

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

WRIT PETITION NO.7286 OF 2019

Smt. Sugrabi wd/o Abdul Habib Abdul Jabbar and others

vs.

Assistant Charity Commissioner, Nagpur and anr.

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

Court's or Judge's orders

Shri. M. V. Masodkar, counsel for petitioner.
Shri. M. B. Turankar, counsel for respondent No.2.
Smt. H. N. Prabhu, AGP for respondent No.1.

CORAM : MANISH PITALE J.

DATED : 04/03/2020

By this writ petition, the petitioners have challenged orders passed by the Assistant Charity Commissioner on 13/01/2017, in two applications moved on behalf of the petitioners in change report inquiry Nos.1624/2014 and 1792/2014. These applications were moved by the petitioners under Section 73-A of the Maharashtra Public Trusts Act, 1950, claiming to be persons having interest and thus having right to be heard in the said change reports.

2. The brief facts relevant for deciding the present writ petition are that since the year 1995 there are change reports filed by rival parties before the Assistant Charity Commissioner. It is claimed by the rival parties that elections took place and that the office bearers were elected as per their respective claims. There were three change reports filed by the rival parties

which remained pending for a long period of time. The said change reports were rejected by the Assistant Charity Commissioner by separate orders of the same date i.e. 22/05/2014. The petitioners challenged rejection of their change reports by filing appeals before the Joint Charity Commissioner. It was during pendency of the said appeals that the aforesaid change report inquiry Nos.1624/2014 and 1792/2014 were filed by the respondent No.2 claiming change in the address of the office of the Society/Trust and also claiming that fresh election had taken place in pursuance of which office bearers had been elected. It is in these change reports that the petitioners filed the aforesaid applications under Section 73-A of the aforesaid Act. It was claimed by the petitioners and that they were persons interested as defined under the provisions of the said Act and that therefore, they had a right to be heard and to raise objections. This was resisted by the respondent No.2.

3. By the impugned orders, the Assistant Charity Commissioner rejected the applications filed by the petitioners, holding that in view of rejection of the earlier change reports and since there was no interim order in the appeal pending before the Joint Charity Commissioner, the petitioners could not be said to be persons interested. In these orders, the Assistant Charity Commissioner specifically observed that the orders were subject to the order that might be passed in the pending appeal before the Joint Charity Commissioner.

4. It is an admitted position that the appeal filed before the Joint Charity Commissioner was allowed on 24/05/2017 and that the orders of the Assistant Charity Commissioner was set aside and the matter was remanded to the Assistant Charity Commissioner for fresh consideration. It is also pointed out that the said order of the Joint Charity Commissioner was challenged before the District Court, wherein the challenge is still pending and an interim stay of the order of the Joint Charity Commissioner was granted.

5. It is in this backdrop, that the learned counsel for the petitioners has submitted that the impugned orders deserve to be set aside, because the petitioners certainly satisfy the definition of persons having interest under the provisions of the said Act and all that they were demanding was right to be heard in the change report inquiries initiated in the year 2014 before the Assistant Charity Commissioner. On the other hand, it was submitted on behalf of respondent No.2 that since the order of remand passed by the Joint Charity Commissioner in the appeal was stayed by the District Court, the petitioners could not claim any relief in the matter.

6. The facts of the present case show how proceedings under Section 22 of the aforesaid Act, whereby change that has occurred in a trust is reported to the Competent Authority, remain pending for years together and this leads to complications in the disputes

raised by the rival parties. In the present case, change report inquiries from the year 1995 have still not attained finality, despite the fact that 25 years have gone by. The status of the claims raised by the rival parties have remained in a flux over such a long period of time and even today there is no finality achieved. At some point in time one or the other rival parties has an order in its favour, which is yet to attain finality, because of the hierarchy of appeals provided under the provisions of the said Act. As a result, change report inquiries from the year 1995 onwards are still pending and it is difficult to come to a conclusion regarding final status of the claims made by the rival parties.

7. It is perhaps for the said reason that even in the impugned order, the Assistant Charity Commissioner incorporated clause (2) to the following effect :-

“2. This order is subject to the order of Hon’ble Joint Charity Commissioner, Nagpur in pending appeal against the order dated 22/05/2014 in CR No.1793/1196.”

8. It is an admitted position that the appeal to which reference was made in the above quoted clause was indeed allowed in favour of the petitioners. It is a different matter that the order allowing the appeal and remanding the proceedings before the Assistant Charity Commissioner, today stands stayed by the District Court.

9. This Court is of the opinion that in such a

situation, it cannot be said that the petitioners do not satisfy the requirement of Section 2(10) of the aforesaid Act, which defines persons having interest. It is such persons having interest who can maintain an application under Section 73-A of the aforesaid Act. There is substance in the contentions raised on behalf of the petitioner that in the backdrop of the continuing disputes between the parties, all that the petitioners prayed before the Assistant Charity Commissioner was for an opportunity to participate in the proceedings and to raise objections under Section 73-A of the aforesaid Act. The over all facts and circumstances of the present case clearly indicate that the petitioners cannot be kept out of participating in the proceedings as sought by them before the Assistant Charity Commissioner and that they certainly qualify to be persons having interest to maintain their applications under Section 73-A of the aforesaid Act to raise objections in change report inquiries Nos.1624/2014 and 1792/2014.

10. In view of the above, the writ petition is allowed, the impugned order is quashed and set aside and the applications filed by the petitioners under Section 73-A of the aforesaid Act in change report inquiries Nos.1624/2014 and 1792/2014 are allowed. No order as to costs.

JUDGE