

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

WRIT PETITION NO. 4703/2021

1. Darshanlal S/o Nandalal Malhotra,
Aged about 56 years, Occupation - Business,
R/o Jawahar Nagar, Bhandara, Dist. Bhandara.
2. Suresh S/o Istari Bhoyar,
Aged about 61 years, Occ-Agriculture,
R/o Bank Colony, Durga Nagar,
Manewada Road, Nagpur.

PETITIONERS

.....VERSUS.....

1. Rajeshwar S. Harshe,
Election Officer/Inspector,
Public Trust Registration Office, Bhandara.
Near Punjab National Bank, Bhandara.
2. Narendra s/o Babanrao Palandurkar,
Resident of Shahpur, Dist. Bhandara,
Taluka-Shahpur, Dist. Bhandara.
3. The Joint Charity Commissioner, Nagpur.

RESPONDENTS

Shri S.D. Abhyankar, counsel for the petitioners.
Shri V.K. Paliwal, counsel for the respondent no.2.
Shri A.A. Madiwale, Assistant Government Pleader for the respondent no.3.

CORAM : A. S. CHANDURKAR AND ANUJA PRABHUDESSAI, JJ.

DATE : 11TH JANUARY, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
counsel for the parties.

2. The challenge raised in this writ petition is to the order
passed by the respondent no.3-Joint Charity Commissioner, Nagpur in
proceedings under Section 41A of the Maharashtra Public Trusts Act,
1950 (for short, 'the Act of 1950'). The facts on record indicate that on

12.01.2012 in proceedings under Section 70 of the Act of 1950, the learned Joint Charity Commissioner directed the elections of the managing committee of Gram Vikas Samiti - public trust to be held. The Inspector from the Public Trust Office was directed to prepare the list of members after considering the Proceedings Book, Membership Register, Receipt-Book, etc. Thereafter, objections were required to be called to the proposed membership list after which the final membership list was to be published. The elections were to be held thereafter. In Writ Petition No.6382 of 2019 by the order dated 28.11.2019 it was directed that the learned Joint Charity Commissioner ought to ensure compliance of the order dated 12.01.2012 to enable a proper elected body to be in-charge of the trust. Pursuant to the aforesaid order, list of members was accordingly submitted by the petitioners after which the Inspector on 11.12.2020 submitted his report. As per this report, it was stated that since all relevant documents were not placed before him, he was not in a position to finally prepare the list of valid members. Considering the aforesaid report, the learned Joint Charity Commissioner proceeded to appoint an Election Officer on 24.12.2020 for holding elections. This order was further challenged in Writ Petition No.473 of 2021 and by the order dated 28.07.2021 the proceedings were remanded to the learned Joint Charity Commissioner for fresh consideration in accordance with the order of remand. Thereafter on 17.08.2021, the learned Joint Charity

Commissioner appointed an Election Officer and direction completion of the election process within a period of three months in compliance with the initial order dated 12.01.2012. Pursuant thereto the petitioners again on 01.09.2021 submitted fresh documents to facilitate preparation of list of members. In the meanwhile the Election Officer published the election programme pursuant to the order dated 17.08.2021. This act was challenged by the petitioners in Writ Petition No.4083 of 2021 and by the order dated 14.10.2021 the writ petition was permitted to be withdrawn since the petitioners had made a representation before the Election Officer. The Election Officer thereafter on 14.10.2021 and 15.10.2021 is stated to have decided those objections. In the aforesaid backdrop, the petitioner filed fresh proceedings under Section 41A of the Act of 1950 in which it was prayed that the elections be directed to be held as per the final order dated 12.01.2012. The learned Joint Charity Commissioner by the impugned order has rejected that application without issuing notice to the Inspector, Public Trust Registration Office, Bhandara. Being aggrieved, the petitioners have challenged the aforesaid order.

3. The learned counsel for the petitioner submits that perusal of the various proceedings indicate that the order dated 12.01.2012 passed in Appeal No.36 of 2009 was required to be complied with in its true letter and spirit. Despite remand of the proceedings for the very same

purpose, the learned Joint Charity Commissioner failed to ensure compliance with that order. It is submitted that the impugned order does not reflect consideration of various grounds raised by the petitioner in support of the proceedings under Section 41A of the Act of 1950. On the contrary merely because the elections were held, the learned Joint Charity Commissioner proceeded not to pass any order and reject the application. It was thus submitted that the proceedings under Section 41A and the prayer made therein ought to have been adjudicated by the learned Joint Charity Commissioner on merit.

4. The learned counsel for the respondent no.2 supported the impugned order. According to him the elections having been held and the reporting trustee having filed the change report pursuant to that election there was no need to interfere in writ jurisdiction with the impugned order. He sought to contend that since the relevant documents were not placed before the Inspector for preparation of the Membership Register there was no option left and the elections were accordingly held. In proceedings under Section 41A of the Act of 1950 it was not permissible to decide the issue of membership. It is thus submitted that the rights of the parties could be adjudicated upon in the change report proceedings.

5. We have considered the respective submissions and we have perused the documents on record. Perusal of various orders indicate that the direction to hold the elections in the manner as specified in the order passed by the learned Joint Charity Commissioner on 12.01.2012 were required to be complied with. Despite the clear directions in that order it has been subsequently found by the learned Joint Charity Commissioner as well as this Court that those directions had not been appropriately carried out. The proceedings have been remanded on two occasions for the very same purpose. The report of the Election Officer dated 11.12.2020 indicates that the elections could not be held for want of appropriate list of members being prepared. In view of the fact that the Election Officer according to the petitioners has failed to carry out the aforesaid inspections, proceedings under Section 41A of the Act of 1950 were required to be filed. A perusal of the impugned order indicates that though the learned Joint Charity Commissioner in paragraphs 4 to 7 has referred to the submissions of the rival parties there is no finding recorded in paragraph 8 of the impugned order either accepting or turning down those submissions with reasons. The only consideration that has weighed with the learned Authority is that the election process has commenced and hence issuance of any direction was not warranted. As a result of this adjudication, we find that the directions issued on 12.01.2012 in Appeal

No.36 of 2009 do not appear to have been still complied with. There is at least no finding to that effect recorded by the learned Joint Charity Commissioner on the submission as made in that regard. For the aforesaid reasons we are inclined to direct the learned Joint Charity Commissioner to re-consider the application filed under Section 41A of the Act of 1950 by giving a due opportunity to the parties in the light of earlier adjudication.

6. Hence, for aforesaid reasons the order dated 09.11.2021 passed on Application No.3 of 2021 by the learned Joint Charity Commissioner is set aside. The proceedings are remanded to the learned Joint Charity Commissioner to decide the application under Section 41A of the Act of 1950 by considering the submissions as would be made by the learned counsel for the parties. The effect of the earlier litigation and especially the order dated 12.01.2012 shall also be taken into consideration. For such purpose the parties shall appear before the learned Joint Charity Commissioner on 24.01.2022. The proceedings shall be decided on their own merits in accordance with law without being influenced by any observations made in this order. It is open for the parties to apply for appropriate interim orders in those proceedings. The proceedings shall be decided expeditiously and preferably within a period of three months from the date of production of this order.

7. Rule is made absolute in aforesaid terms. No costs.

(ANUJA PRABHUDESSAI, J.)

(A.S. CHANDURKAR, J.)

APTE