

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No. 2507/2016
(Social Organization for Upliftment of Rural Culture, Environment and Education (SOURCE) and another .vs. Arvind Krushnarao Mahakalkar and one)

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

Court's or Judge's orders.

Mr. M.M. Dhandekar, Advocate for Petitioner.
Mr. S.S. Joshi, Advocate for Respondent No.1.
Mr. K.L. Dharmadhikari, AGP for Respondent No.2.

CORAM : Manish Pitale, J.
DATED : January 14, 2019.

The present writ petition is filed by the original defendants and also non-applicants before the Assistant Charity Commissioner, Nagpur, challenging judgment and order dated 05.01.2016 passed by the Assistant Charity Commissioner, Nagpur, whereby application filed by the respondent no.1 i.e. the original plaintiff/applicant before the Assistant Charity Commissioner for permission to file suit under Section 51 of the Maharashtra Public Trusts Act, 1950, has been allowed.

2. It is the contention raised on behalf of the petitioners herein that while passing the impugned judgment and order and granting permission to the respondent no.1 to file suit against the petitioners, the Assistant Charity Commissioner, Nagpur, which is also the defendant in the suit filed by the respondent no.1 herein, has made certain observations on the merits of

the contentions raised by the petitioners as regards the dispute between the parties. According to the learned counsel for the petitioners, this creates a serious difficulty for the petitioners to raise their defence in the suit that has been filed by the respondent no.1, consequent to the impugned order granting permission to him to file the suit.

3. Without going into the merits of the contentions raised by the petitioners in the present writ petition, the difficulty expressed on behalf of the petitioners can be taken care of by directing that the Civil Court before whom the suit filed by the respondent no.1 is pending, shall not be influenced by the observations made by the Assistant Charity Commissioner, Nagpur, in the impugned judgment and order dated 05.01.2016. In any case, the observations made on merits, if any, by the Assistant Charity Commissioner, Nagpur, in the impugned judgment and order could have been only of a *prima facie* nature, only to decide the question as to whether the application for permission to file the suit, filed by the respondent no.1 deserves to be granted or not.

4. Therefore, this writ petition is disposed of by holding that the observations on merits, if any, made by the Assistant Charity Commissioner, Nagpur, in the impugned judgment and order, are only *prima facie* in nature and that in any case, the Court of Civil Judge, Senior Division, Bhandara, before whom the Special Suit No.9 of 2016 filed by the respondent no.1 is pending,

shall not be influenced by the observations made in the impugned judgment and order dated 05.01.2016.

5. Writ petition is disposed of.

JUDGE

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