

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO.134 OF 2020  
IN  
WRIT PETITION NO.12380 OF 2016**

Human Multipurpose Development  
Education Society, Ausa,  
Tq. Ausa, Dist. Latur,  
Through its Vice-President,  
Rohidas s/o. Narayanrao Sitape,  
Age : 62 years, Occ. Pensioner,  
r/o. Railway Station Chowk,  
Latur

..Petitioner

**Vs.**

1. The State of Maharashtra,  
Through its Secretary to the  
Government of Maharashtra in  
School Education and Sports  
Department, Maharashtra State,  
Mantralaya, Mumbai – 32
2. The Deputy Director of Education,  
Latur Division, Latur,
3. The Education Officer (Secondary),  
Zilla Parishad, Latur
4. Gram Shikshan Prasarak Mandal,  
Patoda, Tq. Jalkor, Dist. Latur,  
Through its President/Secretary
5. Dr. Shivraj s/o. Vishwanathrao  
Karadkhele, Age : 65 years,  
Occ. Pensioner,  
r/o. Sharda Nagar, Latur

6. Laxmikant Gangadhar Karadkhele,  
Age : 47 years,  
Occ. Service as Headmaster,  
r/o. Rajarshi Shahu Vidyalyaya,  
Ausa, Dist. Latur.

..Respondents

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Mr.Prasad Vaidya, Advocate for applicant  
Mr.S.B.Yawalkar, AGP for respondent nos.1 to 3  
Respondent nos.5 and 6 served

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**CORAM : SUNIL P. DESHMUKH  
AND  
R.G. AVACHAT, JJ.**

**DATE : DECEMBER 07, 2020**

**ORDER (*PER R.G. AVACHAT, J.*):-**

Applicant, original petitioner in Writ Petition No.12380 of 2016, has filed this application for review of the judgment and order dated 12.06.2020 passed by this Court in Writ Petition No.12380 of 2016.

2. Heard Mr.Vaidya, learned counsel for the applicant and Mr.Yawalkar, learned AGP for respondent nos.1 to 3. Perused the documents produced on record.

3. Mr.Vaidya, learned counsel for the applicant, would submit that the Change Reports filed by the contesting

respondents have not been accepted by the Deputy/Assistant Charity Commissioner. *Status-quo ante*, therefore, needs to be restored. Respondent no.5 – Karadkhele prepared some false and bogus record to show some persons to be the members of the trust. He also prepared false record of the election. Shri.R.N.Sitape, who has filed this application on behalf of the applicant – Institute, was on duty on the day on which the meeting was shown to have been held. As such, respondent no.5 practiced fraud on the Court and the authorities concerned. The orders obtained by practicing fraud are non-est in law. The Deputy Director of Education, who accorded sanction for transfer of the school, did not give any reason as to why he had preferred to dispense with issuance of mandatory three months' notice before according sanction. According to learned counsel, a hefty amount has been received for transfer of the school. The same is evident from the allegations made in the complaint filed by respondent no.5. Learned counsel took us through a copy of the complaint in Regular Criminal Case No.545 of 2017. According to him,

permission under Section 36 of the Maharashtra Public Trust Act ("M.P.T. Act", for short) was a condition precedent for transfer of the school since the school building has also been transferred along with the transfer of management of the school. Learned counsel would further submit that respondent no.9 in Writ Petition (No.12240 of 2010), was away in Chicago. He was not present when a resolution for transfer of management of the school was moved. The resolution, however, bears his signature. The same is nothing but a fraud played on the authorities concerned. In support of his claim, learned counsel relied on the orders passed by the authorities under the M.P.T. Act in various proceedings in the nature of enquiry under the said Act. Learned counsel would further submit that the Advocate appearing for the petitioner in the Writ Petition, did not produce on record the relevant documents he is relying on in this application. He ultimately urged for review of the judgment and order dated 12.06.2020.

4. Learned AGP appearing for respondent nos.1 to 3, would, on the other hand, submit that the grounds urged by

the applicant are not the grounds on which review application could be allowed. According to him, the Court is not sitting in appeal. Almost all the points raised by the applicant have been dealt with in the judgment and order dated 12.06.2020. He, therefore, urged for rejection of the application.

5. A person considering himself aggrieved by a judgment or order can seek its review on grounds-(a) discovery of new or important matter or evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time when the judgment or order was made; (b) or on account of some mistake or error apparent on the face of the record; (c) or for any other sufficient reason.

6. We have perused the application. None of the aforesaid grounds has been averred in the application. The applicant proposes to rely on the decisions/orders of the Deputy/Assistant Charity Commissioner passed in Change Report Nos. 961 of 2003, 533 of 2010, 531 of 2010 and 532 of

2010. The orders on the aforesaid Change Reports have been made before the judgment that is sought to be reviewed, was passed. Copies of orders passed in the aforesaid Change Reports had been in possession of the applicant. Learned counsel for the applicant would submit that copies thereof had, in fact, been given to the Advocate appearing for the petitioner in Writ Petition No.12380 of 2016. According to him, Advocate for the petitioner did not produce them in the said Writ Petition.

7. We have perused the orders passed in aforesaid Change Reports. It is found that the applicant, who had reported aforesaid Change Reports, did not appear before the Assistant Charity Commissioner to prosecute those applications. As such, the Change Reports came to be dismissed for want of prosecution. Even otherwise also, in our view, the orders in the aforesaid Change Reports were not relevant to decide the Writ Petition (No.12380 of 2016). It was only Change Report No.1512 of 2000 that was relevant. It was a change indicating the contesting respondent nos. 5 and 6

herein and others, to have entered in the management of affairs of the petitioner - Institution. Said change was reported way back in 2000. The Change Report was earlier accepted by the Assistant Charity Commissioner. The change came to be reflected in the record maintained in the office of the Assistant Charity Commissioner. The persons, who were in the management of the petitioner-Institution, passed a resolution for transfer of R.S. School in favour of respondent no.4 herein. It is only nine years thereafter, the applicant herein successfully challenged said Change Report by preferring a Revision before the Deputy Charity Commissioner. By this time, about 10 years have lapsed since transfer of the management of R.S. School. A third party interest has, thus, been created.

8. We have dismissed the Writ Petition *inter alia* on the ground of having not been inclined to exercise discretion in favour of the petitioner, since Headmaster of the school had appeared before Hon'ble Minister who upheld the decision of transfer of management of the school, and submitted that the

school was safe in the hands of respondent no.4. The Headmaster of school had also appeared before this Court in the Writ Petition and made same submissions.

9. In the factual backdrop of the case, the applicant would not be justified in placing reliance on the judgment of learned single Judge of this Court in the matter of **Chembur Trombay Education Vs. D.K.Marathe and ors., 2002(3)BomCR 161**, wherein it has been observed thus :-

*"..... The enquiry postulated under [section 22](#) is only to ascertain the factum as to whether the change has occurred or not. In the event, the competent authority is satisfied that the change has not occurred in accordance with law, only then that change will have to be undone and status quo ante will have to be restored. A fortiori, resolution of the general body of the Society is sufficient to ignite the change of amendment in the constitution as well as of electing new general body for administering the affairs of the Society. The fact that the change report is pending consideration....."*

The facts of the aforesaid case would indicate that the *status-quo ante* as regards status of members of the general body of

the trust or society, was to be restored. There can be no two views about said observations. It is reiterated that in the case in hand, the management of the school has long been transferred. A third party interest has, thus, been created. The Headmaster of the school had submitted that there is a dispute between the management and it would, therefore, not be desirable to restore the status-quo ante.

10. The applicant has also produced on record attendance register to show that the applicant – Shri R.N.Sitape was on duty on 11.12.2001. Learned counsel for the applicant meant to say that on 11.12.2001, a meeting was shown to have been held, wherein applicant – R.N.Sitape was said to have been present. Here again, it is stated that this Court cannot enter into the disputed questions of fact. This document was very much available with the applicant for over years before the judgment sought to be reviewed was passed. The orders which have been passed by the Deputy/Assistant Charity Commissioner relied on by the applicant (supra) indicate that no factual aspect has been gone into. Change

Reports have not been accepted simply on the ground of having not been prosecuted.

11. As regards the submission of learned counsel for the applicant that fraud vitiates all transactions and the Judgment and order obtained by practicing fraud, is non-est, it needs no mention that a case of fraud has to be specifically pleaded and proved as well. The same has not been done in the case in hand.

12. Learned counsel for the applicant would further submit that the Deputy Education Officer did not give reason as to why he preferred to dispense with issuance of mandatory notice of three months before according his sanction to the approval to transfer of management of the school. At the cost of repetition, it is stated that said point has already been dealt with in the judgment under review.

13. So far as reliance on Section 36 of M.P.T. Act is concerned, it need to be reiterated that permission of the Charity Commissioner is required for transfer of immovable

property of the Institution and not for transfer of management of a school. Admittedly, the building which is said to have been transferred, was constructed by respondent no.5 himself. There was no material in the Writ Petition to indicate that the building belonged to the applicant - Institution and the same has been transferred without obtaining prior permission of the Charity Commissioner.

14. The contention of learned counsel that respondent no.9 in the Writ Petition (10240/2010), was away in Chicago when the resolution for transfer of management of the school was moved, has been raised first time in this application. The said respondent did not take exception for transfer of management of the school. Admittedly, he had moved a proposal for transfer of management of the school. The resolution bears his signature. By no stretch of imagination, it can be said to be an act of fraud. The contention of learned counsel that money changed hands as consideration for transfer of management of the school, has also been dealt with and answered in the judgment observing that if the allegations

are found to be true, the Education Officer may take appropriate action against the management of the school. In such case, management of the school may even be taken over by appointing an Administrator to administer affairs of the school.

15. In our view, present application for review has no merit. No case is made out for review of the judgment. Almost all the points raised in the application have been dealt with in the judgment sought to be reviewed. We still preferred to reiterate some of them herein above. Since the application lacks merit, the same deserves to be rejected.

The application is, therefore, rejected.

**[R.G. AVACHAT, J.]**

**[SUNIL P. DESHMUKH , J.]**

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