

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

WRIT PETITION NO. 3992 OF 2021

Ganesh Shrikisan Khandelwal,
 Aged about 76 years,
 Occupation – Doctor,
 R/o. 6/2, Vakilpeth Coloney,
 Nagpur-9.

.. Petitioner

.. Versus ..

1] Ashok s/o Prahlad Agrawal,
 Aged 65 years,
 Occupation-Nil,
 R/o. Govindpur Road, Gondia,
 District-Gondia.

2] Sudhir s/o Daulatram Paliwal,
 Aged about 67 years,
 Occupation – Private,
 R/o. 157, Triveni, Ramdaspath,
 Nagpur.

3] The Charity Commissioner, Nagpur,
 Civil Lines, Nagpur.

.. Respondents

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Shri Anand Jaiswal, Senior Advocate assisted by Shri S.S. Sharma, Advocate for the petitioner,
 Shri V.K. Paliwal, Advocate for respondent no.1,
 Shri S.D. Abhyankar, Advocate for respondent no.2,
 Ms N.P. Mehta, AGP for respondent no.3.

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CORAM : N.B. SURYAWANSHI, J.
DATED : 11.10.2021.

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition challenges order passed by the Joint Charity Commissioner, Nagpur dated 26.08.2021 (Annexure-J) below Exh.1 in Appeal No.212/2015 thereby dismissing the appeal. By filing the said appeal, the petitioner challenged the order passed by the Assistant Charity Commissioner, Nagpur on 31.7.2015 rejecting the Change Report No.1738/2006.

3. Perusal of the impugned order reveals that the appellant – original reporting trustee and Advocate representing him were absent when the matter was kept for hearing from time to time and the appeal is dismissed on merits in their absence.

4. The learned Senior Advocate for the petitioner, by relying on bye-laws No.18 (2), which provides the powers of Secretary, submitted that the said bye-laws authorises the

Secretary to call the meeting when need is felt by him for the same. He, therefore, assailed the findings recorded by the Joint Charity Commissioner in the impugned order that “Secretary does not have any independent power to convey any meetings and to issue notices. In the absence of anything to show that the Secretary was directed to do so at any point of time, it will have to be held that the meeting was held as per the direction of the President.” He therefore submitted that perverse findings are recorded by the Joint Charity Commissioner, which are contrary to the bye-laws and record. According to him, the authority has misinterpreted the bye-laws and has committed an error in dismissing the appeal. He, therefore, submitted that the petition deserves to be allowed by setting aside the impugned order.

5. The learned Advocate appearing for the respondent no.1 vehemently opposed the petition contending that repeated opportunities were given, however, the petitioner has failed to appear in the matter. The learned advocate for the respondent submits that the appeal was filed in the year 2015 and the matter was prolonged due to absence on the part of the petitioner and his advocate.

6. It is a matter of record that the petitioner and his advocate have failed to attend the matter at the time of hearing. However, taking into consideration the findings recorded by the authority, which are contrary to the bye-laws and record, this court is of the view that the impugned order is unsustainable and the same is liable to be quashed and set aside. The matter is required to be remanded back for fresh consideration on merits by giving an opportunity of hearing to all the concerned parties.

7. In the result, the petition is **allowed** in terms of prayer clause (a), subject to the condition that the petitioner shall deposit costs of Rs.10,000/- with the High Court Legal Services Sub-Committee, Nagpur.

The parties shall cooperate in the hearing of the appeal and the Joint Charity Commissioner shall decide the appeal, as expeditiously as possible, and in any case, within a period of two months from the date of receipt of this order.

Rule is made absolute in the above terms. No costs.

(N.B. Suryawanshi, J.)