

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2696/2019

(DILIP VASANTRAO SOMTHANE & OTHERS **VERSUS** VISHAL DEVIASJI BHOGE & OTHERS)
 WITH

WRIT PETITION NO. 2697/2019

(DILIP VASANTRAO SOMTHANE & OTHERS **VERSUS** PREMA ANANDRAO KUMBHALKAR & OTHERS)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri S.D. Abhyankar, counsel for petitioners.
 Shri M.Dhandekar, counsel for R-1 to 3 in WP No.2697/19.
 Shri A.S. Deshpande, counsel for respondents in WP No.2696/19.

CORAM : A.S. CHANDURKAR, J.

DATE : MAY 03, 2019.

RULE. Heard finally with consent of counsel for parties.

Service on unserved respondents is dispensed with considering the nature of order proposed to be passed.

In both these writ petitions, the order passed by the learned Joint Charity Commissioner allowing the stay application as filed by the concerned respondents herein and staying the effect and operation of the order dated 18.08.2018 passed in the Scheme Proceedings is under challenge.

By the order dated 18.08.2018, the learned Assistant Charity Commissioner was pleased to formulate a scheme alongwith appointment of first board of trustees to manage the affairs of Late Tulsabai Bahu-uddeshiya Shikshan Sanstha, Tumsar. Said adjudication was challenged by filing a revision application before the learned Joint Charity Commissioner. During pendency of that revision application, by the impugned order, the effect and operation of the adjudication in the Scheme Proceedings had been stayed.

Shri S.D. Abhyankar, learned counsel for the petitioners submitted that in view of the law as laid down in *Shailesh J. Padh Versus Assistant Charity Commissioner, Gr.Mumbai & Others* [2016(3) Mh.L.J. 427], it was not permissible for the learned Joint Charity Commissioner to have stayed the adjudication in the Scheme Proceedings only on the ground that earlier change reports were pending. According to him, this Court has held otherwise and hence, the impugned order was liable to be set aside.

Shri A.S. Deshpande and Shri M.M. Dhandekar, learned counsel for the contesting respondents support the impugned order on the ground that as a *prima-facie* case was made out, the execution of the order passed in the Scheme Proceedings has been stayed. They seek to refer to the merits of the adjudication by the learned Assistant Charity Commissioner in support of their submission.

On hearing the learned counsel for the parties, it is seen that the learned Joint Charity Commissioner has given importance to pendency of earlier change reports. It has been therefore observed that without touching the merits of the proceedings a *prima-facie* case was made out. In the light of the law as laid down in *Shailesh J. Padh* (supra) that change report proceedings and scheme application are independent proceedings, it is found that fresh consideration of the application for stay by the learned Joint Charity Commissioner is warranted.

In that view of the matter, the order dated 11.02.2019 passed by the learned Joint Charity Commissioner is set aside. The application is restored before the learned Joint Charity Commissioner for fresh adjudication in accordance with law. The parties shall appear before the learned Joint Charity Commissioner on 08.05.2019. The said application be decided expeditiously on its own merits in accordance with law.

Rule is made absolute in aforesaid terms. No costs.

JUDGE

APTE