IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13254 OF 2018

RAMNATH REVJI AHER AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
...
Advocate for the Petitioners : Shri V.D. Hon, Senior Advocate a/w
Shri Hon Ashwin V.
AGP for Respondents 1 and 2 : Shri S.R. Yadav Lonikar
Advocate for Respondent 3 : Shri A.D.Sonkawade
...

CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.

DATE :- 20th July, 2021

Per Court :-

1. We have considered the submissions of Shri Hon, the learned Senior Advocate on behalf of the petitioners, the learned AGP on behalf of respondent Nos.1 and 2 and Shri Sonkawade, the learned advocate representing respondent No.3 Society.

2. At the outset, we need to record our displeasure for the conduct of respondent No.3 Society represented through the purported President Shri Vasantrao Annasaheb Aher in not responding to the court notice despite service and not causing an appearance either in person or through an advocate. This Court had to issue a notice for final hearing on 21.06.2021. It is pursuant to the said notice that respondent No.3 has caused an appearance. We would have been justified in imposing heavy costs to be paid through the pocket of the Secretary of respondent No.3 Society for such

behaviour. However, Shri Sonkawade, who is a budding lawyer, prays for leniency on behalf of respondent No.3 and assures that respondent No.3 would never behave in such manner in future, that we are pardoning respondent No.3.

3. The petitioners have preferred an application dated 04.12.2017 before the Charity Commissioner, State of Maharashtra, praying for causing an enquiry under Section 41-E of the Maharashtra Public Trusts Act since there have been no valid elections for the governing body of respondent No.3 since 1990. By an order dated 08.12.2017, the Assistant Charity Commissioner, office of the Charity Commissioner, Mumbai, passed an order viz. "*make enquiry and submit report*". Pursuant to the same, the Deputy Charity Commissioner, Ahmednagar conducted an enquiry and submitted the report indicating that several change reports from 1990 are pending, the Trust has movable and immovable properties and to ensure proper governance and administration of the Trust, an Administrator will have to be appointed until the decision on the change report is taken.

4. The grievance of the petitioners is that the competent authority dealing with it's application dated 04.12.2017 contemplates a decision under Section 41-D and not under Section 41-E. The learned Senior Counsel, therefore, submits that the competent authority/ respondent No.2 herein will have to decide the said application on it's own merits and if comes to the conclusion that Section 41-E is not attracted, he would have to assign reasons in

support of his conclusions. If the petitioners are aggrieved by such decision, they would assail the same before the appropriate forum. However, the said authority cannot brush aside the contentions of the petitioners by stating that the application would not be considered under Section 41-E.

5. The learned AGP relies on the affidavit in reply filed by the Inspector working in the office of the Joint Charity Commissioner, Pune and submits, on the basis of the statement made in paragraph 6 that, considering the report of the Inspector and the notings of the Deputy Charity Commissioner, that the application filed by these petitioners was registered under Section 41-D for removing the trustees who are de-facto trustees conducting the affairs of the Trust, although the change reports are pending for adjudication since 1990. He further submits, in the light of paragraph 7, that the proceedings were registered under Section 41-D and would be dealt with accordingly.

6. We are of the view that if an application is filed invoking Section 41-E, it is incumbent upon the authority to scrutinize the grievances/ contentions of the petitioners to the extent of the provision relied upon by them. The petitioners will have to establish that the ingredients under Section 41-E are attracted and thereafter, the authority would pass an appropriate order. If the authority concludes that the pleadings in the application do not attract Section 41-E and would in fact attract Section 41-D, the reasons will have to be assigned to support such conclusions.

7. In view of the above, this Writ Petition is partly allowed. The impugned noting of the Joint Charity Commissioner dated 18.09.2018 in Misc. Application No.584/2018 of registering the application under Section 41-D, is quashed and set aside. As the applicants have invoked Section 41-E and the onus and burden would be on them to establish, on the basis of the pleadings, that Section 41-E is attracted, the said authority would register the application under Section 41-E. All contentions of the litigating parties are kept open. We expect respondent No.2 to deal with the contentions of the petitioners in the light of the provisions of law that have been invoked and pass an order in accordance with the provisions of law, as expeditiously as possible.

kps **(S.G. MEHARE, J.)** **(RAVINDRA V. GHUGE, J.)**