

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

Writ Petition No. 1249 of 2022

Ashfaq Ahmad Khan Majid Khan,
aged about 60 years, Occ : Retired,
R/o I.U.D.P Colony, Washim,
Dist. Washim.

... Petitioner

... Versus ...

Sk. Mahemood Sk. Kalu,
aged about 80 years,
R/o Lal Miya Dargah,
Bhagwanpura Washim.

... Respondent

Mr. A. S. Deshpande, Advocate for the petitioner
Mr. Devendra Mohgaonkar, Advocate for the respondent

CORAM : ROHIT B. DEO, J.
DATED : 4-3-2022

ORAL JUDGMENT

Issue notice for final disposal.

2. Learned Advocate, Mr. Mohgaonkar waives service for the respondent.

3. Rule. With consent, the petition is finally heard.

4. The petitioner is assailing order dated 4-2-2020 rendered by the learned Assistant Charity Commissioner, Washim in Inquiry

491/2009 whereby the change report filed by the petitioner is rejected on the premise that despite several opportunities, no evidence was adduced.

5. The petitioner preferred Appeal 36/2021 under Section 70 of the Maharashtra Public Trusts Act, 1950 which is dismissed by the learned Joint Charity Commissioner, Amravati Region, Amravati vide judgment dated 10-2-2022. While dismissing the appeal, the Joint Charity Commissioner directed the trustees to hold the election of the executive committee in the presence of Inspector attached to the Washim Office within three months on the basis of the list of valid members as on the date of acceptance of change report 1034/2001. The operative part of the appellate judgment reads thus :

“(1) Appeal is dismissed.

(2) The trustees are directed to hold election of executive committee, in presence of Inspector of Washim PTRO, within three months, with the valid members of last admitted valid election of which change report no. 1034/2001 is accepted.

(4) This order be sent to Ld. Trial authority for taking necessary action and passing further directions to conduct elections as mentioned above as required.

(5) Record and proceeding be send to concerned, if received.

(6) Proceeding is closed.”

6. I have perused the order sheet made available for my perusal and I note that the learned Assistant Charity Commissioner cannot be faulted for rejecting the change report in the absence of evidence. The consideration by the appellate judge of the ground that the learned Assistant Charity Commissioner acted in haste, is found in paragraphs 12 and 13 of the judgment impugned, which reads thus :

“12. Ld. Adv. for respondent argued that, the present appellant has not proceeded before District Court, Washim and trying to drag the litigation years together. In view of said submission this authority has gone through the online roznama of Misc. Civil Application No. 33/2016, available on the official web site of District Court, Washim, on perusal of the same, it appears that, the matter is pending for hearing on exhibit since 14/02/2018 to 23/12/2021. From the said situation it seems that, after seeking relief of stay below Exh.19 the appellant has not proceeded with the matter and tried to resolve the dispute once for all. Moreover, appellant tried to drag the litigation years together and kept the same lingering, not only before trial court but also before District Court, Washim. Similarly on perusal of roznama in change report No. 491/2009. It transpires that matter was pending for evidence of appellant on 20/07/2010, and the evidence affidavit was given on 16/03/2012. Thereafter the matter was tagged with change report No 106/2009 from 12/10/2012 till 27/01/2016 the roznama dated 01/02/2016 shows that change report No. 169/2009 was rejected. Thereafter the present matter was kept for verification of original record since 25/02/2016 to 16/12/2016 thereafter, again matter kept for examination-in-chief since 16/12/2016 to 22/06/2017. Thereafter, matter was adjourned for further

chief examination/argument since 22/06/2017 to 04/10/2017. Thereafter the pursis Exh. 25 was kept for hearing since 03/10/2017 to 26/03/2019. On 26/03/2019 the matter was again kept further examination-in-chief till 30/01/2020 and on 04/02/2020 the change report was rejected for not proceeding with the matter.

13. Thus, on perusal of record and roznama it transpires that, the parties are interested to keep the dispute lingering years together and they have not concern or think with the interest of trust.”

7. I completely agree with the observations of the learned appellate Judge.

8. That apart, the appellate Judge has rightly observed that due to checkered history of litigation, it is the trust which is suffering, and therefore, in the interest of smooth administration, the election should be held. The learned appellate Judge rightly directed that since the last undisputed and accepted change report is 1034/2001, the election be held on the basis thereof.

9. I see no reason to interfere in writ jurisdiction. The petition is rejected.

JUDGE