

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

**REVIEW APPLICATION NO. 234 OF 2022
IN
FIRST APPEAL NO. 1349 OF 2022
WITH
(CIVIL APPLICATION NO. 12249 OF 2022)**

Pratap S/o Dattatrya Taware
Age : 62 years, Occ : Pensioner and
Founder President of Dalitmitra Sau
Nirmalatai Janseva Foundation,
Pachora, Tq. Pachora, Dist. Jalgaon,
R/o Deshmukh Wadi, Pachora,
Tq. Pachora, Dist. Jalgaon.

..APPLICANT

VERSUS

1. Smt. Kamla Shankar Joshi
Age : 75 years, Occ : Household,
R/o Vivekanand Nagar, Bhadgaon Road,
Pachora, Tq. Pachora, Dist Jalgaon.
2. Pravin S/o Madhukar Salunke
Age : 50 years, Occ : Agri.,
R/o 35, Sanghvi Colony, Bhadgaon Road,
Pachora, Tq. Pachora, Dist. Jalgaon.
3. Anil Purushottam Joshi
Age : 52 years, Occ : Agri.,
R/o Deshmukhwadi, Pachora,
Tq. Pachora, Dist. Jalgaon.

..RESPONDENTS

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Mr.Sachin S. Deshmukh h/f Mr. Majit S. Shaikh, Advocate
for the applicants

Mr. C.T. Jadhav, Advocate for respondent nos.1 and 3

Mr. Rajendra S. Deshmukh, Senior Advocate a/w

Mr.Devang R. Deshmukh i/b Mr. Ajay D. Pawar, Advocate for respondent no.2.

Mr. Mahesh S. Deshmukh, advocate for intervenor in C.A. No.12249/2022.

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CORAM : S.G.DIGE, J.

RESERVED ON : 05.09.2022

PRONOUNCED ON : 21.09.2022

JUDGMENT :

This review application is taken out mainly on two grounds namely; the directions given by this Court in the order dated 20th July, 2022 passed in First Appeal No.1349/2022 regarding (i) learned Assistant Charity Commissioner, Jalgaon is directed to hold the elections of the said Trust as per approved members on record i.e. as per accepted change report for the period 1997-2002 and (ii) all pending Change Reports are disposed of.

2. It is contention of the learned counsel for the applicant that when the challenge in the First Appeal was confined to the order under section 47 of the Maharashtra Public Trust Act (for short "M.P.T. Act"), therefore, the impugned clauses (c), (d) and (f) of the order deserve

reconsideration. The learned counsel submits that this Court has granted reliefs, which were not asked for nor even the prayer was made in that regard. The learned counsel further submits that by clause (f) of the impugned order, the directions are given to dispose of the change reports. The authority to dispose of the change report under section 22 of the M.P.T. Act is vested with the Assistant Charity Commissioner or the Deputy Charity Commissioner. Hence, the order deserves to be reconsidered. When the change reports are pending the elections of the said trust cannot be held. Hence requested to allow the review application.

3. The learned counsel for the review applicant relied on the judgments in the cases of *Trojan & Co. Vs. Nagappa Chettiar* reported in *AIR 1953 SC 235*, *Krishna Priya Ganguly Vs. University of Lucknow* reported in *(1984) 1 SCC 307*, *Omprakash Vs. Ramkumar* reported in *(1991) 1 SCC 441*, *Bharat Amrutlal Kothori Vs. Dosukhan Samadhan Khan Sindhi* reported in *(2010) 1 SCC 234*, *Union of India Vs Abhimanyu Tiwari* reported in *(2016) 12*

SCC 514 and Anil Kumar Singh Vs. Vijay Pal Singh reported in ***(2018) 12 SCC 584***.

4. It is the contention of the learned counsel for respondent no.2 that the review application is not maintainable since it does not reflect mistake on the face of record. The power of review can be exercised for correcting a mistake but not for substituting a view. Such powers can be exercised within the limit of the statute dealing with exercise of powers. The review cannot be treated like an appeal in disguise. Both the parties were consented for disposal of the change reports since those change reports were not presented in the stipulated time framed as per the order passed by the Joint Charity Commissioner, Nashik Division, Nashik (for short, "Jt. C.C.") dated 22nd June, 2021. The Jt. C.C. in clause (4) of the operative part of the order has directed that the trustees shall submit the change reports and audit reports within fifteen (15) days from the regularization of trust". Neither from the side of the present applicant nor from the side of the present respondents, the

change reports were submitted within time given by the Jt. C.C.. Therefore, the change reports have lost their identity in the eyes of law, being time barred. It was necessary to hold the elections to fill up the vacuum created after disposal of both the change reports. Therefore, there is no point to entertain the present review application. The learned counsel relied on the judgments in the cases of ***State of Haryana Vs. Mohinder Singh and others*** (decided on 12.11.2002) in the Civil Appeal no.5841/42 of 2000 (reported at MANU/SC/1391/2002), **Sasi (D) through L.Rs. Vs. Aravindakshan Nair and Ors** (03.03.2017- SC) reported in **2017(4) SCC 692 and Perry Kansagra Vs. Smriti Madan Kansagra** in Civil Appeal No.1694 of 2019 and S.L.P. (Civil) No.9267 of 2018.

5. It is the contention of the learned counsel for the respondent nos.1 and 3 that the trust was deregistered. The said deregistration was challenged by Narendra Shankar Joshi. Thereafter, the said trust was restored. The direction was given by the Jt. C.C. to file the change reports

within 15 days from the date of order, but the change reports were not submitted within prescribed time, hence in the interest of the trust, the elections were necessary. Two change reports were filed before the Assistant Charity Commissioner, no accounts were submitted in trust office from the year 1997 to 2021. The learned counsel further submits that the setting aside the pending change reports was necessary as by both the change reports the parties were claiming that they are the legal trustees and allowing one change report would lead to new litigation. Hence, there is no merit in the review application.

6. It is the contention of the learned counsel for intervenor that the intervenor is a member of the trust. The intervenor had filed change report before the Assistant Charity Commissioner, Jalgaon, which is disposed of by order of this Court. The intervenor has accepted the order passed by this Court. The reliefs granted by this Court are ancillary reliefs. As per the provisions of the Civil Procedure Code, this Court has inherent power to prevent abuse of law. Hence the order passed by this Court is legal and valid.

7. I have heard all the learned counsel.

8. The review applicant preferred appeal against the order passed by the Jt. C.C. dated 14th March, 2022 before this Court. By the said order, the Jt. C.C. had appointed the respondents herein as trustees of Dalitmitra Sau Nirmalatai Janseva Foundation, Pachora, Tq. Pachora, Dist. Jalgaon (for short, “the said trust”) for a period of two years. The said order was impugned by the review applicant by filing appeal. Considering the submissions of all the parties, this Court has passed the order. The operative part of the order reads as under :-

ORDER

“(a) Appeal is partly allowed.

(b) The order dated 14th March, 2022 passed by the learned Joint Charity Commissioner is hereby quashed and set aside.

(c) Learned Assistant Charity Commissioner, Jalgaon is directed to hold the election of the said Trust as per

approved members on record i.e. as per accepted Change report for the period 1997-2002.

(d) Learned Assistant Charity Commissioner shall verify the record. Election shall be conducted within one month after receipt of this order. Till then the present thirteen (13) members shall administer the Trust.

(e) All the Civil Applications are disposed of.

(f) All pending Change reports are disposed of.”

9. It is the contention of the learned counsel for the review applicant that the directions given by this Court regarding holding the elections of the said trust and disposing of the pending change reports are beyond the scope of appellate jurisdiction of this Court. The said prayers were not sought in the appeal. In my view, this Court had dictated the order in open court. This Court had asked all the learned counsel present in the Court including the learned counsel of revision applicant about disposal of pending change reports in the welfare of the trust, all the learned counsel had consented for it, hence the said order was

passed. If revision applicant is not agree to dispose of the change reports then the said change reports need to be decided on its own merit. This Court has no power in appellate jurisdiction to dispose of those change reports. If change reports are not disposed of then it is not necessary to give directions to hold elections. Accordingly, I pass the following order :-

ORDER

- (i) The Revision application is allowed.
- (ii) The directions given by this Court regarding holding the elections and disposing of the pending change reports are withdrawn.
- (iii) The civil application stands disposed of accordingly.

**[S.G.DIGE]
JUDGE**

After pronouncement of judgment, all the learned counsel including Shri S.S. Deshmukh, learned counsel for the applicants, Mr.A.D. Pawar, learned counsel for respondent no.2, Mr.Mahesh S. Deshmukh, learned counsel for the intervenor and Mr.C.T. Jadhav, learned counsel for

respondent nos.1 and 3 submitted that this Court has allowed the First Appeal and directed to decide the change reports but question would arise, who would administer trust till the decision of the change reports. This Court has clarified in the order dated 20th July, 2022 that till the election, present 13 members, who are held valid, as per change reports of 1997 to 2002, would administer the trust. The said persons would administer the trust till the decision of both change reports.

. The learned Assistant Charity Commissioner is requested to dispose of both pending change reports as early as possible and preferably within three months from the date of receipt of this order.

[S.G.DIGE]
JUDGE

SGA/-