

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

WRIT PETITION NO. 14318 OF 2017

Shri Ashok Eknathrao Vikhe Patil, **...PETITIONER**
Trustee and Executive Chairman,
Pravara Rural Education Society, Ahmednagar,
Age-Adult, Occu- Business,
R/o.A/p. Loni, Tq. Rahata,
Dist. Ahmednagar

VERSUS

1. The Joint Charity Commissioner, **...RESPONDENTS**
At Pune
2. Shri Annasaheb Mhaske Patil,
Age-Adult, Occu- Nil,
R/o. A/p. Loni, Tq. Rahata,
Dist. Ahmednagar
3. Shri Bhagwantrao alias Abasaheb Kharde Patil,
Age-Adult, Occu- Nil,
R/o. A/p. Loni, Tq. Rahata,
Dist. Ahmednagar
4. State of Maharashtra

Mr. R. N. Dhorde, Sr. Counsel i/b Mr. R. L. Adhe, Advocate for the
petitioner

Mr. S. P. Shah, Advocate for the respondent No.2

Mr. V. D. Salunke, learned counsel for the respondent No.3

Mr. S. K. Tambe, AGP for the State

**WITH
WRIT PETITION NO. 14320 OF 2017**

Shri Ashok Eknathrao Vikhe Patil,
Trustee and Executive Chairman,
Pravara Rural Education Society, Ahmednagar,
Age-Adult, Occu- Business,
R/o.A/p. Loni, Tq. Rahata,
Dist. Ahmednagar

...PETITIONER

VERSUS

1. The Joint Charity Commissioner,
Pune Region, Pune

...RESPONDENTS

2. Shri Radhakishna Vikhe Patil,
Age-Adult, Occu- Nil,
R/o. A/p. Loni, Tq. Rahata,
Dist. Ahmednagar

3. Shri Bhagwantrao alias Abasaheb Kharde Patil,
Age-Adult, Occu-Nil,
R/o. A/p. Loni, Tq. Rahata,
Dist. Ahmednagar

4. State of Maharashtra

Mr. R. N. Dhorde, Sr. Counsel i/b Mr. R. L. Adhe, Advocate for the
petitioner

Mr. V. D. Hon, Sr. Counsel i/b Mr. A. V. Hon, Advocate for the
resondent No. 2

Mr. V. D. Salunke, learned counsel for the respondent No. 3

Mr. S. K. Tambe, AGP for the respondent/State

CORAM : N. J. JAMADAR, J.

RESERVED ON : 22-03-2021

PRONOUNCED ON : 04-05-2021

JUDGMENT :

. Rule. Rule made returnable forthwith and with the consent of the counsel for the parties heard finally at the stage of admission.

2. These petitions assail a clause of a common judgment and order dated 13-09-2017 passed by the Joint Charity Commissioner, Pune Region, Pune in appeal Nos. 8 of 2017 and 9 of 2017 whereby despite remitting the change reports to the Deputy Charity Commissioner for afresh decision, the parties were directed to maintain status-quo as regards the administration of trust- Pravara Rural Education Society.

3. The background facts leading to this petition can be stated, in brief, as under:-

A] Pravara Rural Education Society, Ahmednagar (The trust) is a registered public charitable trust. The trust runs numerous educational institutions. Late Eknathrao Vitthalrao Vikhe Patil was

the trustee and Chairman of the trust. Eknathrao Vitthalrao Vikhe Patil died on 30-12-2016.

B] Two change reports, being Change Report No.1345 of 2017 and 1346 of 2017, were filed under Section 22 of the Maharashtra Public Trusts Act, 1950 (the Act, 1950). In Change Report No.1345 of 2017 respondent No.3-Mr. Bhagwantrao @ Abasaheb Ganpatrao Kharde Patil, reported that in the meeting of the trust held on 25-02-2017, respondent No.2-Annasaheb Sarangdhar Mhaske Patil was appointed as trustee in the place of late Eknathrao Vitthalrao Vikhe Patil. In Change Report No. 1346 of 2017, respondent No.3 reported that in the place of Eknathrao Vitthalrao Vikhe Patil, Radhakrushna Eknathrao Vikhe Patil was elected as the Chairman of the trust pursuant to the resolution passed in the meeting dated 25-02-2017. The Change Reports were supported by the copies of resolution, death certificate of late Eknathrao Vitthalrao Vikhe Patil and the consent letter of incoming trustee. By the judgment and order dated 02-03-2017, the learned Deputy Charity Commissioner, Ahmednagar was persuaded to allow the Change Reports.

C] The petitioner herein claimed to be a Trustee and Executive Chairman of the trust. The petitioner assailed the legality, propriety and correctness of the judgment and order dated 02-03-2017 passed by the Deputy Charity Commissioner in Change Report Nos. 1345 of 2017 and 1346 of 2017, by preferring appeals being Appeal Nos. 8 of 2017 and 9 of 2017, before the Joint Charity Commissioner, Pune Region, Pune.

D] By the impugned judgment and order dated 13-09-2017, the learned Joint Charity Commissioner, Pune was persuaded to allow the appeals and remand the Change Reports to the Deputy Charity Commissioner, Ahmednagar for afresh decision thereon, after providing an opportunity of hearing to the petitioner.

E] The factors which weighed with the learned Joint Charity Commissioner to allow the appeals and remand the matter for afresh decision were two-fold. One, the petitioner-appellant had filed a Change Report being Change report No. 607 of 2015, wherein the petitioner had reported that he came to be appointed as a trustee of the trust in the place of one Mr. Rajendra Vikhe Patil

pursuant to the resolution in the meeting held on 18-11-2014. The petitioner had also reported a Change, in Change Report No. 866 of 2015, to the effect that there was change in the constitution of the trust. Additionally, two Misc. Applications, being application Nos. 29 of 2015 and 65 of 2016 were filed to re-construct the constitution of the trust and make necessary changes in the Schedule I of the trust. In the backdrop of the pendency of these proceedings, in the opinion of the learned Joint Charity Commissioner there was a dispute as to which of the constitutions of the trust, propounded by the rival parties, was valid. Without deciding aforementioned prior Change Reports and Misc. Applications, the learned Deputy Charity Commissioner could not have decided the subsequent Change Reports, being Change Report Nos. 1345 of 2017 and 1346 of 2017. Two, the petitioner was not provided an opportunity of hearing before deciding the Change Reports though the petitioner had claimed that he had become a trustee of the trust and filed Change Report No. 607 of 2015, which was subjudice.

F] The petitioner is not aggrieved by the order of remand. The incidental order which the learned Joint Charity Commissioner

passed while remanding the matter is assailed by the petitioner. Clause-4 of the impugned operative order, with which the petitioner is aggrieved, reads as under:-

“4. Both the parties are directed to maintain the status quo as regards to administration of the trust i.e., respondent Shri Radhakrushna Eknathrao Vikhe Patil and respondent, Shri Annasaheb Sarangdhar Mhaske Patil shall continue to work as Chairman and Trustee respectively till the disposal of the change reports”

G] The limited prayer in these petitions is to quash and set aside the aforesaid clause-4 of the impugned order.

4. The respondent No.3 in writ petition No. 14318 of 2017 has resisted the petition by filing an affidavit-in-reply.

5. In the wake of aforesaid facts and pleadings I have heard Mr. R. N. Dhorde, learned senior counsel for the petitioner in both the petitions, Mr. V. D. Salunke, learned Advocate for the

respondent No. 3 in both the petitions, Mr. V. D. Hon, learned senior counsel for respondent No.2 in wp/14320/17, and Mr. S. P. Shah, learned counsel for the respondent No.2 in wp/14318/17 and Mr. S. K. Tambe, learned AGP for the State. With the assistance of the learned counsel for the parties I have perused the material on record.

6. Mr. Dhorde, learned senior counsel for the petitioner would urge that the aforesaid clause of the impugned order is singularly unsustainable. Once the learned Joint Charity Commissioner held that the order passed by the Deputy Charity Commissioner accepting the change report in Change Report Nos. 1345 of 2017 and 1346 of 2017 was legally infirm and the change reports were remanded back to the learned Deputy Charity Commissioner for a fresh decision, the appellate authority could not have directed the parties to maintain the status-quo and allowed the respondent Nos. 2 in the respective petitions to continue to work as the Chairman and Trustee of the trust till the disposal of the Change Reports. The said direction, according to Mr. Dhorde, indirectly negated substantive decision of allowing the appeal and

setting aside the order passed by the Deputy Charity Commissioner accepting the Change Reports. A strenuous effort was made by the Mr. Dhorde, to persuade the court to draw an inference that the continued administration of the trust by the private respondents is causing grave prejudice to the interest of the trust, by making reference to certain acts and omissions attributed to the private respondents.

7. In opposition to this, Mr. Hon, learned senior counsel for the respondent No.2 in wp/14320/17 and Mr. Shah, Advocate for the respondent No.2 in wp/14318/17 and Mr. Salunke, learned counsel for the respondent No.3 in both the petitions assailed the very tenability of the petitions. Mr. Hon, learned senior counsel, who led the submissions on behalf of the respondents, raised preliminary objections to the tenability of the petitions. First and foremost, according to Mr. Hon, since the impugned orders have been passed before the Maharashtra Public Trusts (Second Amendment) Act, 2017 came into force, the petitioner-appellant has a statutory remedy of an application under Section 72 of the Maharashtra Public Trust Act, as it stood before it came to be

deleted by the Amendment Act, 2017. In the face of the statutory remedy this Court would not be justified in entertaining the writ petitions, urged Mr. Hon. Secondly, the petitions in the present form are not competent as there is no resolution passed by the Trust-Pravara Rural Education Society authorizing Mr. Ashok Eknathrao Vikhe Patil to file the petitions. On these grounds, according to Mr. Hon, the petitions deserve to be dismissed in limine.

8. On merits, the learned counsel for the respondents submitted that the impugned order does not suffer from any jurisdictional error or perversity which would warrant interference in exercise of extra-ordinary writ jurisdiction. The thrust of the submission on behalf of the respondents was that the remand of the matter for afresh decision on the Change Reports does not imply that the Change Reports have been rejected much less that the reported change is not legal and valid. In the face of material on record to indicate that the respondent No. 2, in the respective petitions, were administering the affairs of the trust in the capacity of the Chairman and the Trustee and even the petitioner had

unequivocally admitted the said fact, the learned Joint Charity Commissioner was within his rights in directing the parties to maintain the status-quo as regards the administration of the trust in order to ensure smooth administration thereof. Thus, no fault can be found with the impugned order.

9. Mr. Dhorde, learned senior counsel for the petitioner joined the issue of maintainability of petitions by canvassing a submission that from the provisions of the Maharashtra Public Trust (Second Amendment) Act, 2017, if construed in the light of statement of Objects and Reasons, it becomes clear that the legislature intended to abolish the remedy of application to the District Court against the order passed by the Joint Charity Commissioner. Thus, the challenge to the tenability of the petitions on the count of remedy of application is misconceived, submitted Mr. Dhorde. The second ground of the petitions having been filed sans authorization by trust was also stated to be unsustainable as the petitioner had filed appeals before the Joint Charity Commissioner in his individual capacity. However, in the cause title of the impugned judgment, the appeals were shown to have been

preferred by Pravara Rural Education Society, Ahmednagar through its Trustee.

10. On a careful persual of the appeal memo in appeal No. 8 of 2017 and 9 of 2017 and cause title of the impugned judgment, it appears that the submissions of Mr. Dhorde, on the second ground, merit acceptance. The petitioner Mr. Ashok had preferred the appeals in the professed capacity of the Trustee and Executive Chairman of Pravara Rural Education Society. However, the appeals were not preferred by the Trust through its Trustee, as shown in the cause title of the impugned judgment. The instant petitions are also preferred by Mr. Ashok in the said professed capacity of the Trustee and Executive Chairman of the Trust. The said capacity of the petitioner may be called in question. However, it does not imply that the petitions are preferred by the trust. Thus, preliminary objection to the tenability of the petitions on the count of the form of the petitions does not deserve countenance.

11. The first ground of availability of statutory remedy was, however, urged with tenacity by Mr. Hon learned senior counsel for

the respondent No.2. Taking the court through the record Mr. Hon, pointed out that the reported change had occurred in the meeting held on 25-02-2017. The change was reported by filing the Change Report Nos. 1345 of 2017 and 1346 of 2017 on 27-02-2017. The Change Reports were allowed on 02-03-2017. The appeals were preferred on 10-03-2017. The appeals were allowed by the impugned order on 13-09-2017. The petitions were filed on 08-10-2017. The Maharashtra Public Trust (Second Amendment) Act, 2017, under which Section 72 of the Act, 1950, which provided for an application against the order passed by the Charity Commissioner, on appeal, under Section 70 of the Act, 1950, to the District Court came to be deleted, was brought into force w.e.f. 10-10-2017. Thus, the petitioner has a remedy of an application before the District Court.

12. Mr. Hon, learned senior counsel would further urge that Section 33 of the Amendment Act, 2017, expressly provides that nothing in the Amendment Act, 2017, shall affect the application or appeal pending before any Civil Court on the date of the commencement of the said Amendment Act, 2017, and such

application for appeal shall be dealt with and disposed of by such court in accordance with law as it stood prior to the date of commencement of the said Amendment Act, 2017. In view of the said provisions there can be no two views on the point that the petitioner-appellant had a statutory right to prefer an application before the District Court, which is in the nature of an appeal, with a further right of appeal to the aggrieved party to the High Court. As a second limb of the submission, Mr. Hon, would urge that right of appeal is substantive right and inheres in a party from commencement of the action in the court of first instance and such a right cannot be taken away except by an express provision or by necessary implication. In the instant case there is a clear legislative intendment to the contrary i.e. save the right of appeal and application under the repealed provisions, canvassed Mr. Hon.

13. In order to lend support to aforesaid submissions, Mr. Hon, learned senior counsel, placed a strong reliance on the judgment of the Supreme Court in the case of **Videcon International Limited Vs Securities and Exchange Board of India (2015) 4 SCC 33**, wherein the question before the Supreme

Court was, whether an order passed by the Securities Appellate Tribunal before 29-10-2002 would be appealable under unamended provision of Section 15-Z of the SEBI Act, before the High Court, or alternatively, whether the same would be appealable under the amended provision of Section 15-Z of the SEBI Act, before the Supreme Court. And also, whether the date on which the Board had preferred the appeals, was a relevant consideration.

14. The Supreme Court held that the appellate remedy available to the respondent prior to the amendment of Section 15-Z of the SEBI Act must continue to be available to the respondent, despite the amendment. The observations in para 43 are material and hence extracted below:

“43. Having recorded our conclusion, as has been noticed in the foregoing paragraph, it is apparent, that insofar as the vesting of the second appellate remedy is concerned, neither the date of filing of the second appeal, nor the date of hearing thereof, is of any relevance. Legal pursuit of a remedy, suit, appeal and second appeal, are steps in an singular proceeding.

All these steps are deemingly connected by an intrinsic unity, which are treated as one singular proceeding. Therefore, the relevant date when the appellate remedy (including the second appellate remedy) becomes vested in the parties to the lis, is the date when the dispute/lis is initiated. Insofar as the present controversy is concerned, it is not a matter of dispute, that the Securities Appellate Tribunal had passed the impugned order (which was assailed by the Board), well before 29-10-2002. This singular fact itself, would lead to the conclusion, that the lis between the parties, out of which the second appellate remedy was availed of by the Board before the High Court, came to be initiated well before the amendment to Section 15-Z by the Securities and Exchange Board of India (Amendment) Act, 2002. Undisputedly, the unamended Section 15-Z of the SEBI Act, constituted the appellate package and the forum of appeal, for the parties herein. It is, therefore, not possible for us to accept the contention advanced at the hands of the learned counsel for the appellant, premised on the date of filing or hearing of the appeal, preferred by the Board, before the High Court. We accordingly reiterate the position expressed above, that all

appeals preferred by the Board, before the High Court, were maintainable in law.”

15. Reliance was also placed on the judgment of this court in the case of **Abhyudaya Co-operative Bank Ltd Vs State of Maharashtra 2009 (4) Bom. C.R.232** wherein this court held that it is a settled law that right of appeal vests in parties at date of suit and is governed by law prevailing at that time and date of decree or of filing of appeal does not affect this right unless subsequent enactment takes away this right expressly or implied intendment.

16. Per contra, Mr. Dhorde, learned senior counsel for the petitioner stoutly submitted that the legislative intent in incorporating substantive and far reaching amendments in Maharashtra Public Trusts Act, 1950, by Second Amendment Act, 2017, is required to be gathered by construing the provision of Amendment Act, 2017 as a whole.

17. Inviting the attention of the court to the statements of objects and reasons especially clause-3 thereof, wherein it was noted that the Act, 1950 had created hierarchy of authorities and courts with a series of appeals, applications and revisions and said multiplicity of proceedings and Forum under the Act, 1950 was found to be unwarranted and even anomalous, it was urged that the decision to do away with the application/appeals to the District Court against the orders passed by the Charity Commissioner was with a clear intendment to destroy the right of appeal, even in matters which were decided before the Amendment Act, 2017 came into force. Attention of the court was also invited to clause (4) of Section 2 wherein the 'Court' came to be substituted as 'High Court of Judicature at Bombay' in place of 'District Court'.

18. Mr. Dhorde, learned senior counsel placed a strong reliance on the judgment of Supreme Court in the case of **Jose Da Costa Vs Bscora Sadasavi Sinani Narcornim AIR 1975 (SC) 1843**, wherein the following observations were made as regards the right of appeal consequent to the amendment in the governing enactments.

“28. Before ascertaining the effect of the enactments aforesaid passed by the Central Legislature on pending suits or appeals, it would be appropriate to bear in mind two well established principles. The first is that “while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment” (see Delhi Cloth and General Mills Co. Ltd V. Income Tax Commr) 54 Ind App 421 = (AIR 1927 PC 242). The second is that a right of appeal being a substantive right the institution of a suit carries with it the implication that all successive appeals available under the law then in force would be preserved to the parties to the suit throughout the rest of the career of the suit. There are two exceptions to the applicaiton of this rule, viz, (1) when by competent enactment such right of appeal is taken away expressly or impliedly with retrospective effect and (2) when the court to which appeal lay at the commencement of the suit stands abolished (see Garikapatti Veeraya V. N. Subbiah

Choudhry 1957 SCR 488 = (SIR 1957 SC 540) and Colonial Sugar Refining Co. Ltd V. Irving, 1905 AC 369)”

(emphasis supplied)

19. Mr. Dhorde, learned senior counsel also placed reliance on the judgment of the Supreme Court in the Case of **State of Punjab Vs Mohar Singh Pratap Singh 1955 AIR (SC) 84**, wherein the consequences which ensue the repeal followed by fresh legislation on the same subject were expounded.

20. The legal position as regards the right of appeal seems to be well neigh settled. A right of appeal is a substantive right and it gets vested in a litigant no sooner the lis is commencement in the Court of first instance and such right is not affected by the repeal of the enactment conferring such right unless the repealing enactment takes away such right either expressly or by necessary implication. It is, thus, stated that legal pursuit of a remedy, suit and appeal and second appeal (whereever provided), are steps in a singular proceeding. The date on which the appellate remedy becomes

vested in the parties to the lis is, thus, the date when the lis is instituted.

21. In the case at hand, indisputably the petitioner had preferred the appeal under Section 70 of the Act, 1950 before the Joint Charity Commissioner before the commencement of the Second Amendment Act, 2017, nay the impugned judgment was delivered by the learned Joint Charity Commissioner on 13-09-2018 much before the Second Amendment Act, 2017 came into force. Though section 33 of the Amendment Act, 2017 saves the application or appeal pending before the civil court on the date of the commencement of Amendment Act, 2017, yet it does not imply that the right of appeal which inhered in a party before the commencement of the Amendment Act, 2017 is taken away. The substitution of the High Court as 'Court' under clause-4 of Section 2 of the Act, 1950 in place of the 'District Court' does not mean that the Court to which the appeal lay at the commencement of the lis stood abolished. Moreover, in any event, on the day the petitions were presented before this court (08-10-2017), there was no impediment for the petitioner to prefer the application before the

District Court as the Amendment Act, 2017 came into force subsequently i.e. 10-10-2018. Thus, challenge based on existence of an alternate statutory remedy cannot be said to be unfounded.

22. Nonetheless in the light of the view which this court is persuaded to take, in the peculiar facts of the case, the question as to whether in the cases of present nature application before the District Court under Section 72 of the Act, 1950 is competent is not required to be determined to the hilt. Here the court is not called upon to determine the question of tenability of an application under Section 72 of the Act, 1950, which came to be deleted by Amendment Act, 2017. The existence of a statutory remedy is pressed into service as a ground not to entertain the writ petition. It is trite law that the existence of an alternate remedy is a self imposed restraint on exercise of writ jurisdiction. An alternate remedy does not completely preclude the court from exercising the writ jurisdiction. In the instant case, having regard to the nature of the impugned order, this court, especially at this length of time, does not find it expedient to decide the petition on maintainability only.

23. On the merits of the matter, before adverting to deal with the rival contentions it may be apposite to extract reasons which prevailed upon the learned Joint Charity Commissioner to pass impugned direction to maintain the status-quo.

“54. **As to Point No.4 :-** In view of my findings to the aforesaid points, appeals deserve to be allowed. Before passing the final order I would like to mention here that, the appellant in their appeal memo has admitted that, the respondent No. 2 and 3 have taken charge of the administration of the trust with the help of some others. The respondents are looking after the administration of the trust. In proceeding filed under Section 41E of the M.P.T. Act also relief is claimed that, respondents be restrained from working as a Chairman. Now, we are in the month of September. This Authority being the custodian of the trust has to see the smooth administration and interest of the trust. Beside this, there is nothing on record to show that, appellant is nominated as a Chairman emeritus by Late Shri Eknathrao Vikhe Patil after the alleged amendment in the

constitution on 10-06-2014. It is not the case of the appellant that, after demise of Late Shri Eknathrao Vikhe Patil he has been appointed by the remaining trustees and members of Managing Committee.”

24. The observations recorded by the learned Joint Charity Commissioner to the effect that the appellant asserted in the appeal memo that the respondent Nos. 2 and 3 (respondent No.2 in respective petitions) have taken charge of administration of the trust and that in the petition filed under Section 41-E of the Act, 1950 the appellant had sought to restrain the respondents from discharging functions, appears to be based on incontrovertible facts. The question which comes to the fore is, whether the learned Joint Charity Commissioner committed any illegality in ordering the status-quo as regards the administration of the trust?.

25. For an answer, the nature of the proceedings under Section 22 of the Act, 1950 is required to be kept in view. Sub-section (1) of Section 22 envisages reporting of the change to the Deputy or Assistant Charity Commissioner, whenever any change

occurs in any of the entries recorded in the register kept under Section 17. Under sub-section (2), the Deputy or Assistant Charity Commissioner is enjoined to hold an enquiry in the prescribed manner to ascertain whether any change in any of the entries in the register kept under Section 17 has so occurred. Sub-Section (3) of Section 22 envisages that, post enquiry, if the Charity Commissioner is satisfied that the change has so occurred he shall record a finding, with reasons therefor, to that effect. In the event, the Charity Commissioner is not so satisfied he has to record a finding to that effect, again with reasons therefor. The nature of the proceedings under Section 22 of the Act is essentially to ascertain and record a finding as to whether a legal and valid change has occurred or not. The factum of change, however, does not depend upon the acceptance thereof by the Assistant or Deputy Charity Commissioner.

26. This position was explained by this Court in the case of **Chembur Trombay Education Society and others Vs D. K. Marathe and others (2002) 3 Bom CR 161**. After placing reliance on the judgment of the Supreme Court in the case of

Managing Committee, Khalsa Middle School and another Vs Smt. Mohinder Kaur and another, AIR 1993 SCW 3006 the legal position was expounded in the following words.

“....A priori, any amendment or change brought about in accordance with law would come into effect from the date of resolution of the Society to bring about such a change. This proposition is fortified from the plain language of section 22 of the Bombay Public Trusts Act. The said section requires that where any change occurs in any of the entries recorded in the register kept under Section 17, the trustee shall, within 90 days from the date of the occurrence of such change, report such change to the Deputy or Assistant Charity Commissioner, as the case may be. The dictionary meaning of expression “occur” as observed in the Blacks Law Dictionary is:

“To happen; to meet one's eyes; to be found or met with; to present itself; to appear; hence, to befall in due course; to take place; to arise;

Giving the natural meaning to this word in section 22 of the Act, coupled with the principle enunciated by the Apex Court

that when the Act does not require that registration of any change is a condition precedent to come into effect, I have no hesitation in taking the view that the amendment to the constitution as well as subsequent elections of the President and members of the Governing Council, therefore, came into effect from the date of the respective resolutions of the general body. The enquiry postulated under Section 22 is only to ascertain the factum as to whether the change has occurred or not. In the event, the competent authority is satisfied that the change has not occurred in accordance with law, only then that change will have to be undone and status quo ante will have to be restored.

A fortiori, resolution of the general body of the Society is sufficient to ignite the change of amendment in the constitution as well as of electing new general body for administering the affairs of the Society. The fact that the change report is pending consideration before the Charity Commissioner, would be of no avail....”

(emphasis supplied)

27. The aforesaid pronouncement was approved by the Division Bench of this Court in the case of **Ganesh M. Thaware Versus Central Hindu Military Education Society, 2007 (6) MLJ 589**. In the Case of **Vijay Mehta and other Vs Chaur K. Mehta 2008 (5) MLJ 853**, on which reliance was placed by Mr. Subodh Shah, learned counsel for the respondent No.2, in writ petition No. 14318 of 2017, after adverting to the pronouncement in the case of *Chembur Trombay Education Society* (Supra) and *Ganesh Thaware* (supra) it was ruled that the order under Section 22 (3) of the Maharashtra Public Trust Act merely gives finality to the changes already effected by the trust and that order does not make changes effective from that date.

28. In the backdrop of the aforesaid legal position, reverting to the facts of the case, material on record indicates that the change was necessitated on account of death of late Eknath Vikhe Patil on 30-12-2016. Indubitably, late Eknath Vikhe Patil was holding the post of Trustee as well as Chairman. It is the claim of the respondents that in the meeting of the Board of Trustees by resolution dated 25-02-2017 the vacant post of Trustee was filled

by appointing Mr. Annasaheb Patil and the vacancy in the office of Chairman was filled by appointing Mr. Radhakrushna Patil, who was already a Trustee of the Trust. Whether the appointment of the respondent No. 2 in the respective petitions as Trustee and Chairman is legal and valid is a matter to be determined by the Deputy Charity Commissioner. The fact, however, remains that the Board of Trustees claimed that the change has occurred, in fact.

29. From the own showing of the petitioner, the respondent No. 2 in the respective petitions have taken charge of the respective posts and the petitioner even sought to restrain them from discharging functions as such Chairman and Trustee. If the settled legal position that the change occurs from the date of resolution and not from the date of acceptance thereof by the Charity Commissioner is applied to the facts of the case, an inference becomes inescapable that the factum of change was given effect to by respondent No. 2 in the respective cases taking over the respective posts. Furthermore, with the acceptance of the Change Reports by the Deputy Charity Commissioner the said factum of the change was clothed with legality, which was taken

away by the impugned judgment. However, the impugned judgment cannot be said to have negated the vary factum of change.

30. The submission on behalf of the petitioner that the learned Joint Charity Commissioner could not have passed the impugned direction once the appeals were allowed and the matter was remanded back to the Charity Commissioner loses sight of the fact that there is a distinction between a case where the matter is remanded back to the lower authority for afresh consideration and a case where the appellate court completely reverses the finding of the lower authority. The remand of the matter to the Deputy Charity Commissioner, in the instant case, implies that the order of acceptance of the change report passed by the Deputy Charity Commissioner is interfered with. It, however, does not imply that the Joint Charity Commissioner has rejected the Change Reports. Viewed through this prism, the change reported by the reporting trustee awaits decision of the Charity Commissioner. Thus, learned Joint Charity Commissioner does not seem to have committed any error in directing the parties to maintain the status-quo as regards

(31)

wp14318.17

the administration of the trust in exercise of *parens patriae* jurisdiction.

31. The conspectus of aforesaid consideration is that no interference is warranted in the impugned order. The petitions, therefore, deserve to be dismissed. Hence, the following order.

ORDER

- i. The petitions stand dismissed.
- ii. Rule discharged.
- iii. No costs.

[N. J. JAMADAR, J.]

VishalK/wp14318.17