

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

CONTEMPT PETITION NO.238/2017

Prabhakar Waktuji Sapate
Vs.
Hariram Atramji Warkhade and others

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

Court's or Judge's Orders.

Shri V.N.Morande, Advocate for petitioner.
Shri A.P.Thakre, Advocate for respondent nos. 1 to 11.
Shri V.A.Thakre, Assistant Government Pleader for respondent no.12.

CORAM : A.S.CHANDURKAR, J.
DATED : July 23, 2019.

It is the grievance of the petitioner that the respondents are guilty of having breached direction no.6 in the order dated 31.12.2015 issued by the learned Assistant Charity Commissioner. While deciding the proceeding under Section 22 of the Maharashtra Public Trusts Act, 1950 (for short, the said Act) the learned Assistant Charity Commissioner rejected three change reports and issued further direction to hold fresh elections within a period of 30 days. Further direction to file a change report pursuant to such elections also came to be issued. Till the proposed change report was to be filed, the Body on Schedule - 1 was directed to manage the affairs of the Trust in accordance with the bye-laws of the Trust.

According to the petitioner, this order was challenged initially before the learned Joint Charity Commissioner, who did not accept that challenge. The said order was thereafter challenge in Writ Petition No. 497/2016 (*Prabhakar W.Sapate Vs. Narayan B.Dhakate and others*) and this Court while maintaining the direction to hold fresh elections had observed that even though the order dated 31.12.2015 had been passed

without hearing the petitioner, it was not illegal. If there was any further occasion the validity of that order could be considered. It is the grievance of the petitioner that in violation of those directions, the learned Assistant Charity Commissioner on 09.03.2017 permit opening of bank account and operation of Trust's account which resulted in breach of the order dated 31.12.2015. It is thus submitted that due action deserves to be taken against the respondents.

Shri A.P.Thakre, learned counsel for the respondent nos. 1 to 11 and Shri V.A.Thakre, learned Assistant Government Pleader for respondent no.12 submitted that the directions issued are in exercise of powers under Section 41 A of the said Act and hence the same could not constitute an order for the purposes of treating its breach as civil contempt under Section 2(b) of the Contempt of Courts Act, 1971. Reference was made to the decision in ***Budhasao Vs. V.G.Katgaye, 2013(2) Mh.L.J. 220*** in that regard. It was further submitted that the said direction was never challenged by the petitioner and the challenge raised was only to the direction for holding elections. It is thus submitted that there is no breach committed whatsoever.

Heard the learned counsel for the parties and perused the order dated 31.12.2015. While rejecting the change reports, the learned Assistant Charity Commissioner directed the recorded Body to conduct the affairs of the Trust till the change report as directed was decided. This direction is pursuant to the powers under Section 41-A of the said Act. In ***Vanmala Vs. Deputy Charity Commissioner, 2012(3) Mh.L.J. 594***, it has been held that such directions could be issued while exercising the powers under Section 41-A of the said Act. In *Budhasao* (supra) it has been held that against the directions issued under Section 41-A of the said Act which are by virtue of exercise of administrative powers, the provisions of the Contempt of Courts Act, 1971 would not be attracted.

As it is found that direction no.6 was issued in exercise of

jurisdiction conferred by Section 41-A of the said Act, the present contempt petition is not liable to be entertained. It is open for the petitioner to agitate his grievance if there is breach of any direction issued under Section 41-A of the said Act in accordance with law. The proceedings are accordingly disposed of.

JUDGE

Andurkar.