IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2484 OF 2014
WITH
WRIT PETITION NO.2480 OF 2014

The Khandesh Medical and
Surgical Aid Society
Amalner, District Jalgaon,
P.T.R. No. F/25 Through,

1. Shri Subhashchandra S/o Chothmalji Agrawal,
Age: 67 years, Occu: Business,
R/o: 104/2, Shanti Sadan,
Agrawal Nagar, Malegaon Road,
Dhule (M.S.)

2. Shri Rakesh S/o Subhashchandra Agrawal,
Age: 40 Years, Occu: Business,
R/o: 104/2, Shanti Sadan,
Agrawal Nagar, Malegaon Road,
Dhule (M.S.)

3. Shri Pavan S/o Subhashchandra Agrawal,
Age: 35 Years, Occu: Business,
R/o: 104/2, Shanti Sadan,
Agrawal Nagar, Malegaon Road,
Dhule (M.S.)

4. Shri Mohan S/o Motilalji Agrawal,
Age: 60 Years, Occu: Business,
R/o: 105, Sambhaapa Colony,
Chittod Road, Dhule (M.S.)

5. Mrs. Manisha Rakeshji Agrawal,
Age: 35 Years, Occu: Household,
R/o: 104/2, Shanti Sadan,
Agrawal Nagar, Malegaon Road,
Dhule (M.S.).

... Petitioners

VERSUS

1. Joint Charity Commissioner,
Nashik
C/o: Janki Plaza, Dwarka Circle,
Nashik – Pune Road, Nashik.

2. Mr. Mayank Maheshkumar Agrawal
Age: Adult, Occu: Business,
R/o: Ashok Nagar,
Nr. LIC Colony, Dhule (M.S.)

3. Mrs. Yamini Mahesh Agrawal,
Age: Adult, Occu: Business,
R/o: Ashok Nagar,
Nr. LIC Colony, Dhule (M.S.).

... Respondents

...

Mr. A. S. Bajaj, Advocate for the Petitioners
Mrs. V. S. Choudhrai, AGP for the Respondent No.1-State
Mr. M. S. Kulkarni, Advocate for Respondent Nos.2 & 3

...

CORAM : N. B. SURYAWANSHI, J.

DATE : 1st December, 2021

ORAL JUDGMENT :

. **RULE.** Rule made returnable forthwith. Heard finally with consent of the parties.

2. Since similar questions of law and facts are involved in both these petitions, they were heard together and being decided by this common judgment.

3. Both these petitions challenge the orders, passed by the Joint Charity Commissioner, Jalgaon, initiating suo-moto revision under Section 70 (A) of the Maharashtra Public Trust Act, 1950 (For short “the said Act”), in view of withdrawal of the revision application filed by the Petitioners/Applicants therein.

4. The Petitioners are the trustees of Khandesh Medical and Surgical Aid Trust, registered under the provisions of the said Act. According to the Petitioners, there is a scheme for the administration of the trust settled by the Assistant Charity Commissioner on 15-03-2000. In accordance with the scheme, seven trustees were appointed for the term of five years i.e. till 2005. In the year 2005, seven trustees were elected on 18-4-2005 for the term up to 2010. No change about the said elections was reported within stipulated time to the Assistant Charity Commissioner, Jalgaon.

5. Between 2005 to 2010, out of seven trustees, five trustees tendered resignation. On 07-12-2009, a meeting of trustees was held in which five trustees were elected and the said change was reported to the Assistant Charity Commissioner by Change Report No.1330/2009. The said change report was accepted by order dated 06-08-2011.

6. Thereafter, elections were held in the year 2010 and new trustees were elected for the term 2010-2015. They submitted change

report on 14-03-2010 which was numbered as Change No.351/2010. At this stage, it was realized that no change was reported in respect of the elections held in the year 2005. Therefore, Change Report No.839/2010 was filed reporting the said change. Change Report No.839/2010 was partly accepted by recording names of three trustees for the remainder term. The names of four trustees were not recorded as they were debarred in Inquiry No.5/2008.

7. Respondent Nos.2 & 3 filed Revision Application No.30/2011 before the Respondent No.1/Joint Charity Commissioner, soliciting directions for re-inquiry of the Change Report which was numbered as Inquiry Application No.839/2010. Respondent Nos.2 & 3 contended that, they are interested in the said trust and the order accepting the Change Report No.839/2010, is not proper and the said change report was accepted without considering the fact that order of Inquiry Application No.5/2008 was challenged before the Sessions Court and it was sub-judice.

8. Respondent Nos.2 & 3, thereafter, by filing a pursis, requested to allow them to withdraw the Revision. Respondent No.1 allowed the Respondent Nos.2 & 3 to withdraw the Revision, however passed the impugned order, thereby initiating suo-moto revision proceeding under Section 70 (A) of the said Act. Hence, the present petition.

9. Heard the learned advocate for the Petitioner and learned advocate for the Respondent Nos.2 & 3.

10. The learned advocate for the Petitioners submitted that this was not a case, wherein Respondent No.1 should have exercised the powers under Section 70 (A) of the said Act. When the revision application was withdrawn by the Respondent Nos.2 & 3, there was no occasion for Respondent No.1 to initiate suo-moto revision proceeding. He further submits that, thereafter elections were conducted for the period from 2010 to 2015 and the change report of the said elections is accepted. In view of this subsequent developments, the revision proceeding has become infructuous. By relying on the decision of this Court in **Hidayatkhan Bismillakhan Pathan Vs. Vaijnath and Others** reported in **(2009) 7 SCC 506**, he submitted that the impugned orders passed by the Respondent No.1 are unsustainable and the same are liable to be quashed and set aside.

11. Per contra, the learned advocate for Respondent Nos.2 & 3 submitted that, as per the scheme of the trust, mode of succession is prescribed in Clause – 9. In the Change Report No.839/2010, there is no reference to the constitution of the trust and/or to the mode of succession. The said change report is accepted without proper inquiry. Section 70 (A) of the said Act empowers the Respondent No.1 to exercise

suo-moto powers of revision and no prejudice is caused to the Petitioner, if the said powers are exercised. By relying on the decision of this Court in **Mohamad Haidar Mujawar Vs. Jamal Haidar Mujawar and Others** reported in **AIR 1969 Bombay 328,** he submitted that no fault can be found in the impugned orders passed by the Respondent No.1 and the petition is, therefore, liable to be dismissed.

12. The learned Assistant Government Pleader adopted the arguments of the learned advocate for Respondent Nos.2 & 3 and submitted that Section 70 (A) confers power on the Charity Commissioner to suo-moto exercise the revisional powers.

13. The record reveals that Respondent No.1 allowed the Respondent Nos.2 to 3 to withdraw the Revision filed by them, then he held that it is essential to make legal scrutiny of impugned order dated 06-08-2011 passed by the A.C.C. Jalgaon in Inquiry No.1330 of 2009 as the applicants were allowed to withdraw the revision filed by them, for that purpose, he invoked the provisions of Section 70 (A) of the said Act. Considering the said observations of the Respondent No.1 it cannot be said that the impugned order is passed without giving sufficient reason. It is not in dispute that Respondent No.1 has power to initiate suo-moto revision proceedings as per Section 70 (A) of the said Act. By the impugned order, no prejudice is likely to be caused to the Petitioner. The Petitioner will have the opportunity to participate in the revision

proceedings initiated by the Respondent No.1 and contest the matter on merits. In that view of the matter, I do not find any merit in the challenge raised by the Petitioner to the impugned order.

14. In Hidayatkhan Bismillakhan Pathan (Supra), the Apex Court, in the facts of that case, held that the Court should not entertain an appeal or revision, wherein no effective order can be passed and the events which took place subsequently should also be considered. A suo-moto jurisdiction, as envisaged under Section 70 (A) of the said Act can be initiated for the purposes mentioned therein. It is an enabling provision and the said jurisdiction need not be exercised only because it would be lawful to do so. For the said purpose, not only the parties are required to be heard but also subject to the limitations provided for in sub-section (2) thereof.

15. Though in the case in hand, the term of Managing Committee had come to an end still taking into consideration the peculiar facts of the present case, in my view, the Respondent No.1 was justified in exercising suo-moto powers of revision under Section 70 (A) of the said Act.

16. For the aforestated reasons, there is no substance in the petitions filed by the Petitioners and the same are hereby dismissed. Rule discharged.

(N. B. SURYAWANSHI, J.)

Sameer