

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION (CAS) NO. 1173/2022 IN
SECOND APPEAL NO.473/2015

WITH

CIVIL APPLICATION (CAS) NO. 1171/2022 IN
SECOND APPEAL NO.490/2015

WITH

CIVIL APPLICATION (CAS) NO. 1172/2022 IN
SECOND APPEAL NO.491/2015

WITH

CIVIL APPLICATION (CAS) NO. 1170/2022 IN
SECOND APPEAL NO.488/2015

Punjabrao S/o Mohanji Phalke

Vs.

Dnyaneshwar S/o Manikrao Nighot and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri A.P. Thakare, Advocate for appellant
Shri S.D. Chande, Advocate with Shri B.H. Shambharkar, Advocate for respondent No.1
Shri S.R. Charpe, Advocate for respondent Nos. 3, 4 and 6

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 18/11/2022

Present applications are filed by respondent Nos. 3, 4 and 6 for transposing them as appellants in the present matters. Present appeals are filed by one Punjabrao Mohanji Phalke, who was Joint Secretary of the trust. It is contended that the appellants have filed Change Report Nos. 190/1992, 726/2002, 2011/2001, 1139/1989 as there was vacancy

caused in the Managing Committee.

2. Learned Assistant Charity Commissioner after hearing reporting trustee as well as objector i.e. appellant as well as objector accepted the Change Report Nos. 190/1992, 726/2002,, 1139/1989 and Change Report No. 2011/2001 filed by respondent No.1 was rejected on 28/04/2008. The respondent No.1 challenged the same before the Joint Charity Commissioner in Appeal Nos. 11/2008, 12/2008, 18/2008, 10/2008. The said appeals came to be allowed, against which the Application Nos. 17/2009, 18/2009, 20/2009 16/2009 came to be filed before District Judge, Nagpur. The said applications came to be rejected by the District Judge. The said orders are under challenge in the present second appeals. The matters were admitted on 11/07/2016 and 01/08/2016. The present applicants were member elected in the said change report for filling up the vacancies. The present applicants being aggrieved are claiming to be transposed as appellants in place of deceased appellant.

3. The Counsel for respondent vehemently opposed the applications as these applicants have not challenged the orders passed by Joint Charity Commissioner or District Judge. As such, they have no right to be transposed as appellants. It appears that all the connected matters are admitted. Though it is correct that present applicants were not joined as appellants they are party respondent however

being elected members they have never opposed the appellant and their right may be affected if appeal is abated. In my considered opinion, no prejudice is going to cause if applicants herein are transposed as appellants as they were elected trustees of the impugned change report and were supporting the appellant. Their rights will be decided in the present appeals. In view of impugned judgment learned Counsel for the appellant relied on ***Jagatnarayansingh Swarupsingh Chithere and others Vs. Swarupsingh Education Society and another, reported in 1980 Mh.L.J. 372***. In support of his contention that enquiry conducted by the Assistant Charity Commissioner under Section 22 is a judicial enquiry, wherein person affected is required to be noticed and heard. In view of Section 22, Rule 73A, the applicants are persons having interest in the trust and on an application filed on their behalf, they can be joined as a party and can be heard. Section 76 reads as under:

76. Civil Procedure Code to apply to proceedings [before Court] under this Act

“Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the court under this Act.”

4. The provisions of Code of Civil Procedure are made applicable in this regard. The present applications are filed under Order 23 Rule 1A. As such, I have no hesitation to

hold that the respondent Nos. 3, 4 and 6 can be transposed as appellants in these matters. In view thereof, applications are allowed. Permission is granted to transpose respondent Nos. 3, 4 and 6 as appellants.

5. Necessary amendment to be carried out within one week.

6. The applications are disposed of.

7. It appears that there is no substantial question of law framed while admitting the appeal. Hence, list the matter in the week commencing from 12/12/2022 for final hearing.

(SMT. M.S. JAWALKAR, J.)

Jayashree..