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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2224 OF 2018

1). Vijay Vasudev Rane,)
Age 61 years, Retired from service)
Building No.82, Room No.2442,)
Pant Nagar, Ghatkopar (East))
Mumbai – 400 075.)
)
2). Vilas Arjun Mayekar,)
Age 56 years, Business)
Building No.06/A-3,Dhruvatara CHS)
Pant Nagar, Ghatkopar (East))
Mumbai – 400 075.)
)
3). Vinesh Shivaji Bhondivale,)
Age 48 years, Business)
103, Budg. No.05/A, Rajhans Bhavan)
Pant Nagar, Ghatkopar (East))
Mumbai – 400 075.)
)
4). Pradeep N. Vengurlekar,)
Age 61 Years, Business)
503/05, A, Rajhans Bhavan)
Pant Nagar, Ghatkopar (East))
Mumbai – 400 075.)
)
5). Jagdeep Vasudev Rane,)
Age 49 years, Business,)
Building No.10/287, Shivneri Chowk,)
Pant Nagar, Ghatkopar (East))
Mumbai – 400 075.)
) ...Petitioners

….Versus....

1). Shashikant Bhaskar Nirgudkar)
10/281, Shivneri CHS)
Sant Dnyaneshwar Marg,)
Ghatkopar (East))

2). Charity Commissioner,
Maharashtra State, Office of the
Charity Commissioner,
Maharashtra State, Mumbai,
3rd Floor, 83, Dr.Annine Besant Road,
Worli, Mumbai – 400 018.

3). Joint Charity Commissioner,
Greater Mumbai Region, Mumbai,
Office of the Charity
Commissioner,Maharashtra State,
Mumbai, 3rd Floor, 83,
Dr.Annine Besant Road,
Worli, Mumbai – 400 018. ...Respondents

Mr.H.G. Dharmadhikari with Ms.Minal S. Kanade for the Petitioners.

Mr.Manish Upadhye, A.G.P. for the Respondent Nos.2 and 3.

CORAM : R.D. DHANUKA, J.
DATE : 25TH JULY, 2019.

ORAL JUDGMENT :-

1. By this petition filed under Article 226 of the Constitution of India, the petitioners have impugned the order dated 25th September, 2017 passed by the Joint Charity Commissioner, Greater Mumbai, Region Mumbai dismissing the appeal filed by the petitioners under section 70 of the Maharashtra Public Trusts Act, 1950.

2. Learned counsel appearing for the petitioners states that the responded no.1 is served. Statement is accepted. None appeared for the responded no.1 when the matter was called out. No affidavit in reply has been filed.

3. This petition is filed by the members of Ganesh Sansthan Trust registered under the provisions of the Maharashtra Public Trusts Act, 1950 (for short "the MPT Act"). The petitioners had filed Change Report No.2546 of 2012 reporting the election of the managing committee held in the meeting held on 13th March, 2012 within the stipulated period of 90 days before the Assistant Charity Commissioner. The responded no.1 also filed Change Report Nos.1625 of 2013 and 193 of 2013 after 13 months from the date of the meeting which which held on 13th March, 2012. The petitioners raised an issue of limitation before the Assistant Charity Commissioner on the ground that the learned Assistant Charity Commissioner did not have power to condone delay in filing the change report under section 22 of the MPT Act. Learned Assistant Charity Commissioner passed an order on 23rd January, 2017 thereby condoning delay of 10 months in filing the change report under section 22 of the MPT Act and rejected the contentions raised by the petitioners raising a plea of limitation.

4. Being aggrieved by the said order dated 23rd January, 2017, the petitioners preferred an appeal before the learned Joint Charity Commissioner bearing No.92 of 2017. By an order dated 25th September, 2017, learned Joint Charity Commissioner dismissed the said appeal preferred by the petitioners.

5. Mr.Dharmadhikari, learned counsel appearing for the petitioners invited my attention to the annexures to the writ petition, including the application filed by the responded no.1 for condonation of delay, the impugned orders passed by the two authorities below and would submit that admittedly in this case, there was delay of 10 months in filing the change report by the responded no.1. He strongly placed reliance on section 22(1) of the MPT Act and would submit that the change report was required to be filed within 90 days from the date of occurrence of such change. He submits that the said change report was admittedly not filed within 90 days from the date of occurrence by the responded no.1.

6. It is submitted that a proviso was inserted to section 22(1) of the MPT Act by Maharashtra Act 55 of 2017 dated 1st September, 2017 with effect from 10th October, 2017 empowering the Deputy Registrar to extend the period for recording the change on being satisfied that there was sufficient cause for not reporting the change within the stipulated period subject to payment of costs by reporting trustee which shall be credited to the Public Trust Administrative Fund. He submits that since the Maharashtra Public Trusts Act, 1950 is a self-contained Code and there being no provisions for condonation of delay in filing the change report under section 22, learned Assistant Charity Commissioner could not have applied

general law of limitation while extending the period of limitation. In support of this submission, learned counsel strongly placed reliance on the judgment of the Supreme Court in case ***Singh Enterprises vs. Commissioner of C.Ex., Jamshedpur, 2008 (221) E.L.T. 163 (S.C.)***.

7. It is submitted by the learned counsel that admittedly the change report was filed by the respondent no.1 on 9th April, 2013 though the meeting was held on 13th March, 2012. The said application was admittedly filed before amendment to section 22(1) of the MCS Act which came into effect from 10th October, 2017. When the learned Assistant Charity Commissioner allowed the application for condonation of delay, the said proviso was not inserted in section 22(1) of the MCS Act.

8. Learned A.G.P. for the respondent nos.2 and 3 supported the findings recorded by the two authorities below and relied upon the judgment of this Court in case of ***B.J. Wahane & Anr. vs. Kamlesh Gangaram Kanoje, 1997(2) Mh.L.J. 158*** and in particular paragraphs 11, 12 and 15. He submits that the authorities below have rightly exercised general law of limitation in view of there being no provision for condonation of delay specifically prescribed under section 22(1) of the MCS Act or under any other provision of the said Act.

9. Mr.Dharmadhikari, learned counsel for the petitioners in rejoinder submits that the judgment of this Court in case of ***B.J. Wahane & Anr.*** (supra) was pronounced prior to the judgment of the Supreme Court in case of ***Om Prakash vs. Ashwini Kumar Bassi, 2010 (258) E.L.T. 5 (S.C)*** taking a different view and thus would not assist the case of the respondents.

10. A perusal of the record indicates that the meeting of the members was held on 13th March, 2012. The petitioners have already filed a change report within a period of 90 days on 1st June, 2012. The respondent no.1 however filed the change report only on 9th April, 2013 i.e. after delay of more than 10 months. The petitioners had specifically raised an issue of limitation before the learned Assistant Charity Commissioner and had relied upon several judgments in respect of the plea that the learned Assistant Charity Commissioner did not have power to condone delay under section 22 (1) of the MPT Act or any other provisions of law.

11. Learned Assistant Charity Commissioner in the said order dated 23rd January, 2013 held that if the change is not reported under section 22(1) of the said Act within 90 days, then it would be contravention of duty and the same is punishable under section 66 of the MPT Act. If however, after 90 days if any person report the change then it has to be inquired according to section 22(3) of the

MPT Act. Learned Assistant Commissioner did not follow the judgment of the Supreme Court and several other judgments relied upon by the petitioners holding that in absence of any power to condone delay and more particularly when the Act is self-contained for, delay cannot be condoned in absence of no provision for condonation of delay.

12. Learned Joint Charity Commissioner also totally overlooked the principles of law laid down by the Supreme Court in case of ***Omprakash*** (supra) and has rejected the appeal preferred by the petitioners.

13. It is not in dispute that the proviso was inserted in section 22(1) of the MPT Act empowering the Deputy or Assistant Charity Commissioner to extend the period of 90 days for reporting the change on being satisfied that there was a sufficient cause for not reporting the change within the stipulated period subject to payment of costs by the reporting trustee, which shall be credited to the Public Trust Administration Fund. The said proviso was inserted only with effect from 10th October, 2017 and did not apply with retrospective effect. The application for condonation of delay as well as change report having been filed much prior to 10th October, 2017 thus were not governed by the proviso to section section 22 (1) inserted with effect from 10th October, 2017.

14. In my view, the Maharashtra Public Trusts Act, 1950 being a self-contained Code and in view of there being no provision of condonation of delay in filing the change report prior to 10th October, 2017, learned Assistant Commissioner could not have exercised the powers under general limitation law for condoning delay. The Supreme Court in case of ***Om Prakash*** (supra) has held that the authorities created by statute cannot apply Limitation Act, 1963 unless empowered by that statute.

15. In my view since the period of limitation of 90 days is specifically prescribed under section 22 (1) for filing the change report, the provision being silent for condonation of delay and the period of 90 days being mandatory, the learned Assistant Charity could not have applied the general law of limitation to such application for condonation of delay.

16. A perusal of the statement of objects and reasons of L.A. Bill No.LIX of 2017 indicates that the said provision was inserted in section 22(1) to make an enabling provision to allow the extension of period of 90 days in reporting change by adding a proviso to sub-section (1) of section 22. The Legislative intent is thus clear that prior to the date of insertion of such provision to section 22(1) with effect from 10th October, 2017, there was no such power of condonation of delay in filing the change report. The said proviso is not applicable

with retrospective effect.

17. Insofar as the judgment of this Court in case of ***B.J. Wahane & Anr.*** (supra) relied upon by the learned A.G.P. is concerned, the said judgment delivered by this Court was without adverting to several judgments of the Supreme Court and this Court taking a different view. The amendment to section 22(1) by inserting a proviso with effect from 10th October, 2017 read with objects and reasons itself would indicate that prior to the date of the said amendment, there was no such power granted in the authority to condone delay in filing the change report. Be that as it may, in view of the judgment of the Supreme Court in case of ***Om Prakash*** (supra), the judgment of this Court in case of ***B.J. Wahane & Anr.*** (supra) taking a different view prior to the judgment of Supreme Court would not assist the case of the respondents. In my view both the orders passed by the authorities below are thus *ex-facie* contrary to section 22(1) of the MPT Act and are without jurisdiction. Both the authorities have exceeded their jurisdiction by condoning delay which power they did not have under the provisions of the MPT Act.

18. I therefore, pass the following order :-

a). The impugned order dated 25th September, 2017 passed by the respondent no.3 is quashed and set aside. Appeal No.92 of 2017 filed by the petitioners is allowed. Application for condonation of delay filed by the respondent no.1 on 21st September, 2013 is dismissed.

b). In view of dismissal of the application for condonation of delay filed by the respondent no.1, Change Report No.1625 of 2013, which was beyond the period of limitation prescribed under section 22(1) of the Maharashtra Public Trusts Act, 1950 also stands dismissed.

c). Rule is made absolute on aforesaid terms. There shall be no order as to costs.

(R.D. DHANUKA, J.)