

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10285 OF 2019

1. Yateemkhana & Madrasa
Anjuman Khairul Islam, a Public
Charitable Trust, Registered under
the provisions of Maharashtra Public
Trusts Act, 1950 at Serial No.B-339,
(Bom) having its Registered office
situated at : 1st Floor, Baitul Aman
CHS Ltd., 2, Maulana Azad Road,
Nagpada Junction, Mumbai – 400 008.

2. Abu Saleh Ansari
Age 76 years, Occ.: Business,
Having its office situate at
1st Floor, Baitul Aman CHS Ltd.
Maulana Azad Road, Nagpada
Junction, Mumbai – 4000 008.

..Petitioners

vs.

1. Charity Commissioner,
Maharashtra State,
Dharmadaya Ayukta Bhavan,
Dr. A. B. Road, Worli,
Mumbai – 400 018.

2. Hussein Usman Merchant
Age 75 years, R/at.: Dreamland,
Flat No.403, Opp. Ruby Hospital,
Off. S. V. Road, Vaishalinagar,
Jogeshwari West, Mumbai – 400 102.

3. Mohammed Moghees Gohar
Age 68, R/at.: 101, Elite Apartment,
57D, Kevnipada, S. V. Road,
Jogeshwari (West),
Mumbai – 400 102.

Also At
M. M. Gohar,
1st Floor, 34/A, Kedy Shopping

Coop. Hsg. Society, 233/234,
Belasis Road, Nagpada,
Mumbai – 400 008.

...Respondents

**WITH
WRIT PETITION NO.14589 OF 2018**

1. Yateemkhana & Madrasa
Anjuman Khairul Islam, a Public
Trust bearing PTR No.B-339,
(Mumbai), through its Trustees,

1) Abu Saleh Ansari
Age 75 years, Occ.: Business,

2) Mohammed Hanif Lakdawalla
Age 56 years, Occ.Service,
Having the office of the Trust at
1st Floor, Baitul Aman C.H.S. Ltd.
Maulana Azad Road, Nagpada
Junction, Mumbai – 400 008.

...Petitioners

vs.

1. Hussein Usman Merchant,
Age 75 years, R/at.: “Dreamland”
Flat No.403, Opp. Ruby Hospital,
Off. S. V. Road, Jogeshwari (W),
Mumbai – 400 102.

2. Mohammed Moghees Gohar
Adult Indian Inhabitant,
Having his address at 34/A, 1st
Floor, K. D. Shopping Co-operative
Society Ltd., 233/234, Belasis Road,
Nagpada Junction, Mumbai – 400 008.

3. The Charity Commissioner
Maharashtra State, Presided Over by
Mr. S. G. Dighe, having its office
at A. B. Road, Worli, Mumbai – 400 018.

..Respondents

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Mr. Sagheer A. Khan with G. D. Shaikh & Parth Zaveri i/b. Judicare Law Associates, Advocate for Petitioners.

Mr. H. U. Merchant, Advocate for Respondent No.1, in person, present.

Mr. S. K. Gatlewar, Advocate for Respondent No.2 in WP No.14589/18 and for Respondent No.3 in WP No.10285/19.

Mr. Rahul S. Kadam, Advocate for Petitioner in WP No.10285/19.

Mr. S. D. Rayrikar, AGP for Respondent No.3.

Mr. A. P. Vanarase, AGP for Respondent No.1 in WP No.10285/19.

CORAM : C.V. BHADANG, J.

DATE : 22nd JANUARY, 2020

Common Order-

. Both these petitions are between the same parties and involve common question and they are being disposed of by these common order.

2. A bunch of change reports, pertaining to the petitioner Yateemkhana & Madrasa Anjuman Khairul Islam, a Public Charitable Trust, are pending before the learned Deputy Charity Commissioner at Mumbai. By an order dated 29/7/2016 in Writ Petition No.2726/2016 about 19 change reports were clubbed together and the Deputy Charity Commissioner, to be nominated by the Charity Commissioner, Mumbai, was directed to dispose of said change reports as expeditiously as possible and within a period of one year from the date of such nomination. By yet another order dated 7/3/2017 in Writ Petition No.2385/2017 again the Dy. Charity Commissioner, to be nominated by the Charity Commissioner, has been directed to dispose of the change reports within a period of one year from such nomination. The change reports are still pending. For the present, it is not necessary to go into the reasons thereof, although the parties are making allegations and counter

allegations attributing the pendency of the change reports to each other.

3. The respondent Hussein Merchant, filed an application No.410/2017 for transfer of the said change reports from the file of learned Dy. Charity Commissioner (Presided Over by Mrs. Joshi Khandelwal) to one another Deputy Charity Commissioner or Assistant Charity Commissioner. Yet another respondent Mohammed Gohar filed Application No.533/2017 seeking similar relief on the ground that they have apprehension that they will not get a fair trial at the hands of concerned Dy. Charity Commissioner.

4. The learned Charity Commissioner by common judgment and order dated 24/1/2018 partly allowed both these applications and the change reports were withdrawn from the file of learned Dy. Charity Commissioner and transferred to the file of Assistant Charity Commissioner (Shri R. S. Pere) for disposal according to law.

5. Perusal of the said order reveals that the Charity Commissioner proceeded on a consent given by the parties for such transfer. It may be mentioned that at the relevant time, Advocate Mr. I. P. Mishra was appearing for the present petitioner (the respondent before the learned Charity Commissioner) .

6. The respondent Hussein Merchant filed MA No.136/2018 for recall of the order dated 24/1/2018, on the ground that there was no such consent for transfer of the change reports as recorded in the said order.

7. Learned Charity Commissioner by an order dated 10/4/2018 has dismissed the said application for recall, mainly on the ground that the change reports were already transferred to the other Assistant Charity Commissioner. Both these orders i.e. dated 24/1/2018 and 10/4/2018 are subject matter of challenge in Writ Petition No.14589/18.

8. It appears that the respondent Hussein Merchant filed yet another application being Application No.530/2019 for transfer which has been allowed by a detailed order dated 14/8/2019 which is subject matter of challenge in Writ Petition No.10285/2019.

9. I have heard learned counsel for the parties. Perused record.

10. The principal contention on behalf of the petitioners Trust is that there was no consent given for transfer of the change reports as is wrongly recorded in the order dated 24/1/2018. Learned counsel for the petitioners strenuously urged that in such circumstances, the Charity Commissioner ought to have recalled the order dated 24/1/2018 and the refusal to do so by order dated 10/4/2018 is not legal and proper. Learned counsel submitted that transfer of a matter has serious consequences and it is a stigma on the Judicial Officer from whose file such transfer is sought and is granted and therefore such transfer application cannot be legally allowed. Learned counsel was at pains to point out that it is the private respondents, who are responsible for delay in disposal of the change reports and they cannot take benefit of their own wrong. It is next submitted that earlier the then Charity Commissioner by an order dated 30/7/2017 in Misc. Application No.183/2017 had refused to

grant such prayer and therefore it was not open for the successor to have granted such transfer.

11. The respondent Hussein Merchant who appears in person and the learned counsel for the respondent Mohd. Gohar have supported the impugned order. It is submitted that the circumstances on record are sufficient to harbour a reasonable apprehension that the respondents shall not get a fair trial at the hands of the concerned Presiding Officer. There were certain submissions tried to be made on merits of the change reports which cannot be strictly germane to decide the issue of transfer.

12. I have carefully considered the rival contentions and the submissions made. At the outset, it is necessary to note that while granting the application for transfer, the Court has not to record a finding that indeed the Judge or the Presiding Officer, from whose file the matter is transferred, is indeed biased. The only consideration is whether there is sufficient material on the basis of which a litigant can genuinely harbour an apprehension that he may not get a fair trial at the hands of concerned Presiding Officer. Thus, merely because the order of transfer is made does not mean that the Court has accepted that indeed the concerned Dy. Charity Commissioner was biased. The contention that in the face of earlier rejection of the application by the then Charity Commissioner on 13/7/2017 in Application No.183/2017 the transfer could not have been allowed also cannot be accepted, inasmuch as in a given case, there may be circumstances subsequent to passing of the said order which can support such apprehension. Insofar as the order dated 24/1/2018 is concerned, a perusal of the same shows that it is

passed on the basis of a consent. The petitioners made an attempt for the recall of the said order on the ground that no such consent was ever given. It would be significant to note that this Court by an order dated 6/9/2019 had directed the petitioner to file affidavit of Advocate Mr. I. P. Mishra in that regard which affidavit has not been filed till date. It was contended on behalf of the petitioners that the application for recall was filed and was verified by Advocate Mr. Mishra. Be that as it may, by the subsequent order dated 14/8/2019 in Application No.530/2019 the learned Charity Commissioner has after considering the relevant circumstances has directed such transfer of the change reports. Thus, really the question whether there was any consent or not while passing order dated 24/1/2018, pales into insignificance. It is necessary to emphasise that no party has any vested right of the matter being tried by any particular Court. The substantive rights of the petitioners are not at all adversely affected by the impugned orders of transfer. At this stage, it is in the interest of justice that the change reports are decided expeditiously on their own merits as twice there are directions for their expeditious disposal. In the absence of any manifest injustice resulting from the impugned order against the petitioner, I decline to entertain the petition (**Shalini Shaym Shetty and Anr. Vs. Rajendra Shankar Patil (2010) 8 SCC 329**).

13. In the result, both the petitions are dismissed with no order as to costs.

14. At this stage, learned counsel for the petitioner states that all the change reports pending before the learned Assistant Charity Commissioner may be expedited. The prayer appears to be

reasonable as the change reports are pending from the year 2016. In that view of the matter, the learned Assistant Charity Commissioner shall proceed to hear the change reports as expeditiously as possible and an endeavor shall be made to decide the change reports within a period of six months from the date of receipt hereof. Parties to co-operate for the time bound disposal of the change reports.

C.V. BHADANG, J.