

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2394 OF 2020
WITH CA/8538/2020 IN FA/2394/2020

1. Shri. Gangaram s/o. Natthu Khedkar,
Age 72 years, Occu. Agriculture,
2. Shri. Balasaheb S/o. Bhagwan Khedkar,
Age 49 years, Occu. Agriculture,
3. Swati Sandip Khedkar,
Age 34 years, Occu. Household,

All R/o. Chinchpur Ijade, Taluka Pathardi,
District Ahmednagar.

.. Appellants

(Original Applicants No. 7 to 9)

Versus

1. Shri. Balasaheb S/o. Sahebrao Khedkar,
Age 50 years, Occu. Service,
R/o. Pathardi, Taluka Pathardi,
District Ahmednagar.
2. Shri. Sandeep S/o. Ramnath Khedkar,
Age 38 years, Occu. Service,
R/o. Wagholi, Taluka Haveli,
District Pune.
3. Shri. Ramnath S/o. Bhagwan Khedkar,
Age 64 years, Occu. Pensioner,
R/o. Chinchpur Ijade, Taluka Pathardi,
District Ahmednagar.
4. Shri. Vishnu Sahebrao Khedkar,
Age 39 years, Occu. Service,
R/o. Chinchpur Ijade, Taluka Pathardi,
District Ahmednagar.
5. Shri. Mangal Sahebrao Khedkar,
Age 53 years, Occu. Service,
R/o. Chinchpur Ijade, Taluka Pathardi,
District Ahmednagar.

6. Shri. Sanjay S/o. Ramrao Funde,
Age 49 years, Occu. Service,
R/o. Pathardi, Taluka Pathardi,
District Ahmednagar.
7. Sau. Jayashri Balasaheb Khedkar,
Age 45 years, Occu. Household,
R/o. Pathardi, Taluka Pathardi,
District Ahmednagar.
8. Sau. Meera Vishnu Khedkar,
Age 34 years, Occu. Household,
R/o. Chinchpur Ijade, Taluka Pathardi,
District Ahmednagar.
9. Sau. Savita Ramnath Khedkar,
Age 58 years, Occu. Household,
R/o. Chinchpur Ijade, Taluka Pathardi,
District Ahmednagar.
10. Shri. Avinash S/o. Balasaheb Khedkar,
Age 25 years, Occu. Service,
R/o. Chinchpur Ijade, Taluka Pathardi,
District Ahmednagar.
11. The Joint Charity Commissioner,
Pune Region, Pune. .. Respondents

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Mr. A. B. Girase, Advocate for Appellants.

Mr. V. B. Madan Patil, Advocate for Respondents No. 2 and 3

Ms. M. D. Thube-Mhase, Advocate for Respondents No. 1, 4, 5, 7 to 10
Respondent No. 11 served - absent.

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CORAM : ANIL S. KILOR, J.

DATE : 5th APRIL, 2021

ORAL ORDER :-

Leave granted to delete respondent No. 6.

2. The challenge raised in the present appeal is to the Judgment and order dated 17th January, 2020 passed by the learned Joint Charity Commissioner Pune Region, Pune, on Application No. 27 of 2018 filed under Section 47 of the Maharashtra Public Trusts Act, 1950 (hereinafter referred to as '**Act of 1950**').

3. I have heard the learned counsels for the respective parties.

4. Brief facts of the present case are as under -

“Shri. Kanifnath Vidya Prasarak Mandal, Chinchpur Ijade, Taluka Pathardi, District Ahmadnagar”, is a registered Trust under the provisions of the Act of 1950, and also under the Societies Registration Act, 1860.

All the founder trustees of the said trust died, and therefore, the Application under Section 47 of the Act of 1950 came to be filed before the learned Joint Charity Commissioner, Pune Region, Pune, by the appellants along with respondents No. 1 to 5 and 7. In view of filing of said proceeding as per the provisions of Section 47 of the Act of 1950, appellants as well as respondents no. 1 to 5 and 7 had withdrawn their respective change reports.

In pursuance to the Application moved under Section 47 of the Act of 1950, the objections and also applications were called from those, who are interested to be included in the trust as trustees, by issuing public notice on 07-12-2018. In the public notice, thirty days' time was granted for the above purpose which was expired on 15-01-2019.

Thereafter, the respondents No. 8 to 10 moved an Application on 18-10-2019 for inclusion of their names as trustees.

Subsequently, the learned Joint Charity Commissioner passed the impugned Judgment and order dated 17-01-2020 adding the names of respondents No. 1 to 5 and 7 to 10, as trustees and not included the names of appellants as trustees. Hence, this Appeal.

5. At the outset, Ms. Thube-Mhase, learned counsel appearing for the respondents No. 1, 4, 5 and 7 to 10 raised preliminary objections to the present Appeal on the ground that the present Appeal is not maintainable in view of the fact that earlier the appellants had filed writ petition challenging the impugned Judgment and order dated 17-01-2020 and said writ petition was withdrawn without seeking any liberty to file present Appeal and, therefore, in absence of such liberty, present Appeal is not maintainable.

She has further urged that the Appeal is liable to be rejected on the ground of delay and laches. She submits that no Application was moved for condonation of delay and the application which was earlier filed, that was withdrawn.

6. Mr. Girase, learned counsel for the appellants submits that admittedly the writ petition is not maintainable against the order of the Joint Charity Commissioner passed under Section 47 of the Act of 1950 and the appropriate remedy is by way of an Appeal under the provision of Section 47(5) of the Act of 1950. Accordingly, the writ petition was

withdrawn. It is submitted that as per the well settled principles of law, liberty is not needed while withdrawing the writ petition. For this purpose, he has placed reliance on the judgments of the Honourable Supreme Court of India, in the cases of – ***Sarguja Transport Service Versus State Transport Appellate Tribunal M.P., Gwalior, and others***¹ and ***Himachal Pradesh Financial Corporation Versus Anil Garg and others***²

7. As regards the delay and laches, Mr. Girase, learned counsel for the appellants submits that in view of the pandemic situation due to COVID-19, the Hon'ble Supreme Court of India had issued guidelines extending the limitation during the period 15-03-2020 to 14-03-2021.

He further submits that, in spite of the said fact, as an abundant precaution, the Application was filed explaining the delay, however, the Registry of this Court noted that there is no delay in view of the directions of the Hon'ble the Supreme Court of India, therefore, the Application was withdrawn.

8. Before considering the matter on merit, it would be appropriate to first decide the preliminary objections.

As far as first contention raised by the learned counsel for the respondents that without obtaining any liberty from this Court, in writ petition which was withdrawn, the present Appeal is not maintainable. The said issue is no more *res integra* in view of the Judgments cited by the learned counsel for the appellants in the cases, namely, ***Sarguja Transport***

1 (1987) 1 Supreme Court Cases 5

2 (2017) 14 Supreme Court Cases 634

Service and Himachal Pradesh Financial Corporation (Supra). In the said case, the Hon'ble Supreme Court of India has observed that, where a petitioner withdraws a petition, filed by him in the High Court under Article 226/227 without permission to institute a fresh petition, remedy under Article 226/227 should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition and it would not be open to him to file a fresh petition in the High Court under the same Article, though other remedies like suit or writ petition before Supreme Court under Article 32 would remain open to him. In the circumstances, said objection is rejected.

9. As regards the delay and laches, there were directions by the Hon'ble Supreme Court of India, extending the limitation during the period from 15-03-2020 to 14-03-2021. In that view of the matter, second objection as regards the delay and laches cannot be accepted, and hence, same is rejected.

10. Now moving to the merits of the matter, the learned counsel for the appellants submits that, admittedly, the Application moved by the respondents No. 8 to 10 was beyond the time prescribed for making such Application and in that view of the matter, the learned Joint Charity Commissioner ought not to have considered the said Application for inclusion of their names as trustees.

11. It is submitted that while not considering the names of the appellants for inclusion as trustees, no reasons are given by the learned Joint Charity Commissioner in the impugned Judgment and Order.

12. Mr. Girase, learned counsel for the appellants draws attention of this Court to the order-sheet maintained by the learned Joint Charity Commissioner. It is pointed out that though no interviews were held on 21-12-2019, in the impugned order, it is stated that interviews were held on 21-12-2019. Similarly, it is pointed out that on 06-07-2019, though it is observed that the interviews of the appellants were held along with respondents No. 1 to 5 and 7, however, in the impugned Judgment and Order, the names of the appellants do not appear as the trustees of the Trust. It is, therefore, submitted that the names of the appellants were not at all considered by the learned Joint Charity Commissioner while deciding the Application under Section 47 of the Act of 1950.

13. Per contra, Ms. Thube-Mhase, learned counsel for the respondents submits that the Application, though, moved on 18-10-2019 i.e. after the time period prescribed for filing such Application, the proceeding under Section 47 of the Act of 1950 was pending before the learned Joint Charity Commissioner, and therefore, the Application was rightly considered and the names of respondents No. 8 to 10 were included as trustees.

It is submitted that, no error has been committed by the learned Joint Charity Commissioner, particularly, when the learned Joint

Charity Commissioner acted in the interest of the trust.

14. To consider the rival contentions of both the parties, I have perused the record and also the impugned Judgment and Order.

15. It is not disputed that all the founder trustees were died, and therefore, the application under Section 47 of the Act of 1950 was filed by the appellants along with respondents No. 1 to 5 and 7, jointly. Consequently, all the change reports were withdrawn by the respective parties and pursued their interest in the trust through Application under Section 47 of the Act of 1950.

16. The learned Joint Charity Commissioner issued a public notice, which was published in daily newspaper '*Kesari*', on 15th December, 2018. There is no dispute that in the notice, time of thirty days was given to the interested persons either to take objection to the Application or to make an Application for inclusion of the names. There is no dispute that the said period of thirty days has expired on 15th January, 2019 and no Application was filed by any person interested in the said trust or anyone has raised any objection to the Application under Section 47 of the Act filed by the respondents No. 1 to 5, 7 and 8 to 10.

It is further undisputed that the Application was moved by the respondents No. 8 to 10 on 18-10-2019 for inclusion of their names as trustees in the trust. The said Application was filed by respondents No. 8 to 10 after nine months of expiry of the period prescribed in the public

notice. In the public notice, it was specifically mentioned that no Application after expiry of thirty days' period will be considered and entertained. Despite this, after nine months period, the application was considered by the learned Joint Charity Commissioner without assigning any reason.

17. At this juncture, it is necessary to consider that there may be persons who were interested to file application for inclusion of their names as trustees but could not file such application only because the time period prescribed was lapsed. The learned Joint Charity Commissioner, in the event to entertain the belated application of the respondents no. 8 to 10, ought to have issued fresh public notice calling applications and thereby giving opportunity to the persons similarly situated like the respondents no. 8 to 10.

In that view of the matter, the said argument cannot be accepted and I have no hesitation to hold that inclusion of the names of respondents No. 8 to 10, by the learned Joint Charity Commissioner as trustees, is contrary to its own public notice and without giving an opportunity to the other persons, who were similarly placed.

18. As regards non-inclusion of names of the appellants are concerned, no reasons are assigned in the impugned order for not considering the appellants as fit persons. Whereas, the Application under Section 47 of the Act of 1950 for appointment of trustees was jointly moved by appellants and respondents No. 1 to 5 and 7. The names of

respondents No. 1 to 5 and 7 were included as trustees, however, the names of the appellants have not been considered by the learned Joint Charity Commissioner while passing the order under Section 47 of the Act of 1950.

19. In view of the findings recorded above, this Court does not want to go into the arguments made in respect of errors committed by the learned Joint Charity Commissioner while recording the order-sheet. However, it is notable that though the appellants were interviewed, in the impugned Judgment and Order, their names are not referred to and even discussed either for inclusion or for non-inclusion as trustees.

20. In that view of the matter and for the reasons stated hereinabove, I am of the considered view that this matter needs remand for fresh consideration by the learned Joint Charity Commissioner.

21. At this stage, Ms. Thube-Mhase, learned counsel for the respondents points out that after the impugned Judgment and Order dated 17-01-2020, the elections were held and change reports were filed, and accordingly, elected trustees are managing the trust as well as schools, and in that view of the matter, present arrangement may be continued till the decision of learned Joint Charity Commissioner on the Application under Section 47 of the Act of 1950, afresh.

22. Accordingly, I pass the following order.

ORDER

I) The impugned Judgment and Order dated 17-01-2020 passed by the learned Joint Charity Commissioner, Pune Region, Pune, in Application No. 27 of 2018, filed under Section 47 of the Act of 1950, is hereby quashed and set-aside.

II) The learned Joint Charity Commissioner, Pune Region, Pune, is directed to decide the matter, afresh, from the stage of interview.

It is further made clear that, the applications which were received for inclusion, before expiry of thirty days as given in the public notice dated 15th December, 2018, such applications only be considered.

III) The learned Joint Charity Commissioner, Pune Region, Pune is directed to decide the Application under Section 47 of the Act, 1950, afresh, within a period of six months from today.

IV) The parties are directed to remain present before the learned Joint Charity Commissioner, Pune Region, Pune on 7th June, 2021.

V) The respondents no. 1 to 5 and 7 to 10 are directed not to take any major decision, including termination or appointment of any employee or any major financial decision except decision relating to the day-to-day management of the school.

- VI) The learned Joint Charity Commissioner, Pune Region, Pune is at liberty to issue fresh public notice and call fresh application, if he thinks fit in the facts and circumstances of the case.
- VII) The First Appeal is disposed of. Pending civil application for stay stands disposed of accordingly.

(ANIL S. KILOR)
JUDGE

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