

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

WRIT PETITION NO. 11117 OF 2022

Sardar Manjitsingh Jagansingh .. Petitioner

Versus

Sardar Surindersing Ajabsingh Sardar
and others .. Respondents

Shri Ganesh A. Gadhe, Advocate for the Petitioner.

**CORAM : SANDEEP V. MARNE, J.
DATE : 14TH NOVEMBER, 2022.**

FINAL ORDER :

. By this petition, petitioner assails order dated 25th August, 2022 passed by the Joint Charity Commissioner, Aurangabad passed below Exhibit 25 in Appeal No. 19 of 2020 thereby allowing application for amendment filed by the original appellants before him (respondent No. 1 herein).

2. Mr. Gadhe, learned counsel appearing for the petitioner challenges order on various grounds. Firstly he submits that, arguments in the appeal were heard and the matter was closed for judgment, at which stage application for amendment was moved and on that ground itself same ought to have been rejected. Secondly, he would submit that on account of conclusion of the arguments, the legal defences of the petitioner were made known to the respondent No. 1 and in such a situation he cannot be given an opportunity to cover the lacuna in pleading by amending the same. Thirdly, Mr. Gadhe would submit that considering the provisions of

Section 73 and 76 of the Maharashtra Public Trust Act, 1950 (for short “Act of 1950”), the Joint Charity Commissioner did not have jurisdiction to entertain or allow amendment application. Next submission of Mr. Gadhe is that the amendment was intentionally moved to delay proceedings relating preparation of list of persons whose membership is undisputed as directed by this Court by order dated 10th March, 2022 in the Writ Petition No. 1374 of 2022.

3. Lastly Mr. Gadhe would contend that under the provisions of Rule 37 of the Maharashtra Public Trust Rules, it was incumbent upon the Joint Charity Commissioner to pronounce his decision immediately after conclusion of the arguments.

4. I do not find any of the grounds raised by Mr. Gadhe in support of his challenge to the impugned order to be tenable. I have gone through the amendment application and find that only additional grounds of challenge to the order passed by the Assistant Charity Commissioner are sought to be incorporated in the appeal. So far as stage at which the amendment was introduced, the petitioner may be right in questioning the same. However, the Joint Charity Commissioner has observed that after granting the amendment, the petitioner would have all opportunities of re-arguing the matter. Therefore, the first objection of Mr. Gadhe is taken care of.

5. So far as the objection that the Joint Charity Commissioner does not have jurisdiction to allow amendment of pleadings is concerned, the contention is stated only to be rejected. Section 73 read with Section 76 of the Act of 1950 specifically not only confers

all powers of the Civil Court, but specifically directs that the provisions of the Code of Civil Procedure shall apply to all proceedings before the Courts under the Act of 1950. It therefore cannot be said that the Assistant Charity Commissioner or the Joint Charity Commissioner do not have jurisdiction to permit amendment in the pleadings. That argument would also lead to absurdity, as the amendments which are necessary for the purpose of determination of real question of controversy between the parties will remain unincorporated and parties will be deprived of adding pleadings left out inadvertently. I therefore hold that the Joint Charity Commissioner has the necessary jurisdiction to entertain and decide application for amendment of the pleadings.

6. The next objection of Mr. Gadhe that the amendment is moved for the purpose of delaying implementation of the order passed by this Court on 10th March, 2022 in Writ Petition No. 1374 of 2022. I find that the said objection was not raised while opposing the application for amendment. Even otherwise I fail to understand as to how independent proceedings pending before A. C. C. can get affected by pendency of appeal in an independent matter before the Joint Charity Commissioner. The order passed by this Court on 10th March, 2022 is made time bound and the concerned authority is bound to implement it within the time limit granted/extended by this Court. There is no question of those proceedings being delayed on account of passing of the order by the Joint Charity Commissioner.

7. The last submission of Mr. Gadhe is that the Joint Charity

Commissioner ought to have pronounced the judgment immediately after conclusion of the arguments and ought not to have entertained application filed by the respondent No. 1 for amendment of the appeal memo. The provisions of Rule 37(4) of the Rules are unambiguous, which provide that the Joint Charity Commissioner after appeal has been heard, shall pronounce his decision either at once or on some future dates of which due notice shall be given to the parties. Thus there is no obligation on the part of the Joint Charity Commissioner to pronounce the judgment immediately after the arguments are heard.

8. In my opinion, even though the application for amendment has been belatedly moved by the respondent No. 1, the same will not cause any prejudice to the petitioner. The apprehension expressed by Mr. Gadhe that the amendment in the appeal memo might be used by the respondent No. 1 to file an application for additional evidence is in the realm of speculation. Admittedly, no such application has been moved and the matter appears to be adjourned to 24.11.2022 for final arguments.

9. Petition filed by the petitioner is thus devoid of any merits. Same is dismissed without any orders as to costs.

[SANDEEP V. MARNE, J.]