

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4403 OF 2019

Shri. Shankar S/o Sakharam Supare

...Versus...

Smt Vimal Wd/o Ramkrishna Prakashe and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri V.K. Paliwal, Advocate for petitioners
Shri H.D. Dangre, Advocate for respondent Nos. 1 to 3
Ms T.H. Khan, AGP for respondent Nos. 4 & 5

CORAM : N.B.SURYAWANSHI, J.

DATE : 11/08/2021

The petitioner is aggrieved by the order passed by respondent No.5 – Joint Charity Commissioner in Appeal No. 05/2015 and the order passed by respondent No.4 – Deputy Charity Commissioner in Misc. Application No. 1640/2011 and Misc. Application No. 96/2010.

2. The petitioner claims to be the founder trustee of the trust – Adarsh Dnyan Prakash Shikshan Sanstha, Nagpur, bearing PTR F-455(N) registered under Maharashtra (Bombay) Public Trust Act, 1950 (for short “the said Act”). The name of the petitioner was entered in schedule – I in pursuance of the order dated 30/06/1973 passed in Change Report No. 127/1973 as founder member as per Clause – 3 of the Constitution of the Trust. The petitioner was managing the affairs of the trust along with 15 Members coordination Committee. According to the petitioner, the working of the coordinating committee was confirmed by this Court vide order dated 22/12/2005

in LPA No. 99/1996 and the said order is in-force, till today. By the said order, this Court remanded the matter back.

3. Application No.4/1992 was filed under Section 47 of the said Act by the respondent in which order was passed thereby appointing the respondent Nos. 1 to 3 and one more person namely; M.B. Kimmatkar (now dead) as trustees to manage the affairs of the trust. The administration of the trust was directed to be carried out by these four trustees by the rule of majority. The body of these four trustees was to administer the trust till the new body is brought in under the scheme, if any, takes over the charge from them and those four persons were allowed to take part in the scheme proceedings if they are not parties before the Court.

In pursuance of the directions, a scheme was framed which was set aside by the District Court in Misc. Civil Application No.11/2001 and 12/2001. The order of the District Court was challenged in First Appeal No. 390/2002. The first appeal came to be dismissed. Thus order of the District Court was maintained. The judgment of the First Appeal No. 256/1993 was challenged before the Apex Court in Special Leave Petition. The SLP is also dismissed.

4. The petitioner contends that since the petitioner is a founder member, his name should have been continued in Schedule-I of the trust. According to the

petitioner since 1973 after the entry of the name of the petitioner in Schedule – I, no change report was allowed till date. Therefore his name ought to have been continued in Schedule-I.

5. The respondents filed Misc. Application No.96/2010 for taking entries on Schedule-I, in terms of the orders of Supreme Court, claiming that they still continued to be the Adhoc trustees. The same was allowed and by entering their names in schedule-I, the name of the petitioner was deleted. The petitioner, therefore submits that in absence of any order for deletion of his name as founder trustee from schedule-I, the respondents were not justified in deleting his name and entering the name of the respondent Nos. 1 to 3 in Schedule-I. The petitioner therefore challenges the orders passed by the respondent No.5 thereby directing amendment of Schedule-I in Misc. Applications, which were confirmed by respondent No.4 in Appeal No. 05/2015.

6. The learned Advocate for the petitioner submitted that the petitioner being founder member his name could not have been deleted while entering the names of the Adhoc trustees i.e. respondent Nos. 1 to 3. The order of deletion of name was not passed by any competent authority. The impugned orders are therefore unreasoned orders and since they do not consider the grievance of the petitioner in the proper perspective they are liable to be quashed and set aside. In support of his submission, the petitioner relied upon the Dr. Hemkrushan

Shamraoji Kapgate Vs. Assistant Charity Commissioner, Bhandara and Ors.; 2018 (3) Mh.L.J. 227.

7. On the other hand, the learned Advocate for the respondents contended that till date the scheme in terms of the directions issued in Application No. 4/1992 is not framed, the application No.53/2019, for framing of scheme, is pending before the Charity Commissioner. Till date, there is no new body which has come in power. In that view of the matter, the Adhoc body of respondent Nos. 1 to 3 still continues to administer the trust. Hence there is no substance in the contentions of the petitioner that he being founder trustee, his name could not have been deleted from Schedule-I. He further pointed out that while dismissing First Appeal No. 256/1993, this Court in para 37 of the order observed that the petitioner in the present case was kept at an arm's distance from the administration of the trust. While passing orders dated 06/06/1988 and 30/06/1988 this Court did not find any illegalities in the said order. He therefore submitted that the petition deserves to be dismissed.

8. The learned Assistant Government Pleader adopted the arguments of the respondents and supported the impugned orders.

9. The scheme which was framed in the year 1993 on the basis of which the petitioner's name was entered in schedule-I, has been set aside. The said order has become final. Proceedings for framing of scheme bearing

Application No.53/2019 is pending before the Charity Commissioner. Therefore, in terms of the orders passed in Application No. 4/1992, the Adhoc body of the respondent Nos. 1 to 3 was constituted and was given authority to administer the trust. Till the new scheme is framed and elections are held and new trustees are elected, the Ad hoc body continues to administer the trust. The respondent Nos. 1 to 3 are thus entitled to administer the trust.

10. In the light of these facts, no fault is found with the orders passed by the respondent Nos. 4 and 5 which are based on the orders passed in Application No. 4/1992. Both the authorities have passed reasoned orders and the petitioner has failed to point out any illegality or perversity in the orders impugned in the present petition. Merely because the petitioner is a founder trustee that by itself does not give a right to the petitioner to remain on schedule-I, contrary to the orders passed by the competent authority. There is no substance in the petition and the petition is therefore dismissed.

11. Taking into consideration the peculiar facts of the case, the proceedings of Application No. 53/2019 are directed to be decided expeditiously and in any case within a period of six months from the date of receipt of this order.

JUDGE