

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

WRIT PETITION NO. 1444 OF 2022

Shri Andeo Vithoba Dongre,
Aged about 77 years,
R/o Plot No. 465-A, New Nandanvan
Layout, Nagpur.

.... **PETITIONER**

VERSUS

- 1) The Deputy Charity Commissioner,
Nagpur, having office Near G.P.O.
Square, Civil Lines, Nagpur.
- 2) Mrs. Birjula Pandurang Meshram,
Aged about 75 years,
R/o Plot No. 255, Kukde Layout,
Rameshwari Road, Nagpur.
- 3) Shri Nitin Pandurang Meshram,
Aged about 47 years,
R/o Plot No. 255, Kukde Layout,
Rameshwari Road, Nagpur.
- 4) Shri Tushar Pandurang Meshram,
Aged about 43 years,
R/o Plot No.255, Kukde Layout,
Rameshwari Road, Nagpur.
- 5) Shri Vandeo Narayan Patil,
Aged about 64 years,
R/o Plot No.121, Nalanda Nagar,
Post Hagwan Nagar, Nagpur.
- 6) Smt. Varsha Vandeo Patil,
Aged about 53 years,
R/o Plot No.121, Nalanda Nagar,
Post Bhagwan Nagar, Nagpur.

.... **RESPONDENTS**

Mr. M. Masodkar, Counsel for the petitioner,
Mr. N.R. Rode, A.G.P for respondent 1.

CORAM : ROHIT B. DEO, J.
DATED : 14th MARCH, 2022

ORAL JUDGMENT :

Heard. **Rule.** Rule made returnable forthwith. With consent, the petition is heard finally.

2. The petitioner is assailing the order dated 15-11-2021 passed by the Deputy Charity Commissioner, Nagpur in Change Report Enquiry 323/2014 below Exhibits 81 and 82.

3. Exhibit 81 is an application preferred by the intervenors/objectors seeking direction to the reporting trustee to supply the copy of affidavit of the reporting trustee and further grant permission to cross-examine the reporting trustee. Exhibit 82 is an application preferred by the petitioner-reporting trustee which is styled as “application for discarding the objections of the objectors Mrs. Birjulabai Meshram and others and disallowing them from participating in the proceeding as objectors”. By common order dated 15-11-2021 the authority was pleased to allow Exhibit 81 and to reject Exhibit 82.

4. The learned Counsel for the petitioner-reporting trustee would submit that the objections raised are hit by the doctrine of estoppel as statutorily recognized under Section 115 of the Indian Evidence Act. The submission is that the objectors were enrolled as members in 2013 and participated in the elections. The petitioner contended that the change report is based on the membership and the election in which the objectors participated and therefore, the objections preferred by objector Mrs. Birjula Meshram are *mala fide*. The other averment is that since Mrs. Birjula Meshram and the other objectors had the knowledge of the development since last six years and there was no demur, the objectors are precluded from raising the objections at a belated stage. It is further averred that objector Mrs. Birjula Meshram supported the claim of the petitioner for a substantial period in the litigation and therefore, the principle of promissory estoppel comes into play.

5. Notably, the objectors were permitted to intervene by order dated 15-11-2021 purportedly in exercise of power under Section 73A of the Maharashtra Public Trusts Act (Act) and the petitioner did not assail the said order, which has assumed finality. The authority has rightly noted that the intervention having been allowed, the objections cannot be discarded without providing an opportunity to the objectors to

substantiate the objections.

6. The petitioner-reporting trustee appears to be labouring under serious misconception of fact and law. It has probably not occurred to the petitioner-reporting trustee that the question of promissory estoppel or for that matter any other estoppel just does not arise in the factual matrix. Section 115 of the Indian Evidence Act to which my attention is drawn reads thus :

***“115. Estoppel.-** When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief; neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.”*

7. The *sine qua non* ingredient of the doctrine of estoppel as statutorily recognised is that by a declaration or act or omission, the person against whom the doctrine is invoked, shall have intentionally caused or permitted any person to believe a thing to be true and that such person shall have acted upon such belief. It is difficult to appreciate the submission that merely because the objectors were allegedly on the same page as the petitioner, at some point in time, it can be assumed that the petitioner was made to act upon such belief. It is not the case of the petitioner-reporting trustee that he would not have litigated but for a particular representation or act or omission

intentionally done by the objectors which impelled him to litigate or file the change report.

8. Even if it is assumed, *arguendo*, and stretching the concept of promissory estoppel to an unnatural extent, that there is even an iota of substance in the submission of the reporting trustee, he is oblivious of the fact that ultimately the objections shall have to be decided on merit. The objectors cannot be thrown out on the premise that the doctrine of estoppel operates, particularly since their application under Section 73A of the Act is allowed and the petitioner-reporting trustee has accepted the order whereby the objectors were permitted to intervene in the change report enquiry.

9. The petition is dismissed.

JUDGE

adgokar