

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4478 OF 2019
WITH
CIVIL APPLICATION NO. 11131 OF 2022

New English School, Chandekasare
Committee Trust,
Through its President
Shri. Sanjay s/o Daulatrao Hon
Age 55 years, Occ . Agriculture
R/o. Chandekasare, Tq. Kopargaon
District. Ahmednagar.

...PETITIONER
[Ori. Appellant]

VERSUS

1. The Deputy Charity Commissioner
Ahmednagar, District Ahmednagar.
2. Prakash Prabhakar Jadhav
Age 55 years, Occ- Agriculture,
R/o. Pachegaon, Tq. Newasa
District. Ahmednagar.
3. Bharat Sarva Seva Sangh
At Pachegaon, Tq. Newasa
District. Ahmednagar.
Through Rajendra Suresh Nalage
Age Major, Occ. Business
R/o. Plot No. 104, Tarabag Colony,
Nagar Pune Road, Ahmednagar.
District. Ahmednagar.
4. Shankarrao Gahinaji Chavan
Age 56 years, Occ. Agriculture
R/o. Chandekasare, Tq. Kopargaon,
District. Ahmednagar.

...RESPONDENTS

ALONG WITH
WRIT PETITION NO. 4489 OF 2019
WITH

CIVIL APPLICATION NO. 11130 OF 2022

New English School, Chandekasare
Committee Trust,
Through its President
Shri. Sanjay s/o Daulatrao Hon
Age 55 years, Occ . Agriculture
R/o. Chandekasare, Tq. Kopargaon
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Age 56 years, Occ. Agriculture
R/o. Chandekasare, Tq. Kopargaon,
District. Ahmednagar.
5. Daulatrao Malhari Pawar
Age Major, Occ. Agriculture
R/o. Pachegaon, Tq. Newasa
District. Ahmednagar.

...RESPONDENTS

.....

Mr. A.D. Shinde, Advocate for the petitioners.
Mr. V.D. Sapkal, Senior Advocate i/by. Adv. Mr. P.S. Pawar,
Advocate for respondents No. 2 to 4.

Mr. S.S. Thombre, Advocate for applicant in civil applications.
Mrs. G.L. Deshpande, AGP for respondent-State.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 18th APRIL, 2023

PRONOUNCED ON: 4th MAY, 2023

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. Since these petitions raise similar question of law and fact they were heard together and are being decided by this common judgment.

3. In Writ Petition No. 4478 of 2019 following relief is claimed;

"B) Quash and set aside the order dated 29.12.2018 passed by the Deputy Charity Commissioner, Ahmednagar in Change Report No. 599 of 2018 and the order dated 27.03.2019 passed by the Joint Charity Commissioner, Pune Region, Pune in appeal No. 09 of 2019.

4. In Writ Petition No. 4489 of 2019, following relief is claimed;

"B) Quash and set aside the order dated 29.12.2018 passed by the Deputy Charity Commissioner, Ahmednagar in Change Report No.

336 of 2018 and the order dated 27.03.2019 passed by the Joint Charity Commissioner, Pune Region, Pune in appeal No. 10 of 2019.”

5. For the sake of convenience and to avoid repetition facts of Writ Petition No. 4478 of 2019 are being considered.

The petitioner-trust is registered as 'New English School, Chandekasare, School Committee Trust, Chandekasare, Taluka-Kopargaon, District- Ahmednagar' on 30.10.2003, under the Bombay Public Trust, Act, 1950 (for short 'Act of 1950') vide registration number E-779.

6. It is the case of the petitioner that suit property bearing Survey No. 141/322/1, situated at village Chandekasare, Taluka- Kopargaon, District- Ahmednagar (for short 'suit land') was originally owned by Namdeo Vishwanath Adherao. He gifted 1 Hectare 61 Are area of the suit land by a registered gift deed in favour of the petitioner.

7. Respondent No. 3, Bharat Sarva Seva Sangh was permitted to run the school in the school building constructed by the petitioner/trust on payment of rent, for using premises of the petitioner, as per the agreement executed between the parties. In the revenue record name of the petitioner is registered as

owner of the suit land by mutation entry no. 5371. Respondent No. 3 with a view to grab the suit land filed proceeding before the revenue authorities challenging the mutation entry no. 5371, which was dismissed. Said dismissal was challenged in appeal and revision, which were also dismissed. Thus, mutation entry in favour of the petitioner attained finality. In the Village Panchayat record also name of the petitioner was recorded as owner of the suit land.

8. According to the petitioner school committee was formed by the villagers with a view to provide educational facility to the students of village Chandekasare and the suit land was given to the said committee. By collecting donations school building was constructed and the same was given on rent to respondent No. 3. By relying on letter dated 20.08.2010 issued by Education Officer, Secondary, Zilla Parishad, Ahmednagar it is contended that respondent No. 3 was given rooms in the school building on yearly rental basis and the said letter further states that said rooms are of private ownership of school committee. After the death of President of school committee Shri. Daulatrao Hon, Village Panchayat of Chandekasare passed resolution to the effect that there is building of New English School which stands

in the name of President of school committee. Said building is school committee's property and Shri. Sanjay Daulatrao Hon is elected as President of New English School Committee. This committee has received recognition on 31.12.2003, vide registration No. E-578A. Said committee is established as per rules. Pursuant to the said resolution name of the incumbent President of the petitioner is entered into revenue record of suit land.

9. Respondent No 3 filed Application No. 393 of 2010, under section 22A of Act of 1950, for recording its name to the suit land. Petitioner filed application Exhibit-20 raising an objection as to the jurisdiction and to frame preliminary issue of jurisdiction in the inquiry. Respondent No. 1 after hearing the parties allowed the said application and held that, he had jurisdiction to conduct inquiry under section 22A of Act of 1950, but has no jurisdiction of declaration or title of the property.

10. Respondent No. 3 then filed application bearing No. 13 of 2018 under section 41E of Act of 1950, for temporary injunction. Said application is allowed thereby directing the petitioner and others from dealing in any manner and/or representing themselves as owners of the suit land. They were

restrained from collecting award compensation amount and from taking wrongful possession of the property.

11. Said order was challenged by the petitioner by First Appeal No. 1168 of 2018 wherein Civil Application No. 4280 of 2018 was moved for ad-interim relief. This Court vide order dated 26.03.2018 was pleased to stay Clause No. 2 and 3 of the impugned order which reads thus:

"2. The opponent nos. 2 to 8 their representatives are hereby temporarily restrained from dealing in any manner and/or representing themselves as the owners of property bearing Survey No. 141/322/1, Chandekasare, Tal. Kopargaon, Dist. Ahmednagar, admeasuring 1H 61R. along with the constructions standing thereon.

3. The opponent Nos. 2 to 8 further temporarily restrained from entering into any Memorandum of Understanding/Agreement with the Sub -Divisional Officer, Shirdi and/or with any Government Authority for obtaining/collecting the award/compensation amount by representing themselves as the owners of the aforesaid property, which is under acquisition of Nagpur-Mumbai National Highway."

12. By order dated 02.08.2018, competent authority and Sub Divisional Officer, Shirdi Division, Shirdi, rejected objection of respondent No. 3 by holding that respondent No. 3 appears to

be tenant and has not established its title.

13. Thereafter on 20.03.2018 petitioner filed Change Report No. 599 of 2018 seeking to take suit land on the record of the trust. Third respondent also filed Change Report No. 336 of 2018. By common order passed on both change report inquiry applications, respondent No. 1 allowed Change Report Inquiry No. 336 of 2018 by respondent No. 3 and rejected Change Report Inquiry Application No. 599 of 2018 filed by the petitioner.

The petitioner unsuccessfully challenged the said decision by filing Appeal No. 9 of 2019, under section 70 of Act of 1950, before Joint Charity Commissioner. The petitioner is aggrieved by both the orders passed against it.

14. Heard the learned advocate for the petitioner, learned Senior Advocate for respondents No. 2 to 4, learned advocate for intervenor and learned Assistant Government Pleader for State at length. Perused the memo of writ petition, documents annexed thereto, reply filed by respondents, averments in the civil application and citations relied upon by the respective parties.

15. I have duly considered the rival submissions of respective parties and on perusal of record and the impugned orders, I am of the opinion that, there is no merit in the writ petitions and petitions are liable to be dismissed.

16. Admittedly, respondent No. 3/Trust is registered prior to the year 1972 and is running New English School at village Chandekasare, as per the permission granted by Deputy Director of Education on 17.09.1972. Respondent No. 3/Trust is running several schools at different places within Ahmednagar and Nashik districts. It therefore appears that when the gift deed was executed on 17.04.1979, President of school committee of respondent No. 3/Trust was Shri. Daulatrao Hon. When the petitioner/trust itself was not in existence at that time, when gift deed was executed, the contention of the petitioner that said gift deed was executed in favour of school committee formed by villagers of village Chandekasare has no merit. Even if, it is accepted for the sake of argument that the school committee was constituted by villagers, it had no legal sanctity.

17. Perusal of the gift deed executed by father of intervenor shows that 1 Hectare 61 Are land was gifted for construction of school building and ground. There is specific

recital in the gift deed that if the land is gifted to the school, the same should be utilised by the school and rent of the school building be utilised for development of school. The gift deed is executed in favour of Societies School Committee President Shri. Daulatrao Hon. Admittedly, at the time of execution of gift deed, New English School, at Chandekasare was being run by respondent No. 3/Trust. It is clear from the recitals in the gift deed that the land was given to the school and interpretation of the petitioners that said gift deed was executed in favour of school committee, formed by villagers of village Chandekasare is devoid of any substance. Said interpretation being propounded by the petitioners is misconceived and cannot be accepted. Therefore it is clear that since the date of execution of gift deed the land and building is in possession of respondent No. 3/Trust.

18. From the recitals of the gift deed the intention of the donor is loud and clear that he gifted the land to the school and not to the school committee. The President of the school committee has accepted the land on behalf of school.

19. Record further indicates that after the death of Shri. Daulatrao Hon, the then President of School Committee of New English School, which was being run by third respondent has

forwarded a letter dated 12.09.2002 to the branch Manager, informing him that in the place of late Daulatrao Hon, Bhagirath Hon is elected as President of School Committee and Patilba Murlidhar Hon is elected as Vice President and in the place of late Shri. D.D. Lohar, headmaster, new headmaster Shri. S.M. Zhede is appointed, therefore, thereafter building fund account of New English School bearing Saving Account No. 392 will be operated by persons named in the letter. Along with the letter copy of resolution No. 2 passed in meeting dated 20.08.2022 is also annexed.

20. Admittedly, the petitioner has submitted application under 18(5) of the said Act, for registration of trust in the year 2003. In the said application, in column No. 3, the petitioner has stated object of the trust as to bring villagers of Chandekasare together and to create brotherhood and oneness/affection. In column of movable assets, cash amount of Rs. 2500 is shown and in column No. 7 of immovable property, no word 'नाही' is mentioned, meaning thereby, there is no property. It is thus clear that the petitioner/Trust had no property at the time of its registration in the year 2003 and the petitioner/Trust was not in existence when the gift deed was executed in favour of school

committee of respondent No. 3, which was running New English School at village Chandekasare since 1972. There appears substance in the argument of learned Senior Advocate for respondent No. 3 that the petitioner by exercising influence entered its name to the revenue record and village panchayat record, though, for the first time it is registered in the year 2003.

21. In the letter dated 29.05.2001 (Page No. 156) of the administrator appointed on respondent No. 3 trust addressed to all the head masters of twelve school run by third respondent in Ahmednagar and Nashik district, at serial no. 5, name of New English School, Chandekasare, Taluka- Kopergaon is mentioned. It is informed to the headmasters of the twelve schools that the administrator who is Deputy Education Officer (Secondary), Zilla Parishad, Ahmednagar has taken over the charge of management and schools w.e.f. 29.05.2001. Vide letter dated 25.07.2007, administrator handed over the charge of said schools to the Secretary of respondent No. 3, as his appointment was cancelled.

22. It is therefore clear from all the above record that gift deed was executed in favour of President of school

committee of respondent No. 3 in the year 1979 and at that time petitioner was not in existence and thus, there is no substance in the contention of the petitioner and the intervenor who is supporting the petition that gift deed was executed in favour of local school committee of the villagers of village Chandekasare and not in favour of third respondent's school committee. Obviously, petitioner could get his name entered in the revenue record as well as Village Panchayat record by exercising influence.

23. There is no substance in the submission of the petitioner that proceeding before the Deputy Charity Commissioner in respect of suit land was not maintainable, inquiry was not conducted by said authority in proper manner. The procedure under section 20, 21 and 22A of Act of 1950 was not followed by respondent No. 1 while conducting inquiry.

24. It is apt to consider relevant provisions applicable to the facts of the present case;

Section 19

19. Inquiry for Registration.

On the receipt of an application under section 18, or upon an application made by any person having interest in a public trust or on his

own motion, the Deputy or Assistant Charity Commissioner shall make an inquiry in the prescribed manner for the purpose of ascertaining-

(i)

(ii) whether any property is the property of such trust,

(iii)

Section 22A.

22A. Further inquiry by Deputy or Assistant Charity Commissioner

If at any time after the entries are made in the register under sections 21, [22 or 28] it appears to the Deputy or Assistant Charity Commissioner that any particular relating to any public trust, which was not the subject-matter of the inquiry under section 19, or sub section 19, or sub-section (3) of section 22 [or section 28], as the case may be, has remained to be enquired into, the Deputy or Assistant Charity Commissioner, as the case may be, may make, further inquiry in the prescribed manner, record his findings and make entries in the register in accordance with the decision arrived at or if appeals of applications are made as provided by this Act, in accordance with the decision of the competent authority provided by this Act. The provisions of sections 19, 20, 21 and 22 shall, so far as may be, apply to the inquiry, the recording of findings and the making of entries in the register under this section.

25. Plain reading of section 22A makes it clear that if any particular relating to any public trust, which was not subject

matter of inquiry under section 19 or sub section 3 of section 22 or section 28 has remained to be inquired into, the Deputy or Assistant Charity Commissioner may make further inquiry in the prescribed manner, and record his finding and make entries in the register in accordance with decision arrived at.

26. It is thus clear that under section 19(ii), Deputy Charity Commissioner has to make inquiry in the prescribed manner for the purpose of ascertaining whether any property is the property of trust.

27. In view of aforesaid provisions, respondent No. 1 was within its jurisdiction in entertaining and deciding Change Report Inquiry Nos. 336 of 2018 and 599 of 2018.

28. Learned Senior Advocate for third respondent is right in submitting that once having submitted to the jurisdiction of respondent No. 1 under section 22A, the petitioner now, since, the decisions are given against it, cannot turn back and contend that respondent No. 1 had no jurisdiction to decide about title of the property.

29. The school committee is constituted under Schedule II of Maharashtra Employees of Private Schools (Conditions of

Service) Rules, 1981. According to the petitioner gift deed was executed in favour of school committee of villagers of village Chandekasare, which has no legal sanctity. On the contrary it appears from the record that school committee was formed by respondent No. 3 and its President at the relevant time, when the gift deed was executed in the year 1979, was late Shri. Daulatrao Hon.

30. The petitioner has failed to substantiate its contention that the school committee of village Chandekasare was receiving rent and its bank account was being operated by said committee. Nothing is placed on record in support of said contention.

Reliance of the petitioner on the communication dated 20.08.2010 of the Education Officer is also misplaced and misconceived as the Education Officer had no authority in law to state that the suit land and the building was private property of the school committee. Fact remains that the said letter is issued in the year 2010 at the instance of petitioner/trust.

31. There appears substance in the submission of third respondent that school committee under Rule 2 Schedule A is required to be formed only after registered trust is granted

permission to run school and the said school is recognized by government. There is nothing on record to show that the petitioner fulfills this requirement.

32. In Sanddep Ram Meghe and Ors. vs. Pundlikrao Balaji Gohad (Dead) & Ors., 2013 (4) Mh.L.J. 703, learned Single Judge of this Court held that, "*inquiry under section 22 of the said Act is a judicial inquiry and not a formal inquiry and while holding inquiry under section 22, it is incumbent on the part of Inquiry Officer to hold full fledged inquiry, which may in a given case include examination of validity or otherwise of the electoral roll and if such procedure is not adopted by Inquiry Officer, the very purpose of existence of section 22 of the said Act will be frustrated.*"

There cannot be any dispute about these observations. In the case in hand, the petitioner has failed to bring on record any material to show that the impugned orders are passed without following proper procedure.

33. In Jagatnarayansingh Swarupsingh Chithere and others vs. Swarupsingh Education Society and another, 1980 Mh.L.J. 372, learned Single Judge has held that, "*under sub-*

section (3) of section 22, the Deputy or Assistant Charity Commissioner, as the case may be, shall record his finding with reasons therefor on the question of this satisfaction or otherwise qua an alleged change and inquiry in that behalf has to be conducted."

In the present case, proper procedure is followed.

34. In *Ramnarayan Manilal Sahu and others vs. State of Maharashtra and others*, 2005 (2) Mh.L.J. 95, Division Bench of this Court at Nagpur, held that, "*it is not within the purview or scope of inquiry contemplated under the said Act to be made by the authorities to decide the question of title of the property of the trust. Therefore, it is within the competence of the Civil Court to decide the question of title in respect of the property acquired by the trust and it is in that sense jurisdiction of the Civil Court is not barred Under Section 80 of the Bombay Public Trust Act to decide the question of title.*"

The said decision is rendered in different facts. In the case in hand change report was initiated and Deputy Charity Commissioner was within his jurisdiction to entertain and decide the said inquiries. Hence, this ruling does not help the petitioner.

35. *Kasturmal Dalsukh Dharamshala and ors., vs.*

Shantidevi Laxminarayan Agrawal and ors., 2013(1) Mh.L.J. 695, is decided on different facts and it does not further the case of the petitioner.

36. The Deputy Charity Commissioner, Ahmednagar has passed a well reasoned order. The Joint Charity Commissioner has rightly upheld the findings recorded by Deputy Charity Commissioner. Concurrent findings of fact recorded by both the authorities are not liable to be interfered with in exercise of extraordinary writ jurisdiction. There is no illegality or perversity in the orders impugned in the present petitions.

37. In the peculiar facts of the present case, since the dispute has arisen after receipt of compensation of part of school property, which was acquired for Samruddhi Highway and award of huge compensation is passed, the petitioner and third respondent are fighting for the money received by way of compensation. During the course of argument, it was disclosed that the school building was acquired and demolished. New English School, Chandekasare is being conducted in a rented premises. In these facts, it would be in the interest of justice to direct the third respondent/trust to utilise the compensation amount i.e. Rs. 2 Crore 72 Lakhs, for the purposes of

construction of school building and development of New English School at village Chandekasare. With these directions, writ petitions are dismissed.

Rule is discharged.

38. Interim relief stands vacated. In view of disposal of writ petitions, civil applications are disposed of.

39. At this stage, learned advocate for the petitioner prays for continuation of stay granted by this Court vide order dated 08.04.2019. The stay granted by this Court shall continue to operate for further period of six weeks from today.

[NITIN B. SURYAWANSHI, J.]