

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

Writ Petition No. 7525 of 2019
Rajesh Moon Vs. Girish Dorlikar and others

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

Court's or Judge's orders

Mr. A.M.Sudame, Advocate for the petitioner
Mr.A.S. Dhore, Advocate for the respondents No.1 to 6
Mrs. Mrunal Naik, AGP for the respondent No.7

CORAM : MANISH PITALE, J.

DATED : MARCH 04, 2020

By this writ petition, the petitioner has challenged order dated 15th October 2019, passed by the Assistant Charity Commissioner, Chandrapur on Exh.16, which concerns an application filed by respondents No.4 to 6 before the Assistant Charity Commissioner to raise objection in a pending proceeding.

2. The petitioner claiming to be the reporting trustee stated before the Assistant Charity Commissioner that the application filed by respondents No.4 to 6 was not maintainable for the reason that they could not be said to be persons interested as defined under the provisions of the Maharashtra Public Trusts Act, 1950.

3. In the impugned order, the Assistant Charity Commissioner referred to Section 2(10)(a) of the

aforesaid Act and took into consideration the material on record to come to a conclusion that the respondents No.4 to 6 deserved permission to raise objections as objectors. While holding in favour of respondents No.4 to 6, the Assistant Charity Commissioner recorded that the petitioner was unable to support his contention that the said respondents had resigned from membership of the Trust and documents like letters of resignation, resolution accepting such resignations, etc. were not on record. On this basis, the contention raised on behalf of the petitioner was rejected and application filed by respondents No.4 to 6 was allowed.

4. The learned counsel appearing for the petitioner has invited attention of this Court to the reply filed on behalf of the petitioner to the application at Exh.16, before the Assistant Charity Commissioner. It is contended that the letters of resignation submitted by respondents No.4 to 6 were placed on record and so were proceedings demonstrating for such resignation letters were indeed accepted by the Trust. On this basis, it was submitted that the impugned order deserved to be set aside. It was further contended that the Assistant Charity Commissioner erred in referring to Section 2(10)(a) of the aforesaid Act while Section 2(10)(e) thereof applied in this case. It was submitted that since respondents No.4 to 6 were neither members of the Trust nor beneficiaries thereof, their application at Exh.16, ought to have been rejected by

the Assistant Charity Commissioner.

5. On the other hand, the learned counsel appearing for the contesting respondents No.1 to 6 submitted that they had submitted letters of resignation only from membership of the Executive Committee of the Trust and not from the membership of the Trust itself. According to the learned counsel for the said respondents, a perusal of the documents showing acceptance of such letters of resignation by the Trust would show that their resignations were accepted only from membership of the Executive Committee and not from the membership of the Trust itself. On this basis, it was submitted that the impugned order did not deserve any interference. It is additionally submitted that the question as to whether the respondents No.4 to 6 were persons interested or not was required to be tested on the basis of definition of the expression “person having interested” found in Section 2(10)(d) and (e) of the Act, since the Trust is also registered as a Society.

6. The learned AGP has appeared on behalf of the respondent No. 7. Heard learned counsel for rival parties and perused the material on record. The impugned order of the Assistant Charity Commissioner had proceeded on the basis that relevant material pertaining to alleged resignations of the respondents No.4 to 6 was not on record. On this basis, the

Assistant Charity Commissioner had proceeded to hold that respondents No.4 to 6 continued to be members of the Trust. The Assistant Charity Commissioner also referred to Section 2(10)(a) of the said Act to conclude in favour of respondents No. 4 to 6.

7. At the outset, it is evident that the Assistant Charity Commissioner committed an error in referring to Section 2(10)(a) of the aforesaid Act, while holding in favour of the respondents No.4 to 6 because the said provision is not applicable in the facts of the present case. Similarly, reliance placed on a judgment passed on Section 2(10)(a) of the said Act was also an error on the part of the Assistant Charity Commissioner.

8. The material on record indicates that relevant documents like the letters of resignation and minutes of the meeting showing acceptance of such letters was on record of the Assistant Charity Commissioner, yet, the said authority proceeded on the basis that such documents were not available while deciding the contentions raised on behalf of the petitioner. This indicates that the rival contentions raised by the contesting parties need to be decided afresh by the Assistant Charity Commissioner, by taking into consideration the aforesaid documents that were already on record. It is also obvious that the expression “persons having interest” in the context of facts of the present case needs to be applied on the

basis of Section 2(10)(d) and (e) of the aforesaid Act, particularly in the light of the contentions raised on behalf of the rival parties.

9. In view of above, the writ petition is partly allowed.

10. The impugned order is quashed and set aside.

11. The Assistant Charity Commissioner is directed to decide the application at Exh.16 afresh by taking into consideration the documents placed on record on behalf of the petitioner herein. The parties would be at liberty to place on record such further documents as may be relevant to decide the controversy. The Assistant Charity Commissioner shall pass appropriate order on application at Exh.16 within a period of six weeks from today.

12. The parties to appear before the Assistant Charity Commissioner on **11th March 2020**.

13. It is made clear that this Court has not expressed any opinion on the merits of the contentions of the rival parties on the purport of the documents on record.

JUDGE