

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2122 OF 2023

**SHIVRAM APPARAO SURYAWANSHI AND OTHERS
VERSUS
THE ASSISTANT CHARITY COMMISSIONER 1, LATUR AND OTHERS**

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Advocate for Petitioners : Mr. R.D. Biradar
AGP for Respondent No.1 – State : Mr. R.B. Bagul
Advocate for Respondent Nos. 2, 7 & 8 : Ms. Vaishali Kalyankar
Advocate for Intervener : Mr. P.P. More

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**WITH
WRIT PETITION NO.2722 OF 2023**

**PRAKASH KESHAV YADAV AND OTHERS
VERSUS
THE ASSISTANT CHARITY COMMISSIONER 1, LATUR AND OTHERS**

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Advocate for Petitioners : Ms. Vaishali Kalyankar
AGP for Respondent No.1 – State : Mr. R.B. Bagul
Advocate for Respondent Nos. 2 to 8 : Mr. R.D. Biradar
Advocate for Intervener : Mr. P.P. More

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 11TH APRIL, 2023

PER COURT :

1. Challenge in these petitions is to the order dated 02/02/2023, passed by respondent No.1 Assistant Charity Commissioner-1, Latur, below Exhibit-1 in Inquiry Application No.1830/2019.
2. Petitioner No.1 in Writ Petition No.2122/2023 claims to be existing President and other petitioners are office bearers and

members of the Trust namely Shri. Maruti Mandir, Makani (Thor), Tq. Nilanga, Dist. Latur. By filing application under Section 41-A of the Maharashtra Public Trusts Act, respondent Nos. 2 to 8 sought direction to hold election of the executive body of Trust. The said application was partly allowed vide order dated 09/03/2021. Respondent No.1 directed Inspector of Charity Commissioner's Office, Latur, to hold election of the executive body of the said Trust from amongst the trustees. Respondent Nos. 2 to 8 were directed to deposit amount of Rs.30,000/- towards election expenses.

3. Petitioners in the present petition filed Writ Petition No.6196/2021, challenging said direction on the ground that they were not made party in the said proceedings. By order dated 20/04/2021, the Division Bench of this Court relegated petitioners back to respondent No.1. Merits of contentions of the parties were kept open. After remand, petitioners and respondent Nos. 2 to 8 filed withdrawal pursis seeking withdrawal of Inquiry Application No.1830/2019 contending that elections were already held and both the parties have filed their respective change reports which are pending before the authority.

4. By the impugned order passed below Exhibit-1, respondent No.1 rejected the said pursis and directed parties to cooperate Inspector of Charity Commissioner's Office for proceeding

with the elections, as per order dated 09/03/2021. Hence, the present petition.

5. Heard learned advocate for petitioners, learned advocate for interveners, learned advocate for respondent Nos. 2, 7 and 8 and learned Additional Government Pleader for respondent No.1. Perused the memo of writ petition, annexures thereto, impugned order, affidavit-in-reply filed by respondent No.1 and civil applications filed by the interveners. According to the petitioners, respondent Nos. 3 and 4 are expired.

6. Learned advocate for petitioners vehemently submitted that since elections were held and change report is submitted by respondent Nos. 2 to 8 pursuant to the elections and as they have filed present inquiry application, they were entitled to claim withdrawal of the said application and respondent No.1 has erred in rejecting said pursis. He, therefore, submits that writ petition deserves to be allowed by setting aside the impugned order and by allowing the pursis filed by respondent Nos. 2 to 8. In support of his arguments, he relied on the order passed by learned Single Judge of this Court in Writ Petition No.1173/2021 (*Manmatappa Pandubappa Lokhande Vs. The Deputy Charity Commissioner and Others*).

7. Learned advocate representing respondent Nos.2, 7 and

8 in Writ Petition No.2122/2023 supported the petitioners.

8. Learned Additional Government Pleader by relying on affidavit-in-reply filed by respondent No.1, submits that collusive withdrawal pursis is filed by petitioners and respondent Nos. 2 to 8 with a view to defy order dated 09/03/2021 passed by respondent No.1.

9. The interveners strenuously opposed the petition contending that record is created by the petitioners and respondent Nos. 2 to 8 to show that elections were held, which were held without participation of all the members of Trust. Further submission is that the elections are held contrary to the order dated 09/03/2021. Hence, there is no substance in the contentions of the petitioners.

10. Admittedly, respondent No.1 by order dated 09/03/2021 has specifically directed the Inspector of Charity Commissioner's Office, Latur, to hold election of the executive body of the Trust from amongst legal trustees. This order is still operating and is not set aside by any competent authority.

11. *Prima facie*, there appears no substance in the contentions raised by the petitioners and respondent Nos. 2 to 8 that they have held elections and submitted change reports.

Petitioners and respondent Nos. 2 to 8 admitted that elections which they claim to have held, were not held by the Inspector of Charity Commissioner's Office, Latur. In this view of the matter, pendency of change reports filed by petitioners and respondents after holding so called elections, contrary to the directions issued by respondent No.1 dated 09/03/2021, cannot be said to be of any consequence/relevance. Therefore, there is no substance in the contention of the petitioners and respondents that as the change reports submitted by them are pending, they may be permitted to withdraw the present proceedings.

12. Assistant Charity Commissioner in the impugned order has rightly observed that due to filing of various change reports the order dated 09/03/2021 was not complied, so also, change reports are filed by holding elections as per convenience of the parties. There is no unity among the members of the Trust and it is not possible to settle the matter unless election is held from among all the valid members. Because of filing of various change reports there is possibility of loss to the Trust. For proper administration and for protecting interest of the Trust, respondent No.1 is justified in directing Inspector of his office to conduct election in terms of order dated 09/03/2021.

13. Petitioners and respondent Nos. 2 to 8 in collusion

appear to have filed withdrawal pursis so as to defy order dated 09/03/2021 passed by respondent No.1. In this view of the matter respondent No.1 is justified in rejecting the said prayer and there is no illegality or perversity in the same.

14. Reliance placed by learned advocate for petitioners on the decision of learned Single Judge of this Court in Writ Petition No.1173/2021, is misplaced and misconstrued. The said decision is rendered in different facts and is of no help to the case of the petitioners.

15. In the result, writ petitions being devoid of merit are dismissed.

16. Respondent Nos. 2 to 8 in Writ Petition No.2122/2023 shall deposit amount of Rs.30,000/- towards election expenses as directed by respondent No.1, within four weeks from the date, this order is uploaded.

(NITIN B. SURYAWANSHI, J.)