

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

WRIT PETITION NO.13318 OF 2019

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| 1. Bhagwantrao @ Abasaheb S/o.
Ganpatrao Kharde Patil
Age-85 years, Occu-Agriculture,
R/o. Kolhar, Tq. Rahata,
District Ahmednagar
Trustee and Secretary, Pravara
Rural Education Society
At Pravara Nagar, Tq. Rahata,
Dist. Ahmednagar | ...PETITIONERS |
| 2. Rajendra S/o. Eknathrao Vikhe Patil,
Age-55 years, Occu-Agriculture,
R/o. Loni (Bk), Tq. Rahata,
Dist. Ahmednagar | |

VERSUS

- | | |
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| 1. The Joint Charity Commissioner,
Pune Region, Pune | ...RESPONDENTS |
| 2. The Deputy Charity Commissioner,
Ahmednagar, Dist. Ahmednagar | |
| 3. The Assistant Charity Commissioner,
Ahmednagar, District Ahmednagar | |
| 4. Ashok Eknathrao Vikhe Patil,
Age-64 years, Occu-Business,
R/o/ Loni (Bk), Tq. Rahata,
Dist. Ahmednagar | |

Mr. V. D. Hon, senior Advocate i/b Mr. Ajinkya P. Deshmukh,
Advocate for the petitioners
Mr. R. B. Bagul, AGP for the respondent/State

Mr. A. A. Nimbalkar, learned counsel h/f Mr. Ojas Deolankar, Advocate and Mr. R. L. Adhe, Advocate for respondent No. 4

CORAM : SANDEEP K. SHINDE, J.

RESERVED ON : 29-06-2021

PRONOUNCED ON : 23-07-2021

ORAL JUDGMENT:

1. This petition under Articles 226 and 227 of the Constitution of India challenges the order dated 19-10-2018 passed by the Joint Charity Commissioner, Pune Region, whereby at the instance of respondent No.4, proceedings in the Change Reports were transferred from Deputy Charity Commissioner, Ahmednagar to the file of Shri Dande, Assistant Charity Commissioner, Ahmednagar.

2. Briefly stated the facts of the case are that:

a] The petitioner No. 1 is a Trustee and Secretary of Pravara Rural Education Society ('trust' for short). The petitioner No. 2 is another Trustee of the said trust. The respondent No. 4 filed Change Report Nos. 607 of 2015 and 866 of 2015 under Section 22 of the Maharashtra Public Trust Act, 1950 ('said Act' for short). Pending decision, respondent No. 4 approached the Joint Charity Commissioner, Pune Region, Pune vide Misc. Application No. 2 of 2017 for seeking transfer of proceedings in aforesaid two change

reports to another Charity Officer. This application was filed in terms of the provision of Rule 36 (iii) of the Trust Rules, 1951.

b] Ground Nos. 6, 7 and 8 in the transfer application were; thus:

“6. The applicant states that he feels prejudiced with the conduct of the proceedings before Ld. Respondent No. 3 at the backdrop of the appeals filed and based on the priority given to the change reports of the respondent No. 1 and 2. Also the reasons for keeping the application No. 29/2015 abated for order is surprising to the applicant.

7. The applicant state that the filing of the appeals and the proceedings that have transpired before Ld. Respondent No. 3 since February 2017 have inflected sense of insecurity and also lack of confidence before the Ld. Respondent No. 3 for conduction proceeding in the further. The respondent NO. 3 has hurriedly passed orders in some change reports whereas the previous ones have been ignored while inquiring the subsequent change reports.

8. The applicant states that in order to have fair trial inquiry it would be expedient in the interest of justice that the matter is referred in paragraph 5 are transferred to ACC No. 1, Ahmednagar. Such transfer would not cause any

harm to the interest of the parties and also would not prejudice the trial/inquiry. Such transfer would enable fair inquiry on merits before an Authority who is previously not associated with trust or is not party in appellate proceedings.”

c] The learned Joint charity Commissioner transferred the proceedings in Change Reports from the Deputy Charity Commissioner, Ahmednagar to Shri Dande, Assistant Charity Commissioner, Ahmednagar solely on the ‘administrative ground’ without addressing the grounds urged in the application. The Joint Charity Commissioner concluded the application, in the following words.

“So without going into the merits of the application, I came to conclusion that, the application may be allowed by exercising powers under Clause iii of Rule 36 of Bombay Public Trust Rules, 1951. Said files may be transferred on administrative ground, without touching to the merits of the application and without making any observation regarding allegations made in the application. Hence point No. 1 is answered in the affirmative and following order is passed.”

3. Mr. Hon, learned senior counsel for the petitioners would

submit that the Charity Commissioner had committed a gross irregularity in exercise of jurisdiction, in as much as, although, transfer of proceedings was sought on the ground of alleged unfair attitude and biased frame of mind of the Officer before whom the proceedings were pending, the learned Joint Commissioner transferred the proceedings on the 'administrative ground' and no 'finding', has been recorded on the grounds urged in the application. Mr. Hon, learned senior counsel submitted the jurisdiction and powers to transfer the proceedings under Rule 36(iii) of the Bombay Public Trust Rules are not purely administrative. It is, therefore, submitted the Charity Commissioner was required to record 'finding' while exercising the jurisdiction under Rule 36(iii) of the said Rules. Mr. Hon, learned senior counsel therefore submitted the learned Joint Charity Commissioner having failed to exercise the jurisdiction vested with him, this court may interfere with the impugned order in exercise of its supervisory jurisdiction and quash the impugned orders.

4. Mr. Nimbalkar, learned counsel for the respondent No. 4 would submit that the petition is misconceived and not maintainable, since the petitioners acquiesced in the order of Joint Commissioner in as much vide application No. 3 of 2021 now petitioners are seeking transfer of change reports and proceedings from the Assistant Charity Commissioner, Ahmednagar to any other Officer. Mr. Nimbalkar, learned counsel for the respondent No. 4 justifies the impugned order.

5. Before advertng to merits of the matter, it may be stated that both the parties herein are seeking transfer of proceedings from one Charity Officer to another, as a matter of 'right'. The question is, whether scheme of Bombay Public Trust Act / Rules, acknowledges such 'right'. AND another question is, kind of jurisdiction Charity Commissioner exercises under Rule 36(iii) of the Bombay Public Trust Rules; whether judicial, quasi-judicial or administrative.

Well before answering these questions, let me reproduce Rule 36(iii) of the Bombay Public Trust Rules ;

36(iii). The power at any stage to transfer any proceedings pending before any Joint, Deputy or Assistant Charity Commissioner to another Joint, Deputy or Assistant Charity Commissioner, as the case may be, or take over himself for disposal.

6. In the case of The Charity Commissioner Bombay V/s The Municipality Taloda and others, 1962 Indian Law Reports (Bombay Series) 732 the Division Bench of this court after examining the scheme of the Bombay Public Trust Act held that power exercised by the Charity Commissioner under various provisions of the Bombay Public Trust Act is not merely judicial or quasi-judicial but also administrative, inquisitive and even as a

delegatee of governments power of superintendence over the trust. Yet, in the case of Vanmala Manoharrao Kamdi and others Vs Deputy Charity Commissioner 2012(3) Mh.L.J. the Division Bench of this court in paragraph No. 19 has held thus:

19. Thus, looking to the scheme of the Act and the ratio of these decisions it is clear that the function of the Charity Commissioner while acting under the provisions of the Act is administrative, judicial as well as quasi-judicial and even that he acts as a watchdog and a delegate of the Government for superintendence and control over the Public Trusts. Not only that the Division Bench of this Court in the decision cited supra went to the extent of saying, with which we fully agree, that Charity Commissioner acts even as a litigant on behalf of the Trust he having been empowered to file appeals or other proceedings before the Court or he is even entitled to defend on behalf of the Public Trusts or actions of Charity Commissioner under the BPT Act, 1950. Thus, taking survey of all these decisions and the nature of powers and functions performed by the Charity Commissioner, we hold that the Charity Commissioner functions as an administrative, inquisitive, quasi-judicial as well as judicial authority under the different provisions of the BPT Act, 1950 and has also to act/defend as a litigant for the public trusts

as parens patriae.

7. Following the law laid down in aforesaid two judgments I hold, the Charity Commissioner exercises the judicial, quasi-judicial and administrative jurisdiction while acting under the provisions of Bombay Public Trust Act.

8. It may be stated that the provisions of Section 22 and 41-E of the said Act, contemplate enquiry by following procedure in terms of Rule 7 of the Bombay Public Trust Rule, 1951, prescribed for trial of suits under the Presidency Small Cause Court Act, 1882 or Provincial Small Cause Court Act, 1887 as the case may be. Essentially, scope of enquiry under Section 22 is not limited to factum of change, but extends to its legality and validity and therefore, enquiry being, judicial enquiry person affected must be given notice and heard. In the case of Lahudas Sambhaji Karad, etc. Vs State of Maharashtra and others 1993 (1) Mah.L.R. 624, it was held that enquiries under Section 22 of the Bombay Public Trust Act, 1950 are in the nature of judicial enquiries and person affected must be heard.

Scope and nature of power/jurisdiction under Rule 36 (iii)

9. Although, the provision of Rule 36 empowers the Charity Commissioner, to transfer the proceedings from one Charity Officer to another, nevertheless, these are neither judicial nor

quasi-judicial but administrative powers, for the following reasons;

- i] Rule 36(iii) does not contemplate any adjudication and therefore not subject to Rules of natural justice.
- ii] While exercising the power under Rule 36(iii) of the Bombay Public Trust Act, the Charity Commissioner does not make any 'order' in the sense it is not a expression of any, decision.
- iii] Rule does not contemplate, enquiry, finding and decision. None of these terms are found in the Rule 36(iii). This is an indication of the fact that the legislature did not want for exercising the powers under this Rules, the Charity Commissioner should hold enquiry, record the finding and render the decision.
- iv] Act does not provide for an appeal or revision against the order passed under Rule 36(iii).
- v] Order passed under Rule 36 (iii) does not occasion, infraction of civil or personal right.
- vi] Rule does not provide or acknowledge 'right' of parties to seek transfer of proceedings.

10. Before concluding the judgment, it may be stated scope, jurisdiction and powers of Charity Commissioner under Rule 36 (iii) is different and distinct, from kind jurisdiction under Section 24 of the Code of Civil Procedure, where cardinal principle of exercise of power is convenience and inconvenience of the parties.

11. For the reasons stated above I hold;

A] That powers exercised by Charity Commissioner under Rule 36(iii) is administrative in nature and Charity Commissioner does not act as judicial, quasi-judicial authority in exercise of such powers.

B] That exercise of powers under Rule 36(iii) are not subject to principle of natural justice.

C] It being administrative power of Charity Commissioner, parties to the proceedings cannot seek transfer of proceedings taking the recourse to the provision of Rule 36(iii).

D] The petition is dismissed and disposed of in the aforesaid terms with no order as to costs.

[SANDEEP K. SHINDE, J.]