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

WRIT PETITION (STAMP) NO. 1192 OF 2019

Poona Camp Sikh Association Pune & Ors. .. Petitioners
Vs.
Mr. Ranjeet Singh Arora & Ors. .. Respondents

Mr. Shirish V. Pitre for the Petitioners.
Mr. Radhikesh V. Utharwar a/w. Mr. Gajanan Gawai for Respondent Nos.1 to 10.
Mr. S. H. Kankal for Respondent Nos.11 to 13.

CORAM : V. L. ACHLIYA, J.
DATE : 20th FEBRUARY, 2019.

P. C. :

1. Being aggrieved by an order dated 02.01.2019 passed by I/c. Assistant Charity Commissioner-III, Pune Region, Pune, the Petitioners have preferred this Writ Petition under Article 227 of the Constitution of India. By the impugned order, the learned Assistant Charity Commissioner rejected the Application moved by the Petitioners raising issue of maintainability of applications filed by the opponents under Section 50A of the Maharashtra Port Trust Act, 1951.

2. Heard learned Counsel for the Petitioners and perused the impugned order.

3. It is the contention of the learned Counsel for the Petitioners that the

order passed by the learned Charity Commissioner is unsustainable in law and same is perverse. The Charity Commissioner has failed to take into consideration that the scheme as framed earlier in 2008 is still in existence and no application to frame the new scheme can be entertained at the behest of the Opponents. It is submitted in the facts and circumstances, at the most the application can be entertained under Section 50(3) of the Maharashtra Public Trust Act.

4. On the other hand, learned Counsel for the Respondents submits that under Section 50A, the Charity Commissioner can act on its own motion as well as at the instance of person interested and may frame the new scheme as well as modify the scheme, if any scheme already in force. By referring the observations made in the order passed by the learned Assistant Charity Commissioner, it is pointed out that no scheme as alleged to be framed found to be in existence with the office of Charity Commissioner.

5. On due consideration of submissions advanced, I am of the view that, the order passed is reasoned and well within ambit of Section 50A of said Act. On plain reading of sub-section 1 of Section 50A, it can be gathered that the Charity Commissioner holds an authority to frame a new scheme, after giving due opportunity of hearing to all the concerned, if he is satisfied that it is expedient to frame a scheme for the management for

the administration of such public trust. Sub-section 3 of Section 50A provides that the Charity Commissioner may modify the scheme if already framed. In paragraph 5 (b) and (c) of the order passed, the Assistant Charity Commissioner has noted as under :

“(b) As per application filed by Applicant, all record and proceedings called from record department of this office on dated 20.12.2018. I did not find any scheme application previously sanctioned, any Order / Judgment regarding it. So it is difficult to rely upon certified copy of scheme filed by Opponents as authenticity of it is in question because it is general practice in all charity offices that new scheme framed requires signature of authority on either first page or last page of scheme but in this case it is not happened. For missing record need detail administrative inquiry to arrive any conclusion for that.

*(c) After completion of tenure of adhoc committee appointed in the year 1988 no single change report has been filed by them and suddenly Opponents claiming that one scheme is already approved and they are working as per that scheme but I found that disputed scheme is incomplete, first board of trustees and their names are missing, Clause No. 15 of that disputed scheme is completely vague and arbitrary so it is difficult to accept such scheme. To save the trust it is necessary and urgent to give democratic setup for smooth running and better administration of this trust. I relied upon one case laws filed by Applicant:- **In Bhanudas Vs Joint Charity Commissioner & others (2-07 of 2008)**, in this case Hon'ble High Court held that there is no bar to frame new scheme when already scheme is in existence.”*

6. Thus, the Assistant Charity Commissioner has reached to the conclusion that there is no scheme, which is in force, so as to modify

the same. In that view, the Assistant Charity Commissioner held that the application as contemplated under sub-section 1 of Section 50A can be entertained and thereby upheld the maintainability of applications filed by the Opponents. Thus, the order passed no way suffers from any illegality, perversity so as to call for interference in exercise of writ jurisdiction under Article 227 of Constitution of India. I am, therefore, not inclined to entertain the Petition. The Petition is dismissed. However, it is clarified that the decision to frame new scheme or to modify the scheme solely vests with Assistant Charity Commissioner. In case, the Petitioners produce the record of scheme if any framed earlier, then it will be open for the Assistant Charity Commissioner to consider the same.

7. With the above observations, the Petition stands disposed of. No order as to costs.

[V. L. ACHLIYA, J.]