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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1461 OF 2023

Balaram Bhaurao Kale and Another	PETITIONERS
VERSUS	
Yogesh Vinayk Rao Patil and Others	RESPONDENTS

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Mr. Abhinay D. Khot, Advocate for the petitioners
Mrs. G. L. Deshpande, AGP for respondent - State
Mr. A. N. Nagargoje, Advocate for respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 29th MARCH, 2023

ORDER :

1. Challenge in this petition, filed under Article 227 of the Constitution of India, is to the order dated 23rd December, 2022 passed by Deputy Charity Commissioner, Aurangabad Division, Aurangabad below Exhibit-23, in Change Report Enquiry No.73 of 2022.
2. The petitioners claim to be founder members of Trust – Dnyanganga Shikshan Sanstha Aurangabad, registered under the Maharashtra Public Trusts Act and the Societies Registration Act.
3. It is the case of the petitioners that one Ravindra Bhaidas Patil filed seven change reports in the year 2014 for the period 1988 – 1991 to 2006 – 2009, wherein the petitioners were not

added as party respondents.

4. Thereafter, present change report was filed by respondents No.1 and 2 along with delay condonation application and after condonation of delay, it is numbered as Change Report Enquiry No. 73 of 2022. Both the petitioners filed objection in the said Enquiry. Various applications were filed in the said proceedings from time to time. One of such application is Exhibit-23, by which the petitioners sought witness summons to four witnesses, namely – (1) Manjusha Nitin Upasani, (2) Representative / Manager, Aurangabad District Central Co-operative Bank Limited, Adalat Road Branch, Aurangabad, (3) Ravindra Bhaidas Patil and (4) Chhaya Yogesh Patil.

5. Application Exhibit-23 was objected by the reporting trustees – respondents No.1 and 2. After hearing the parties, the third respondent rejected the application Exhibit-23. Hence, the present writ petition.

6. Heard learned advocate for the petitioners, learned advocate for respondent No.1 and the learned Assistant Government Pleader for the third respondent. Perused the grounds raised in the petition, documents annexed along with the same, citations relied on by the parties and the impugned

order.

7. The third respondent has observed in the impugned order that the outgoing trustees, Manjusha Upasani and Chhaya Patil have not come before the authority alleging that any injustice is caused to them because of the Change Report and the Change Report is not valid and legal. Manjusha Upasani was issued notice through RPAD, however, she has not appeared and / or filed any objection. In respect of other witnesses, it is observed that Ravidnra Bhaidas Patil though is named as witness in the witness list, he is President of the governing council. By observing this, the third respondent has held that the term of the governing council is over in the year 2018, the matter is to be decided as early as possible and, therefore, the application is rejected.

8. During the course of hearing, learned advocate for respondent No.1 has submitted that the matter is at the stage of final hearing and according to his instructions, the matter is almost reserved for judgment.

9. Learned Assistant Government Pleader was requested to take instructions from the third respondent about the stage of the matter. She has received instructions which can be

summarized as under-

- I. The matter is currently at the stage of final arguments of the objectors / petitioners, who have partly argued it.
- II. Thereafter, adjournment applications Exhibit-37, 41, 42 and 47 were rejected and "no argument" order is passed against the objectors below Exhibit-1.
- III. Thereafter, the objectors / petitioners filed application Exhibit-44 for setting aside the order passed below Exhibit-1.
- IV. After final arguments are part heard, Application Exhibit-39 is filed for addition of party to the proceedings.
- V. The application is now pending for order.
- VI. Copy of the order passed below Exhibit-1 is also enclosed.

10. Perusal of the copy enclosed shows that the petitioners' advocate raised objection before the third respondent as to why the matter is being conducted on day to day basis and that has created apprehension in his mind. It is further noted that the

said proceeding is 5 years old and was filed along with delay cononation application. In this matter the objections / petitioners were given several opportunities for arguments and last chance and warning was also given. Since the matter is old, as per directions of this Court and the Charity Commissioner, the matter is kept for hearing. The matter is kept for final hearing of the objectors / petitioners, since last more than four months, however, they are not arguing the matter finally and, therefore, "no argument" order was passed.

11. Taking into consideration the stage of the matter and the conduct of the petitioners, this Court is not inclined to exercise discretion in favour of the petitioners. There is no illegality or perversity in the order impugned in the present petition. No case is made out by the petitioners to exercise extraordinary writ jurisdiction to cause interference in the impugned order. The writ petition is therefore, dismissed by imposing cost of Rs.10,000/- on the petitioners. Cost to be deposited before the third respondent within a period of two weeks from the date of receipt of writ of this order. On failure to deposit the the cost, the third respondent to recover the same as land revenue.

[NITIN B. SURYAWANSHI]
JUDGE