

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.7723 OF 2018

Subhash Rambhau Kosalge,
Aged about 69 years, Occ. Business,
R/o Dnyaneshwar Nagar, Pusad,
Tq. Pusad, District Yavatmal.

.....PETITIONER

...V E R S U S...

- 1) Shri Rajabhau s/o Mahadeorao
Choudhary, aged about 70 years,
Occ: Agriculturist, R/o Giroli,
Tq. Manora, District Washim.
- 2) Shri Pandurang Bhausahab Pawade,
Aged about 65 years, Occ: Agriculturist,
R/o Sule Nagar, At Post Nanded,
Tq. & District Nanded.
- 3) Shri Pradeep Ramrao Deshmukh,
Aged about 55 years, Occ: Agriculturist,
R/o Khadaka, at post Leva, Tq. Mahagaon,
District Yavatmal.
- 4) Shri Vasant Mankoba Bhusewar,
Aged about 52 years, Occ: Agriculturist,
R/o Dhanoda, Tq. Mahagaon,
District Yavatmal.
- 5) Shri Laxman Mankaji Kashinde,
Aged about 52 years, Occ: Agriculturist,
R/o Vitawa, Tq. Pusad, District Yavatmal.
- 6) Shri Jaisingh Tukaram Deshmukh,
Aged about 52 years, Occ: Agriculturist,
R/o Khadka, At Post Leva, Tq. Mahagaon,
District Yavatmal.

- 7) Shri Balasaheb Kisanrao Deshmukh,
Aged about 55 years, Occ: Agriculturist,
R/o Jam Bazar, Tq. Pusad, District Yavatmal.
- 8) Shri Gajanan Vasantryao Deshmukh,
Aged about 47 years, Occ: Agriculturist,
R/o Dhawanda, Tq. Manora, District Washim.
- 9) The learned Joint Charity Commissioner,
Yavatmal.

...RESPONDENTS

WITH
WRIT PETITION (Stamp) NO. 8032 OF 2020

- 1) Rajabhau s/o Mahadeorao
Choudhary, aged about 70 years,
Occ: Agril, R/o Dnyaneshwar Nagar,
Pusad, Tq. Pusad, District Yavatmal.
- 2) Pandurang Bhausahab Pawade,
Aged about 55 years, Occ: Agril,
R/o Sule Nagar, At Post Nanded,
Tq. Nanded, District Nanded.
- 3) Pradeep Ramrao Deshmukh,
Aged about 70 years, Occ: Agril,
R/o Khadaka, At post Leva,
Tq. Mahagaon, District Yavatmal.
- 4) Vasanta Vyankoba Bhusewar,
Aged about 52 years, Occ: Agril,
R/o Dhanoda, Tq. Mahagaon,
District Yavatmal.
- 5) Laxman Mankaji Kashinde,
Aged about 52 years, Occ: Agril,
R/o Vitawa, At post, Tq. Mahagaon,
District Yavatmal.

- 6) Jaisingh Tukaram Deshmukh,
Aged about 52 years, Occ: Agril,
R/o Khadka, At Post Lava,
Tq. Mahagaon, District Yavatmal.
- 7) Balasaheb Kisanrao Deshmukh,
Aged about 55 years, Occ: Agril,
R/o Jam Bazar, Tq. Pusad, District Yavatmal.
- 8) Gajanan Vasantrya Deshmukh,
Aged about 47 years, Occ: Agril,
R/o Dhawande, Tq. Manora, District Washim

.....PETITIONERS

...V E R S U S...

- 1) Subhash Rambhau Kosalge,
Aged about 69 years, Occ. Business,
R/o Dnyaneshwar Nagar, Pusad,
Tq. Pusad, District Yavatmal.
- 2) Assistant Charity Commissioner,
Yavatmal, Tq. and Dist. Yavatmal.

...RESPONDENTS

W.P. NO.7723/2018

Smt. R.D. Raskar, Advocate for petitioner.
Shri Anil Kadu, Advocate for respondent Nos.1 to 8.
Shri K.L. Dharmadhikari, A.G.P. for respondent No.9.

W.P.(st) NO. 8032 /2020

Shri Anil Kadu, Advocate for petitioners.
Shri Anup Gilda, Advocate for respondent Nos. 1 and 5.
Shri K.L. Dharmadhikari, A.G.P for respondent No.2.

CORAM:- V. M. DESHPANDE, J.
DATED :- JANUARY 11, 2021.

ORAL JUDGMENT

Rule. Rule made returnable forthwith in these two writ petitions.

(2) These two writ petitions can be disposed of by this common order.

(3) Smt. R.D. Raskar, learned counsel is appearing for the petitioner in Writ Petition No.7723 of 2018 and Shri Anil Kadu, learned counsel is appearing for the respondent Nos.1 to 8 and Shri K.L. Dharmadhikari, learned A.G.P is appearing for the respondent No.9 – Joint Charity Commissioner, Yavatmal.

(4) In another Writ Petition (stamp) No.8032 of 2020, Shri Anil Kadu, learned counsel is appearing for the petitioners and Shri Anup Gilda, learned counsel is appearing for the respondent No.1 and Shri K.L. Dharmadhikari, learned A.G.P. is appearing for the respondent No.2- Assistant Charity Commissioner, Yavatmal.

(5) The Writ Petition No.7723 of 2018 takes exception to the order passed by the Assistant Charity Commissioner, Yavatmal in Change Report No.100 of 2014 thereby he allowed the application Exhibit-10 filed by the respondent Nos.1 to 8, togetherwith the judgment passed by the Joint Charity Commissioner, Amravati Region, Amravati dated 15.09.2017, thereby the revision filed by the petitioner against the order passed by the Joint Charity Commissioner is dismissed.

(6) In Writ Petition (stamp) No.8032 of 2020, the petitioner has challenged the order passed by the Assistant Charity Commissioner, Yavatmal below Exhibit 27 in Change Report Inquiry No.100 of 2014 seeking direction to produce original cash book, original ledger book, etc.

(7) Change report proceedings were registered on the record of the Assistant Charity Commissioner in view of change report submitted by the reporting trustee for recording the change that occurred in the meeting dated 23.03.2014. The respondents in Writ Petition No.7723 of 2018 filed an application for intervention in the said proceedings.

(8) Sub-section 10 of Section 2 of the Maharashtra Public Trusts Act (for short “said Act”) deals with the person having interest. Similarly, Section 73A of the said Act gives power to the inquiry officer to join persons as party to the proceeding. Section 73A reads as under:

“73A. Power of Inquiry Officer to join persons as party to proceedings. - In any proceedings under this Act, any person having interest in the public trust may be joined as a party to such proceedings on an application made by such person or such terms and conditions as the officer holding the inquiry may order.”

(9) Plain reading of Section 73A of the said Act therefore, postulates that a person cannot be joined as a party in the proceedings unless such person is having interest in the public trust. Therefore, it is expected on the part of the Assistant Charity Commissioner to record its finding, if an application is moved under Section 73A of the said Act that such person is having interest in the trust. The order dated 19.11.2016 passed by the Assistant Charity Commissioner, Yavatmal does not reflect that the Assistant Charity Commissioner has recorded the finding that respondent Nos.1 to 8 are having interest, which in my view, is mandatory on the part of Assistant Charity Commissioner to record the same. Therefore, I am of the view, that the matter needs to be remanded back to the Assistant Charity Commissioner, Yavatmal for deciding the application filed on behalf of the respondent Nos.1 to 8 afresh after giving opportunity of hearing to the petitioner as well as the respondent No.1 to 8. It shall be open for the Assistant Charity Commissioner to conduct a proper inquiry before reaching to the conclusion.

(10) Insofar as, order dated 14.01.2020 below Exhibit-27, which is challenged in Writ Petition (stamp) No.8032 of 2020 is concerned, since the petitioner is having interest or not will be

decided by the Assistant Charity Commissioner after remand. The petitioner is again permitted to file an application afresh for the prayer which was made in Exhibit-27 by giving further details, if the petitioner chose to supplement.

(11) In that view of the matter, I pass the following order.

i) Order dated 19.11.2016 passed by the Assistant Charity Commissioner below Exhibit -10 in Change Report No.100 of 2014 togetherwith the judgment dated 15.09.2017 passed by Joint Charity Commissioner, Amravati Region, Amravati in Revision No.43 of 2016 is hereby set aside.

ii) Similarly, the order below Exhibit-27 in Change Report Inquiry No.100 of 2014 is also quashed and set aside.

iii) The Assistant Charity Commissioner, Yavatmal is hereby directed to decide the afresh the application filed for intervention by giving proper opportunity of hearing to the parties.

iv) The applicants who moved application (Exhibit-27) are also permitted to file fresh application by supplementing further pleadings to the application (Exhibit-27).

v) The exercise should be undertaken by the Assistant Charity Commissioner within a period of three months from the receipt of this order.

(12) Rule is made absolute in above terms. No order as to costs.

JUDGE

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