

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

WRIT PETITION NO. 2902 OF 2021

Mr. Raosaheb s/o Haribhau Bhosale,
Age 80 years, Occ. Secretary of Bankat
Swami Shikshan Sanstha, Khadki Ghat,
Tq. & Dist. Beed. ... **Petitioner.**

VERSUS.

- 1) The State of Maharashtra.
- 2) Mr. Machindra Narayan Gharat,
Age Major (years), Occ. Agriculture,
R/o. At Sakhareborgaon, Post. Morgaon,
Tq. And District Beed. ... **Respondents.**

...

Advocate for the Petitioner : Mr. V.D. Sapkal, Senior Advocate, i/b Mr.
Shashikant Chalikwar
A.G.P for the Respondent No. 1/State : Mr. K. B. Jadhavar.
Advocate for the Respondent No. 2 : Mr. S.S. Thombre.

AND

WRIT PETITION NO. 2917 OF 2021

Mr. Raosaheb s/o Haribhau Bhosale,
Age 80 years, Occ. Secretary of Bankat
Swami Shikshan Sanstha, Khadki Ghat,
Tq. & Dist. Beed. ... **Petitioner.**

VERSUS.

- 1) The State of Maharashtra.
- 2) Mr. Shivajirao s/o Baburao Shinde,
Age 65 years, Occ. Legal Practitioner,
R/o. Sarkarwada, N.4, F1-74, CIDCO,
Aurangabad, District Aurangabad. ... **Respondents.**

...

Advocate for the Petitioner : Mr. V.D. Sapkal, Senior Advocate, i/b
Sapkal Sandip P.

A.G.P for the Respondent No. 1/State : Mr. K. B. Jadhavar.
Advocate for the Respondent No. 2 : Mr. R. C. Bramhankar.

CORAM : **MANGESH S. PATIL, J.**
RESERVED ON : **13.08.2021.**
PRONOUNCED ON : **18.08.2021.**

JUDGMENT :

Heard. Rule in both the Writ Petitions. The learned A.G.P and the learned advocates for the respondents waive service. With the consent of both the sides the matters are heard finally at the stage of admission and since they arise out of similar orders on similar applications though passed in two different proceedings, they are being disposed of by this common judgment.

2. These matters arise out of the orders passed by the learned Assistant Charity Commissioner on the applications (Exhs. 38 and 66) in Charge Report No. 180/2019 and similar applications (Exh. 59 and 82) in Change Report No. 1638/2018 which are the proceedings filed by the respondent Nos. 2 from both these Writ Petitions under Section 22 of the Maharashtra Public Trust Act (hereinafter 'Trusts Act').

3. The petitioner in both these Writ Petitions is one and the same person and a member of the Shri. Bankatswami Shikshan Sanstha Khadki (Ghat) Tq. & Dist. Beed which is a Public Trust running Educational Institutes having registration number PTR-E-2 (Beed). While contesting the Change Reports filed by the respondent Nos. 2 he *inter alia* raised objections to the maintainability of the Change Reports and requested for framing a preliminary issue on that count and solicited a finding on that. The learned Assistant Charity Commissioner by the impugned orders refused to frame and decide the issue.

4. The learned Senior Advocate Mr. V.D. Sapkal for the petitioner would

point out that the respondent Nos. 2 enrolled few Members without permission of any authority and falsely showing that some elections were held for a new Managing Committee submitted the Change Reports. They being not the Members have no authority to submit any such Change Reports. He would further point out that on an application filed by one of the respondent Nos. 2 for disqualifying the Trustees under Section 41D of the Trusts Act the Joint Charity Commissioner Latur in Enquiry No. 7/2009 suspended seven Trustees by the order dated 02.07.2009 and appointed a fit person as an Administrator. Subsequently, the proceeding under Section 41D of the Trusts Act was dismissed on 07.01.2019. In the meantime the respondent Nos. 2 filed Letters Patent Appeal No. 188/2009 in this Court wherein following directions were given :

“(i) LAP stands disposed of with directions to the Joint Charity Commissioner to decide the pending proceedings under Section 41D of the Act, expeditiously, and preferably within nine months.

(ii) Interim orders passed in LAP and the Writ Petitions/civil Applications shall be continued till the disposal of the proceedings under Section 41D of the Act.

(iii) The concerned Assistant Charity Commissioner shall verify the veracity of the list of members and shall take further steps to hold elections of Bankatswami Shikshan Sanstha, Khadki Ghat, Taluka and District Beed, expeditiously, after considering the objections to the said list, if any.

(iv) The list of members is filed by the appellant in LPA. Said list be submitted to the Assistant Charity Commissioner, Beed, within a period of 3 weeks from today. The respective parties are entitled to file their objections, if any. After considering the said objection, the Assistant Charity Commissioner shall decide about the validity of members, within six months and take steps to hold the elections of the trust.

(v) Writ Petition No. 10170 of 2012 stands disposed of. All civil applications stands disposed of”.

It is pursuant to such direction that the learned Joint Charity Commissioner rejected the application under Section 41D of the Trusts Act and exonerated the seven Trustees. Pursuant to such directions in the LPA the learned Assistant Charity Commissioner conducted an enquiry bearing No. 924/2014. It was objected to by four persons. Respondent Nos. 2 herein were two of them. The learned Assistant Charity Commissioner declared that there were only eight valid Members. The petitioner being one of them.

5. Learned Senior Advocate would submit that however, the learned Assistant Charity Commissioner while deciding that enquiry also issued couple of other directions :

“2-A] After seeking permission from competent authority, enroll the new members from the interested persons of the trust.

2-B] By appointing election officer, election be conducted from the valid members of the trust within two months and file the respective change before this authority within stipulated period.”

The learned Senior Advocate would submit that without following these directions the respondent Nos. 2 and the other objectors without obtaining any permission enrolled new members and filed the two Change Reports. Since ex facie the respondent Nos. 2 had no authority to enroll the members and even those were enrolled without any permission, the Change Reports filed are not tenable. He would submit that when the issue regarding maintainability goes to the very root of these Change Reports, an innocuous request of the petitioner to frame and decide the issue regarding maintainability as a preliminary one has been illegally turned down. The proceedings can be terminated if one examines the aforementioned aspects. However, the learned Assistant Charity Commissioner has taken a hyper technical view.

6. Learned Senior Advocate would then point out that the learned Assistant Charity Commissioner is bent upon to and going ahead with the Enquiries even without framing any issue whatsoever. A specific objection has been raised in these Writ Petitions touching this aspect. He would submit that since the learned Assistant Charity Commissioner is exercising a judicial power while deciding the Change Reports, it is expected of him to frame the disputed issues but no such course is being followed. He would point out that even in the case of ***Gajanan Narayan Patil Vs. Chhagan Devchand Patil of Shirud; 1984 Mh.L.R. 646*** it has been observed and laid down that issues are required to be framed when it is necessary to clarify or pinpoint the disputes between the parties. It was also a proceeding under the Trusts Act in respect of a Change Report Enquiry under Section 22. He would also refer to the observations of this Court in the matter of ***Balaji s/o Bhikaji Kapale and another Vs. Punjaji son of Balaji Tayade & others; 2001(4) Mh.L.J. 821.***

7. The learned Senior Advocate would then submit that the applications of the petitioner were not the applications under Section 9A of the Code of Civil Procedure. Independently thereof, even the issue could have been framed and decided as preliminary one under the provisions of Order XIV Rule 1 of the Code of Civil Procedure but the learned Assistant Charity Commissioner has even refused to invoke that provision.

8. Learned advocates Mr. Choudhari and Mr. Thombre for the respondent Nos. 2 submit that the competence of the respondent Nos. 2 to enroll the members and to file Change Reports though go to the root of the maintainability of the Change Reports, there are several disputed questions of fact and law which need to be gone into and that can happen only at the full-fledged enquiries being conducted by the learned Assistant Charity Commissioner. They would submit that the petitioner is not going to be deprived of availing an

opportunity to oppose the Change Reports. In the enquiries he can very well demonstrate all the facts and circumstances on which the dispute regarding maintainability hinges. He cannot be allowed to insist for framing an issue and deciding it as a preliminary one regarding maintainability of the Enquiries. The learned Assistant Charity Commissioner has clearly observed in the impugned orders that such an issue can be gone into and decided on merits. If that be so, the petitioner's request has been rightly turned down. There is no illegality in the impugned orders. The learned Assistant Charity Commissioner has assigned sound reasons as to why and how it is not necessary to frame any preliminary issue regarding maintainability.

9. Learned advocates would then refer to and rely upon several judgments to point out the issue regarding maintainability of proceeding is not contemplated under Section 9A of the Code of Civil Procedure. They would refer to the following decisions :

- (i) **Kamalakar Eknath Salunke Vs. Baburav Vishnu Javalkar & Ors;**
2015 (2) Mh.L.J. 886.
- (ii) **Hareendran and others Vs. Sukumaran and others.**
(2018) 14 Supreme Court Cases 187.
- (iii) ***Gajanan Narayan Patil Vs. Chhagan Devchand Patil of Shirud;***
1984 Mh.L.R. 646.
- (iv) ***Anna s/o Shriram Fate Vs. Joint Charity Commissioner, Nagpur***
2005(2) Mh.L.J. 298.
- (v) ***Lahudas Sambhaji Karad Vs. State of Maharashtra and others;***
1993 (2) Mh.L.J. 1056.

10. I have considered the rival submissions and the decisions cited. I have also applied my mind to the facts incorporated herein above. Needless to state that these are not the appropriate proceedings where the

aforementioned chequered history needs to be gone into. What is the purport of the orders and directions passed by this Court in the Letters Patent Appeal No. 188/2009 is a matter which will have to be pondered upon and taken into account by the concerned Assistant Charity Commissioner. Suffice for the purpose to observe that the Change Reports filed by the respondent Nos. 2 are pending before the learned Assistant Charity Commissioner regarding whose jurisdiction, as has been rightly admitted by the learned Senior Advocate Mr. Sapkal for the petitioner, to try and decide a proceeding in the form of Change Report Under Section 22 of the Trusts Act, is not in question.

11. The petitioner has been harping upon the maintainability of the Change Reports. It is quite apparent that his objection to the maintainability raises an issue of facts as well as law. Needless to state that the questions of facts can be decided only at a full-fledged enquiry. Whether the respondent Nos. 2 were competent and could have legally enrolled the members is a matter to be gone into and decided in these Change Reports Enquiries and obviously the learned Assistant Charity Commissioner would be obliged to do that.

12. Since according to the learned Senior Advocate the applications filed by the petitioner do not raise any objection to the jurisdiction but to the maintainability of the very proceedings, one need not deal and go in to any discussion on the scope and ambit of Section 9A of the Code of Civil Procedure.

13. So far as the provision of Order XIV of the Code of Civil Procedure is concerned, true it is that there is ample scope for framing an issue and trying it as a preliminary one. As can be noticed, under Rule 2 of Order XIV of the Code of Civil Procedure, when a Court forms an opinion that the case or any part thereof may be disposed of on an issue of law only it may try that issue first if it relates to either the jurisdiction or a bar created by any

law. The learned Senior Advocate emphasized that it is under this provision that, when the papers clearly demonstrate that the respondent Nos. 2 were not authorized to enroll any member, the step taken by them was clearly beyond the directions in the Letters Patent Appeal No. 188/2009, the Change Reports can easily be decided by treating the order in the Letters Patent Appeal No. 188/2009 as a bar to the proceedings.

14. The learned Assistant Charity Commissioner in the impugned orders has specifically pointed out that he is not averse to going into the issue regarding maintainability. However, the issue cannot be decided on an issue of law only as is contemplated under Order XIV Rule 2(2) of the Code of Civil Procedure. Disputed questions of facts will have to be gone into. In my considered view, the view taken by the learned Assistant Charity Commissioner is clearly a plausible view and cannot be said to be either perverse or arbitrary so that any interference can be caused under the writ jurisdiction.

15. But then, as is pointed out by the learned Senior Advocate Mr. Sapkal the learned Assistant Charity Commissioner though seems to be alive that the issue regarding maintainability of the Change Reports arises has not even framed the issue and has proceeded to hold the Enquiries and the matters are awaiting cross-examination of the respondent Nos. 2. Needless to state that if the disputed questions of facts are being raised as can be discerned from the above discussion and the rival stands of the parties, it would be appropriate for the learned Assistant Charity Commissioner first to frame the issues including that of maintainability of the Change Reports and then to proceed and decide the matters.

16. In the result, in substance the Writ Petitions are liable to be dismissed, however with a direction to the learned Assistant Charity Commissioner to frame the issues before proceeding further with the enquiries.

17. The Writ Petitions are dismissed.

18. However, the learned Assistant Charity Commissioner shall frame the issues including that of maintainability of the Change Reports and then proceed with the Enquiries and decide those expeditiously.

19. The Rule is discharged.

(MANGESH S. PATIL, J.)

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