

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2779 OF 2021

Sayed Abdul Kadar Sayed Abdulla,
Age : 91 years, Occu : Nil,
R/o. Mohalla Sayyadan,
Nanded

... Petitioner

Versus

1. The Assistant Charity Commissioner,
Nanded
2. Mohd. Kasim Hussain s/o. Mohd. Ibrahim
Age : 75 years, Occu : Pensioner,
R/o. Khudbainagar, Degloor Naka, Nanded
3. Islahul Amal Education and Welfare Society,
Through its Secretary,
Masihuzzama Saeeduzzama,
Age : 62 years, Occu : Secretary,
R/o. Sayyadan Galli, Nanded.

.. Respondents.

...

Mr. Shaikh Tarek Mobin H. , Advocate for petitioner.
Mrs. G.L. Deshpande, AGP for Respondent – State
Mr. V.J. Dhage, Advocate for Respondent no.3

...

CORAM : SANDEEP V. MARNE, J.

DATE : 24-11-2022

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. With the consent of the parties, called out for final hearing. Mrs. G.L. Deshpande, the learned AGP waives notice on behalf of respondent – State and Mr. V.J. Dhage, learned advocate waives notice on behalf of

respondent no.3.

2. By this petition, petitioner has assailed the order dated 09.12.2020 passed by Assistant Charity Commissioner-I, Nanded thereby rejecting petitioner's Inquiry Application No.266 of 2020, filed by him for reopening of Inquiry Application No.462 of 1983.

3. The case has a chequered history. Inquiry Application No.462 of 1983 has been filed by petitioner for registration of Municipal House, Old No. 6-2-73 (New No.6-2-92) and its adjacent part at Mohalla Sayyandan as his Trust property. As against this, Inquiry Application No.36 of 1983 was filed by respondent no.3 for registration of the same property as the property of trust of respondent no.3. By separate orders dated 06.08.1996 the Assistant Charity Commissioner was pleased to allow Petitioner's Enquiry Application No.462 of 1983 and to reject Inquiry Application No.36 of 1983.

4. Respondent No.3 filed appeals before Joint Charity Commissioner challenging the orders dated 06.08.1996, which came to be dismissed on 20.07.2000. Respondent no.3 carried the matter further to the District Judge by filing appeals. The District Judge was pleased to allow the appeals and remanded both the enquiries to the

Assistant Charity Commissioner by order dated 13.08.2002.

5. The Assistant Charity Commissioner accordingly proceeded to entertain both Inquiry Application Nos.36 of 1983 and 462 of 1983. After hearing the parties, the learned Assistant Charity Commissioner was pleased to direct the parties to approach the Civil Court to decide the issue of ownership of property. While petitioner acted in pursuance of the direction of the Assistant Charity Commissioner dated 15.09.2005 by filing Regular Civil Suit No.661 of 2005, respondent no.3 challenged that order of the Assistant Charity Commissioner by filing appeal before the Joint Charity Commissioner, Aurangabad. The appeal of respondent no.3 was rejected. Respondent no.3 therefore approached District Court challenging the decisions of Assistant Charity Commissioner and Jt. Charity Commissioner. The District Court was pleased to allow the appeals filed by respondent no.3 by its judgment and order dated 08.03.2013 directing the Assistant Charity Commissioner to conduct enquiry for deciding ownership / title of the house in dispute as per its earlier order dated 13.08.2002.

6. On an objection being raised by respondent no.3 to the maintainability of Regular Civil Suit No.661 of 2005, the Civil Court

was pleased to reject the plaint under the provisions of Order-7, Rule-11 (d) of the Code of Civil Procedure.

7. This is how ideally both Inquiry Application Nos.462 of 1983 and 36 of 1983 remained pending on the file of the Assistant Charity Commissioner, Nanded for decision. However, for some unknown reasons, the Assistant Charity Commissioner, Nanded was not deciding Inquiry Application No.462 of 1983 filed by petitioner. This led to filing of Inquiry Application No.266 of 2020 by petitioner seeking reopening of Inquiry Application No.462 of 1983. The Assistant Charity Commissioner, Nanded has proceeded to reject the Inquiry Application No.266 of 2020 holding that he has become *functus officio* for the purpose of deciding Inquiry Application No.462 of 1983. This order of Asst. Charity Commissioner dated 09-12-2020 is the subject matter of challenge in the petition.

8. I have heard both the counsels for the parties. The Order of the Assistant Charity Commissioner in my view is clearly erroneous. The District Court has remanded both the Inquiry Application Nos.462 of 1983 and 36 of 1983 and it is therefore incumbent upon the Assistant Charity Commissioner to decide both the inquiry applications. There is no order of record finally deciding

Inquiry Application No.462 of 1983 filed by petitioner. In my view, there was no necessity of filing Inquiry Application No.266 of 2020 by petitioner as the Inquiry Application No.462 of 1983 already remained pending for decision before the Assistant Charity Commissioner. In view of the above, the following order is passed.

ORDER

- (i) Writ petition is allowed.
- (ii) Order dated 09.12.2020 passed by the Assistant Charity Commissioner, Nanded is set aside.
- (iii) The Assistant Charity Commissioner, Nanded is directed to decide Inquiry Application No.462 of 1983 filed by petitioner while deciding the Inquiry Application No.36 of 1983 filed by respondent no.3.
- (iv) It is expected that the Assistant Charity Commissioner, Nanded expedite the hearing of both the inquiries and shall make an endeavour to decide the same, preferably within a period of 6 months from today.
- (v) Rule is made absolute in above terms.

(SANDEEP V. MARNE, J.)