

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

WRIT PETITION NO.5404/2019

Jugalkishor S/o Chandulal Dhannawat and others

..Vs..

The Charity Commissioner of Maharashtra, Worli, Mumbai and others

AND WRIT PETITION NO.5398/2019

Subodh S/o Ratanlal Mishrikotkar and another

..Vs..

The Charity Commissioner of Maharashtra, Worli, Mumbai and others

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

Court's or Judge's orders

Shri M.R. Johrapurkar, Advocate for the petitioners.
Ms. Geeta Tiwari, A.G.P. for respondent Nos.1 & 2. ..(in both petitions)

CORAM : Z.A. HAQ, J.

DATED : 5.8.2019.

Heard.

2] These two petitions can be disposed by common order as in both these petitions, the orders passed by the District Court dismissing the appeals filed by the petitioners under Section 72(1) of the Maharashtra Public Trusts Act, 1950 (for short "the Act of 1950") are dismissed and the orders passed by the Joint Charity Commissioner condoning the delay in filing appeal under Section 70 of the Act of 1950 are maintained.

3] Change Reports under Section 22 of the Act of 1950 were filed which were accepted by the Assistant Charity Commissioner by orders dated 22nd June, 2011. Undisputedly, the respondent - Jagannath S/o Madanlal Saraf was a trustee prior to 2011.

The respondent - Jagannath Madanlal Saraf filed appeals under Section 70 of the Act of 1950 before the Joint Charity Commissioner contending that the resolutions dated 20th March, 2011 (in Writ Petition No.5404/2019) and 29th March, 2010 (in Writ Petition No.5398/2019) which showed that elections had taken place and new Executive Committee was elected, was fabricated. There was delay in filing the appeals and, therefore, respondent - Jagannath had filed applications praying for condonation of delay. By orders dated 15th December 2015, learned Joint Charity Commissioner condoned the delay in filing the appeals. These orders passed by the Joint Charity Commissioner condoning the delay were challenged by the petitioners before the District Court in appeals under Section 72(1) of the Act of 1950. By the impugned orders, these appeals are dismissed by the learned District Judge.

4] The submission made on behalf of the petitioners, in both these petitions, that the Joint Charity Commissioner committed an error by condoning the delay of about 21-22 months without there being proper explanation, *prima facie*, though appears to be appealing, on scrutiny of the matter, I find that the learned Joint Charity Commissioner has not committed any error of jurisdiction by condoning the delay and entertaining the appeals filed by the respondent - Jagannath Madanlal Saraf. Similarly, the learned District Judge has also not committed any error of jurisdiction by maintaining the orders of Joint Charity Commissioner.

5] There is another aspect. The Joint Charity Commissioner is vested with the revisional powers under Section 70A of the Act of 1950 to examine the legality and correctness of any order or finding recorded by the Deputy or Assistant Charity Commissioner, the restriction for exercise of powers under Section 70A of the Act of 1950 being that it cannot be exercised during the period for which appeal under Section 70 of the Act of 1950 can lie. Limitation for exercising power under Section 70A of the Act of 1950 is not prescribed and, therefore, it will be governed by residuary provision i.e. Article 137 of the Limitation Act, and the limitation for exercising revisional powers by the Joint Charity Commissioner shall be three years. Therefore, the legality of the orders passed by the Assistant Charity Commissioner / Deputy Charity Commissioner can be examined by the Joint Charity Commissioner even otherwise in revisional jurisdiction upto 3 years.

6] Hence, in the facts of the case, I see no reason to interfere with the exercise of discretion by the Joint Charity Commissioner which, according to me, is exercised by him judiciously.

Hence, the writ petitions are **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE