

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2384 OF 2023

DATTAPPA GANPATAPPA ITKE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ASSISTANT CHARITY
COMMISSIONER AND ANOTHER

Mr. Brahme Shailesh P., Advocate for the petitioner.
Mr. S.S.Thombre, Advocate appears for the Interveners.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : MARCH 01, 2023.

PER COURT :

1. At the outset Mr.S.S.Thombre, learned counsel seeks permission to intervene in the present petition, which intervention is being opposed by Mr.Brahme, learned counsel for the petitioner.
2. In the present case, the challenge is to the order dated 19th December, 2022, whereby the Deputy Charity Commissioner has directed registration of Change enquiry report No.3758 of 2022 to be cancelled.
3. Learned counsel appearing for the Petitioner submits that there is no provision whereby such an order can be passed by the Deputy Charity Commissioner cancelling the registration of the change report No.3758 of 2022 by observing that previously the

change report in respect of the same trust was rejected on 15th November, 2022 and subsequently an application under Section 41A of the Maharashtra Public Trusts Act, 1950 (for short, “the Act”) is pending.

4. Mr.S.S.Thombre, learned counsel appearing for the intervener submits that the Deputy Charity Commissioner has rightly directed the change report not to be registered for the reason that the earlier change report was rejected on 15th November, 2022 and within a period of one week, the Change Report No.3758 of 2022 was filed and it is improbable that the elections would have been conducted within a period of one week. He would further submits that application under section 41A of the Act is pending adjudication and the change report is rightly directed to be cancelled in view of the pendency of adjudication of the application.

5. Considered the submissions of the parties.

6. The position is not disputed that Change enquiry report No.3758 of 2022 was filed under the provisions of Section 22 of the Act. After the change report was registered by the present number i.e. 3758 of 2022 an internal note was moved by the Deputy Charity Commissioner seeking a report considering that on 15th November, 2022, the order was passed and subsequently an application under section 41A of the Act is pending adjudication. Upon report being received, the Deputy Charity Commissioner has held that due to

inadvertence the change report has been numbered and has to be cancelled.

7. In my opinion, the impugned order amounts to refusal to exercise the jurisdiction vested in the Deputy Charity Commissioner under Section 22 of the Act. The Deputy Charity Commissioner, at the outset cannot cancel the registration of the Change report and is required to examine the Change report and render its finding. In view thereof, the impugned order dated 19th December, 2022 is liable to be quashed and set aside and the change report No.3758 of 2022 is restored to its file. The Deputy Charity Commissioner to examine the Change Enquiry Report No.3758 of 2022 on its own merits and in accordance with law.

8. Needless to state that the intervener is at liberty to file an appropriate application for intervention in the change report no.3758 of 2022 and to raise all the contentions, which contentions the Deputy Charity Commissioner to consider on its own merits and in accordance with law. Needless to state the order is not to be construed as an impediment to consideration of the application under Section 41A, which is pending adjudication before the Deputy Charity Commissioner.

9. Writ Petition stands allowed. No costs.

(SHARMILA U. DESHMUKH, J.)