

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

WRIT PETITION NO.4621/2017

Manoj Shyamrao Wadibhasme Vs. Shri Ramesh Dhondbaji Nagdeve

AND

WRIT PETITION NO.3004/2019

Ramesh Dhondbaji Nagdeve Vs. Sau.Saroj w/o Anil Mate and Another

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

Court's or Judge's Orders.

Shri A.C.Dharmadhikari, Advocate for petitioner (in WP No.4621/17).
Shri Amol Mardikar, Advocate, for respondent in W.P.No.4621/17 and
for petitioner in W.P. No.3004/2019.
Ms Pallavi Mahashabde, Advocate for respondent no.1 in W.P.No.3004/19

CORAM : A.S.CHANDURKAR, J.

DATED : DECEMBER 10, 2019.

Both these writ petitions are being decided by this common order after hearing learned counsel for the parties.

In Writ Petition No. 4621/2017 a challenge has been raised to the order dated 16.06.2017 by which the application preferred by the respondent objector to permit him to put-forth his contentions in change report proceedings bearing No. 129 of 2017 is under challenge. It is the case of the petitioner that the respondent was not a person interested in the affairs of the public trust. The said respondent had been removed from the trust in the year 2005 which removal had been subsequently affirmed by the Authorities under Maharashtra Public Trusts Act, 1950 (for short, 'the said Act'). It is therefore submitted that the learned Assistant Charity Commissioner was not justified in permitting the respondent to raise objections by participating in the change report proceedings.

On behalf of the respondent, it is submitted that the learned Assistant Charity Commissioner was justified in permitting the respondent to raise an objection to the said change report. He submitted that against the adjudication in the earlier Change Report No.827/2005, the said respondent had filed M.J.C.No.59/2016 which was entertained and decided on merits by the District Judge. He further submitted that the respondent had also initiated other proceedings in the context of pending change reports. As he was the Joint Secretary since the year 1989, it could not be said that he was a stranger to the aforesaid litigation. Hence the impugned order permitting the respondent to participate in the change report proceedings did not call for any interference.

In Writ Petition No. 3004/2019 the order passed by the learned Judge of the District Court in M.J.C.No.59/2016 dated 13.02.2019 is under challenge. As a result of that order the judgment passed by the learned Joint Charity Commissioner on 09.06.2016 in Appeal No. 222/2015 has been confirmed and the change report bearing No.827/2005 decided by the order dated 22.09.2015 passed by the learned Assistant Charity Commissioner stands confirmed. By the said change report the names of the outgoing trustees were deleted and in their place new members who were elected on 30.08.2005 were inserted. The petitioner raised an objection in those proceedings to submit that no notices were issued to him prior to the meeting in which the said change took place.

Shri Amol Mardikar, learned counsel for the petitioner in Writ Petition No. 3004/2019 submitted that the Authorities without considering the objection raised by the petitioner that the meeting held on 30.08.2005 was without issuing any notice to the petitioner allowed the change report. The acknowledgment placed on record by the reporting trustees did not bear the

signature of the petitioner and by relying upon the report of handwriting expert this fact was sought to be substantiated. Moreover, the resolution on the basis of which the change so proposed was not passed by the requisite majority. Ignoring these aspects the said change report stood accepted. The impugned orders therefore were liable to be set aside.

Ms Pallavi Mahashabde, learned counsel for the respondent no.1 on the other hand submitted that after considering the entire evidence on record the learned Assistant Charity Commissioner had accepted the change report. Though the petitioner had moved an application seeking permission to examine the handwriting expert before the learned Assistant Charity Commissioner that application was rejected by the order dated 14.08.2014. The said order was challenged by the petitioner in Writ Petition No.4778/2014 and this Court by its judgment dated 16.06.2015 dismissed the same. It was therefore not permissible for the petitioner to re-agitate that aspect. Since both the Authorities as well as the Court had found that the change as reported was legal, there was no necessity to interfere with the impugned order.

In Writ Petition No. 4621/2017 Shri A.C.Dharmadhikari, learned counsel for the petitioner submitted that the respondent has been permitted to intervene in the proceedings without considering the fact whether he was a person interested or not. Since the respondent was already removed as a member he could not be permitted to be a person interested to enable him to participate in the subsequent change report proceedings.

On the other hand, Shri Amol Mardikar, learned counsel for the respondent supported the impugned order by submitting that since 1989 the respondent was concerned with the affairs of the trust and had been litigating for its rights, he was

rightly permitted to intervene in the proceedings.

After hearing the learned counsel for the parties and after giving due consideration to the respective submissions, it is found that the orders impugned in both the writ petitions do not call for any interference. Insofar as the order passed by the learned Assistant Charity Commissioner on 16.06.2017 permitting the respondent in W.P.No.4621/2017 to intervene in the proceedings, it is found that the respondent has filed various proceedings and was a party to earlier change reports. It cannot be said that he is a stranger who has no concern with the affairs of the trust. The respondent infact had also filed an appeal challenging the acceptance of Change Report No.827/2005 which adjudication is the subject matter of challenge in Writ Petition No.3004/2019. In the light of the provisions of Section 73 A of the said Act and in view of the material on record, I do not find any reason to interfere with the order dated 16.06.2017 passed by the learned Assistant Charity Commissioner in Enquiry Case No.129/2017.

Writ Petition No. 4621/2017 therefore stands dismissed.

As regards the challenge to the acceptance of Change Report No.827/2005 it has been found that the election held on 30.08.2005 was valid and the proposed change occurred in view of those elections. As noted above, the petitioner sought to urge that notice of that meeting was not duly served on the petitioner and therefore he got the relevant documents examined by an handwriting expert. His application to examine that handwriting expert was rejected on 01.09.2014 and the challenge to that order in Writ Petition No. 4778.2014 was not successful. It therefore not permissible now to again re-open that aspect of the matter. The learned Joint Charity Commissioner and thereafter the

learned Judge of the District court have after examining entire documentary material found that the change in question was legal and valid. Moreover, the requirement of bye-laws for passing relevant resolution was by simple majority and not by two third majority. It is after considering all these aspects that the change report as accepted has been found to be in accordance with law. I therefore do not find any scope to interfere with those orders in exercise of writ jurisdiction. Accordingly, Writ Petition No.3004/2019 is also dismissed. The parties shall bear their own costs.

JUDGE

Andurkar.