

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

WRIT PETITION NO.8570 OF 2019

1. Subhash Mallikarjun Birajdar
Age : 32 years, Occ.: Business
2. Abhijit Prakash Birajdar
Age : 28 years, Occ.: Business
3. Kalyani Mallappa Birajdar
Age : 48 years, Occ.: Business
4. Sachin Shivanand Birajdar
Age : 26, Occ.: Business
5. Kedar Shivanna Birajdar
Age : 43 years, Occ.: Business.

All residing at Shelgi,
Tal. Uttar Solapur, Dist. Solapur Petitioners

Vs.

Shri. Mallikarjun Devasthan, Shelgi Respondent
Uttar Solapur, Dist. Solapur
P.T.R. No. A, 404 – Solapur,
Through its Trustee
Shri. Jagdishchandra Mallikarjun Patil
Age : Adult, Occ.: Business,
R/at : Shelgi, Tal. Uttar Solapur,
Dist. Solapur.

ALONGWITH
WRIT PETITION NO.8571 OF 2019

1. Shivshankar Revanshiddh Birajdar
Age : 53 years, Occ.: Business

2. Prakash Sangappa Birajdar
Age : 56 years, Occ.: Business

Both residing at Shelgi,
Tal. Uttar Solapur, Dist. Solapur Petitioners

Vs.

Shri. Mallikarjun Devasthan, Shelgi Respondent
Uttar Solapur, Dist. Solapur
P.T.R. No. A, 404 – Solapur,
Through its Trustee
Shri. Jagdishchandra Mallikarjun Patil
Age : Adult, Occ.: Business,
R/at : Shelgi, Tal. Uttar Solapur,
Dist. Solapur.

Mr. Sandesh Patil i/by Anusha Amin for Petitioners in both Petitions.

Mr. A.V. Anturkar, Senior Advocate a/w Mr. Vishwanath Patil i/by Kewal Ahya for Respondent in both Petitions.

Coram : NITIN W. SAMBRE, J.

Date : 27th August, 2019

JUDGMENT :

1. By consent, both these petitions are heard and finally disposed of by this common judgment. Both these petitions are arising

out of the orders dated 18th April, 2018 passed by the Assistant Charity Commissioner, Solapur Region, Solapur in Inquiry Application No. 1177 of 2017, in exercise of powers under Section 22 of the Maharashtra Public Trust Act and the orders dated 9th July, 2019 passed by the Joint Charity Commissioner, Pune Region, Pune in Appeal No.79 of 2018 **and** orders dated 9th July 2019 passed by learned Joint Charity Commissioner, Pune in Revision Application No. 61 of 2017 and the judgment and order dated 15th March, 2016 passed by the learned Deputy Charity Commissioner, Solapur in respect of Change Report No. 899 of 2015, under Section 70 of the Maharashtra Public Trusts Act, 1950.

2. In both these petitions, the facts are necessary for deciding the issue are as under :

A Public Trust namely Mallikarjun Maroti and Ganapati Devasthan, Shelgi bearing registration No. A-404 at Solapur was initially managed by trustee, Mr. Mallikarjun Mahalingappa Patil, who died in the year 1992.

A mode of succession was, the elder son of the said trustee would inherit trusteeship by succession. Ashok Mallikarjun Patil, elder son of deceased Mallikarjun succeeded as a trustee, who expired on 16th February, 1997. Younger brother of Ashok i.e. Jagdish initiated Change Report proceedings under Section 22 of the Bombay Public Trust Act being Change Report No.899 of 2015 claiming that after death of Ashok, other three brothers have consented for his succession as trusteeship.

3. The said proceedings were initiated almost after a period of 17 years, which the Deputy Charity Commissioner, Solapur has allowed vide impugned order dated 15th March, 2016.

4. It is worth to clarify that application, Change Report 899 of 2015 was moved for addition of name of Jagdishchandra Patil, which was accepted by the order dated 15th March, 2016 by Deputy Charity Commissioner and revision bearing Revision No. 61 of 2017 against the same was preferred before the Joint Charity Commissioner, Pune, which is decided on 9th July, 2019. As such, Writ Petition No. 8570 of 2019.

5. In Writ Petition No. 8571 of 2019 after co-option of four trustees, Change Report No. 1177 of 2017 was accepted by Assistant Charity Commissioner, Solapur on 18th April, 2018, which order was confirmed by Joint Charity Commissioner, Pune on 9th July, 2019 in Appeal No. 79 of 2018. As such, Writ Petition No. 8571 of 2019.

6. In the aforesaid background, the contention of Shri. Anturkar, learned Senior Counsel appearing for the Petitioners are, the Change Report proceedings, which are accepted vide impugned order dated 15th March, 2016 are contrary to very Scheme of Section 22 of Bombay Public Trust Act. According to him, first Proviso to Section 22, which Change Report proceedings provided that the Deputy Charity Commissioner can extend a period of 90 days for reporting the change on being satisfied, provided the sufficient cause as cited for not reporting the change within a stipulated period of 90 days from the date of occurrence of such change. According to Shri. Anturkar, the change in the case in hand has occurred after the death of recorded trustee namely Ashok Patil, who died on 16th February, 1997, whereas

the Change Report proceedings are initiated on 19th June, 2017 i.e. almost after a period of 20 years. Shri. Anturkar, as such would urge that without recording any finding on the issue of delay condonation, the Assistant Charity Commissioner has proceeded to pass order, contrary to the Proviso to Section 22 of the Act. He would further urge that even if the Revision Application being 61 of 2017 was dismissed, that by itself will not give liberty to the learned Joint Charity Commissioner to dismiss the appeal without considering the said issue. He would categorically invite my attention on the order of Charity Commissioner passed on 29th January, 2019, produced on record at page 38 in Writ Petition No. 8570 of 2019, so as to canvass that the issue of not deciding the plea of delay condonation has been overlooked by the authorities below.

7. Learned Senior Counsel, Shri. Anturkar would further urge that whether the Assistant/Deputy Charity Commissioner is a Court, has power to condone the delay, which is required to be appreciated.

8. While countering the aforesaid submissions, the learned counsel for the respondent while inviting attention of this Court to the

judgment in the matter of K. Shamrao and Others Vs. Assistant Charity Commissioner, reported in (2003) 3 Supreme Court Cases, 563 would urge that the Assistant Charity Commissioner has almost all the powers which an ordinary Civil Court has and that being so it has power of condoning the delay. He would further urge that even if there is no specific order on condonation of delay, it has to be presumed that the delay of more than 17 years was condoned. As such he sought dismissal of both the petitions.

9. Considered rival submissions.

10. The fact remains that there was no scheme holding the field governing the administration of the public trust in question.

11. This Court appreciate the mode of succession by the founder trustee. The fact remains that once the elder son Ashok, expired on 16th February, 1997, who was recorded trustee. While considering the plea under Section 22 at the behest of the respondent trustee namely Jagdishchandra Patil, it was expected of the Deputy/ Assistant Charity Commissioner to conduct the proceedings in accordance with the provisions of Section 22 of the Maharashtra Public

Trusts Act particularly the Proviso to Sub-Section 1, which confers power on the Deputy/Assistant Charity Commissioner to order on condonation of delay, provided sufficient cause is demonstrated. Admittedly, the Assistant Charity Commissioner has not passed any order on the said issue of inordinate delay of 17 years. Apart from above, when the factum of delay was brought to the notice of the Joint Charity Commissioner, the Joint Charity Commissioner has given complete go-bye to the Proviso to Section 22 of the Act and has presumed .must have condoned the delay, which in fact is not the factual position. That being so, the order of accepting Change Report, which is impugned in the present petitions, so also the order of Joint Charity Commissioner in an appeal in confirming the Change Report proceedings, in my opinion has rendered illegal.

12. As a consequences of above, since the order of accepting Change Report is not sustainable having been delivered contrary to Section 22 of the Bombay Public Trusts Act, the subsequent Act of nominating the trustee by the respondent-trustee Jagdishchandra has also rendered illegal.

13. In the aforesaid background, both these petitions needs to be allowed in terms of prayer clause (a), which reads thus :

WRIT PETITION NO.8570 OF 2019 :

“(a) By an appropriate writ, order or direction of this Hon’ble Court, the judgment and order dated 09/07/2019 passed by learned Joint Charity Commissioner, Pune, Region Pune in Revision Application No. 61 of 2017 and the judgment and order dated 15/03/2018 passed by the learned Deputy Charity Commissioner, Solapur in respect of Change Report 899 of 2015 be quashed and set aside.”

WRIT PETITION NO. 8571 OF 2019 :

“(a) By an appropriate writ, direction and order of this Hon’ble Court, the judgment and order dated 09/07/2019 passed by learned Joint Charity Commissioner, Pune, Region Pune in Appeal No. 79 of 2018 and the judgment and order dated 18/04/2018 passed by the learned Assistant Charity Commissioner, Solapur in respect of Change Report 1177 of 2017 be quashed and set aside.”

14. As such, Change Report proceedings being Enquiry Application No. 1177 of 2017 and 899 of 2015 stood restored to the file of respective Authorities. Both these proceedings are clubbed together and directed to be decided by the Deputy Charity Commissioner, Solapur Region, Solapur afresh.

15. However, in the interest of better administration of the Trust, the position as is existing today i.e. Jagdishchandra and his nominated trustees, who are administering the trust shall be maintained. The respondents, whose names are already included in Schedule-I shall continue to administer the Trust in accordance with law. Hearing of the proceedings is expedited.

16. The Petitions are allowed.

(NITIN W. SAMBRE, J.)