

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

LETTERS PATENT APPEAL NO.447 OF 2011

In

Writ Petition No.4390 of 2011

1. Victor s/o Devsagayam Bastian,
Aged about 30 years, Occ.-Advocate,
R/o.-"Philomena Bhawan", 71 A
Rambagh Layout, Medical Square, Nagpur.

Amended as
per Court's
order dated
19-06-2015

2. Vijay Watkar,
Secretary, Saint Ignatius Education Society,
R/o.- Watkar Palace, Mahal, Nagpur.

...APPELLANTS

VERSUS

1. Ignatius Anthony Bastian,
R/o.-B-2 Second Floor, Deepa Apartment,
Medical Square, Nagpur.

2. The Deputy Charity Commissioner,
Nagpur.

...RESPONDENTS

Shri Apoorv De, Advocate for appellants.
Mrs. Sangeeta Jachak, AGP for respondent no.2.

**CORAM : A.S. CHANDURKAR &
PUSHPA V. GANEDIWALA, JJ.**
DATED : SEPTEMBER 20, 2021.

ORAL JUDGMENT : (Per PUSHPA V. GANEDIWALA, J.)

In this Letters Patent Appeal, the appellants challenge the judgment of the Single Bench of this Court passed in Writ Petition

No.4390 of 2011 on 17-09-2011 whereby, the learned Single Judge has allowed the Writ Petition and quashed and set aside the order below Exb-09, passed by the Deputy Charity Commissioner on 28-07-2011.

2. The facts, in nutshell of this Appeal, are as under :-

Saint Ignatius Education Society, Ajni is a registered public trust. The appellant no-1- Victor claims to be the Member of the said trust while, appellant no.2- Vijay claims to be its Secretary. It is the case of the appellants that on 05-09-2007, the appellant no.1 became the President and Mrs. Magdlene Alfred Francis became the Secretary and the Change Report bearing nos. 1160 of 2007 and 1161 of 2007 in this respect were filed. The appellants also filed Change Report No. 1666/2008. It is further case of the appellants that respondent no.1-Ignatius Bastian fraudulently filed a Change Report No.636/08 on 15-04-2008, and obtained a favorable order on 27-5-2008. The appellants herein challenged the said order in Change Report No. 636 of 2008, before the Joint Charity Commissioner in Revision No. 22/08 which was allowed and the order dated 27-05-2008 passed by the learned Deputy Charity Commissioner in Change Report No. 636/2008 came to be set aside and the matter was remanded back to the Deputy Charity Commissioner for reconsideration. The appellants challenged the said order before the District Court in appeal.

The appeal before the District Court came to be dismissed. In second appeal, this Court passed order in terms of the draft minutes filed by the parties and accordingly, learned Deputy Charity Commissioner was directed to reconsider the matter. The learned Deputy Charity Commissioner ultimately rejected the Change Report No.636/2008 vide order dated 09-05-2011 by observing that the respondent is not a person having interest within the meaning of section 2(10) of the Act. The respondents challenged this order dated 09-05-2011 in Change Report No.636/2008 in Appeal No.23/2011 before the Joint Charity Commissioner.

3. It is further stated that in the Change Report No.1666 of 2008 which was pending before the learned Deputy Charity Commissioner, the respondents herein had filed an objection below Exhibit-09. The appellants filed rejoinder to the said objection and also filed an application for dismissal of the objection. Matter was heard by the learned Deputy Charity Commissioner and by way of order dated 28-07-2011, the learned Deputy Charity Commissioner rejected the objection below Exhibit-09 and allowed the Change Report Enquiry No.1666 of 2008 by recording a finding that there were no objections to the said proceedings.

4. The respondent no.1 has challenged the aforesaid order

below Exhibit-09 in Writ Petition No.4390 of 2011 before this Court. The learned Single Judge of this Court allowed the Writ Petition and quashed and set aside the order of the learned Deputy Charity Commissioner below Exhibit-09 principally on the ground that when the appeal against the order passed in Change Report No.636 of 2008 was pending before the Joint Charity Commissioner where the issue with regard to locus and status of the respondent No. 1 was pending adjudication, there was no reason for the Deputy Charity Commissioner to hurriedly decide the objection filed by the petitioner and then to accept the Change Report filed by the appellant no.1 herein by a judgment of the same date by observing that there was no objection to the present Change Report. This judgment of the learned Single Judge is impugned in this Letters Patent Appeal.

5. We have heard Shri. Apoorv De, the learned Counsel appearing for the appellants and Mrs. Sangeeta Jachak, the learned A.G.P. for respondent no.2. No one has put in appearance for respondent no.1.

6. With the assistance of learned Counsel Shri Apoorv De for the appellants, we have perused the impugned judgment and the record.

7. The learned Single Judge of this Court has set aside the

order of the learned Deputy Charity Commissioner below Exhibit-09 predominantly on the ground that the issue with regard to the *locus standi* of the respondent no.2 in Change Report No.636 of 2008 was challenged in Appeal bearing No.23 of 2011 before the Joint Charity Commissioner and the same is pending. The learned Single Judge has held that when the appeal against the order passed in Change Report No.636 of 2008 was pending before the Joint Charity Commissioner, there was no reason for the Deputy Charity Commissioner to hurriedly decide the objection filed by the petitioner and then to accept the Change Report filed by the appellant no.1 herein by a judgment of the same date by observing that there was no objection to the present Change Report. It is further observed that there would be no rule of law if the authorities in the office of the Charity Commissioner decide the objections on a particular day and then proceed to decide the change report in favour of the reporting trustee on the same day by holding that there is no objection to the Change Report.

8. Now, it is informed by the learned counsel for the appellants that the aforesaid Appeal No.23 of 2011 which was pending before the Joint Charity Commissioner against the decision in Change Report No.636 of 2008 came to be decided and the same is dismissed vide order dated 20-10-2011 and the Appeal against that order before the District Judge i.e. Regular Civil Application No.20 of 2011 is also

dismissed vide judgment dated 22-07-2015. The learned counsel has placed on the record a copy of the judgment of the Joint Charity Commissioner in Appeal No. 23/2011.

9. Considering the subsequent developments, as the finding with regard to the *locus standi* of the respondent no.1 herein that the respondent no.1 is not a person having interest within the meaning of Section 2(10) of the said Act, reached finality, the impugned judgment of the learned Single Judge of this Court dated 17-09-2011 passed in Writ Petition No.4390 of 2011, needs to be quashed and set aside and the same is accordingly quashed and set aside and the order passed by the learned Deputy Charity Commissioner on 28-07-2011 (below Exhibit-09) is hereby confirmed.

10. In the circumstances, the Appeal is allowed.

11. There shall be no order as to costs.

12. Letters Patent Appeal stands disposed of.

JUDGE

JUDGE