respondents are not allowing the said change reports to be finally decided by the Assistant Charity Commissioner. The learned counsel submitted that when the delay in filing the applications was condoned, the present respondents approached to the High Court and kept the matter pending for more than 7 years. The submission so made is refuted by the learned counsel

appearing for the respondents. The learned counsel submitted that the respondents also desire that the change reports, which are pending shall be expeditiously decided and thereafter only the fresh elections can be held for new body.

4. It was further contended by the learned counsel for the appellants that the managing committee, which was in power had declared the election for members of the managing committee for next five years, but vide the impugned order, the learned Joint Charity Commissioner has restrained the appellants from conducting the said election and has further directed that till the duly elected managing committee comes in existence, the *de facto* managing committee as is shown in Schedule-I of the subject trust shall carry on the day to day business/affairs of the trust, but shall not take any policy decision. The learned counsel for the appellants submitted that the members of the erstwhile managing committee were having right to remain in power till the new managing committee is elected. It was, therefore the contention of the learned counsel that without giving any hearing to the members of the erstwhile managing committee, the learned Joint Charity Commissioner has deprived the said members from looking after the affairs of the subject trust till the election of new managing committee. There appears substance in the contention so raised on behalf of the appellant.

5. After having heard the learned counsel for the respective parties and after having gone through the order impugned in the present appeal and the other material placed on record, more particularly the orders passed in the earlier proceedings, it is discernible that the real dispute between the parties is about the membership of the said trust. As noted earlier, when it is the contention of the appellants that the persons whose names are included in the voters list as was published by the appellants are all valid members of the trust, according to the respondent nos. 2 and 3 many of the persons whose names are included in the voters list are not the valid members of the trust. As has been argued by the learned counsel appearing for the respondent nos. 2 and 3, in the change reports, which are pending for consideration, the objection as about the membership has been specifically raised and the same is the main objection.

6. From the impugned order, it can be gathered that the objection raised as about the membership of the trust has weighed in the mind of the learned Joint Charity Commissioner and that appears to be the reason that he has directed the Assistant Charity Commissioner to decide all pending change reports in respect of the subject trust within three months of passing of the impugned order by him, and he has therefore passed the further order restraining the present appellants from conducting the election of the managing committee.

7. In so far as the order passed by the learned Joint Charity Commissioner directing the Assistant Charity Commissioner to decide the pending change reports of the subject trust expeditiously and preferably within the period of three months is concerned, it appears to me that the period of three months as provided for the decision of the said pending change reports is quite insufficient. As has been mentioned in para 8 of the impugned order, 20 to 22 change reports are pending. For deciding all these change reports, the period of three months may not be sufficient. It appears to me that the learned Joint Charity Commissioner must have prescribed the period of six months for deciding the pending change reports.

8. There appears substance in the observation made by the learned Joint Charity Commissioner in the impugned order that in all pending change reports, the main objection is as about the membership. The learned Joint Charity Commissioner, has, therefore observed that unless the crucial issue of membership is adjudicated, there is no propriety in taking the election for the new managing committee. However, while recording such observation, according to me, the learned Joint Charity Commissioner shall not have restrained the existing body members from looking after the day to day affairs of the subject trust and there was no propriety in giving further direction that till new legally elected managing committee comes into existence, the *de facto* managing committee members as shown on Schedule-I of the trust shall look

after the affairs of the trust. During the course of arguments, it was submitted by Shri Tawshikar, the learned counsel appearing for the respondent nos.2 and 3 that, respondent nos. 2 and 3 shall not have any objection even if the managing committee, which was in power on the date of passing of the impugned order by the Joint Charity Commissioner i.e. on 05.11.2018 is continued and permitted to look after the affairs of the trust till the new body comes in power. It was, however, the further contention of Shri Tawshikar that the said body shall not be permitted to take any policy decision and shall only be permitted to carry out the day to day affairs of the trust.

9. In view of the submissions made by the learned counsel appearing for the parties and for the reasons recorded by me herein above, it appears to me that the present appeal can be disposed of with the following order, which would meet the ends of justice.

ORDER

[i] The Assistant Charity Commissioner, Osmanabad is directed to expeditiously decide the change reports in respect of the subject trust and in any case within the period of six months from the date of this order.

[ii] The present appellants and the present respondent nos. 2 and 3 as well as the other persons who are parties to the pending change reports shall cooperate the Assistant Charity Commissioner to decide the change reports within the given period.

[iii] The order passed by the Joint Charity Commissioner directing the *de facto* managing committee as shown on Schedule-I of the subject trust to look after the day to day affairs of the trust is set aside; instead it is directed that the managing committee, which was in power as on 05.11.2018 shall continue to look after the day to day affairs of the trust without taking any policy decision.

[iv] If the pending change reports in respect of the subject trust are not decided within the period of six months, it would be open for the present appellants to approach the learned Joint Charity Commissioner seeking his permission to hold the election for the managing committee on the basis of voters list as was published on 11.10.2018. The learned Joint Charity Commissioner shall consider such request and pass the necessary orders if he is satisfied that the adjudication and disposal of the change reports has not been prolonged at the instance of the appellants.

[iv] The appeal stands disposed of in the aforesaid terms.

[v] In view of disposal of the appeal, the Civil Application also stands disposed of.

**(P.R. BORA)
JUDGE**

Sudhir Rane