

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5528 OF 2023
ALONG WITH
WRIT PETITION NO. 5529 OF 2023

Fakruddin Ali Sahebjan Barshaikh & Others	Petitioners
Versus	
Shaikh Rais Ahmed & Others	Respondents

Mr. Sachin Deshmukh i/by. Mr. P.B. Vikhe, Advocate for the petitioners.

Mr. N.B. Narwade, Advocate for respondents No. 1 to 7.

Mr. S.R. Yadav Lonikar, AGP for State.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17th JULY, 2023

ORDER :

1. Since, both these petitions raise common question of law and fact, they were heard together and are being decided by this common order.

2. Petitioners are aggrieved by the order passed by learned Joint Charity Commissioner-2, Pune Region, Pune, below Exhibit-4 in Appeal No. 19/2023 and Appeal No. 20/2023, thereby rejecting the application filed by the petitioners and directing to list the appeal for final hearing.

3. Petitioners were executive trustees of Allied Education Society, Samnapur, Taluka- Sangamner, District-

Ahmednagar and their names appear on Schedule-A of the trust. Learned Assistant Charity Commissioner rejected nine change reports filed by petitioners and respondents by order dated 01.11.2021 and directed that executive trustees, whose names appear on Schedule-A shall hold elections of executive trustees of the trust within a period of three months. Admittedly, this order has become final.

4. Pursuant to the said order, respondents filed Change Report No. 94/2022 claiming that they have conducted meeting on 17.01.2022 and they have been elected as executive trustees of the trust for the period 2022-2027 and they sought deletion of names of the petitioners from Schedule-A as executive trustees and sought substitution of their names in the place of petitioners.

Petitioners also filed Change Reports No. 1165/2022 and 1804/2022 claiming that they have been elected as executive trustees. Change Report No. 1804/2022 was not pressed by the petitioner vide purshis dated 05.01.2023 filed at Exhibit-27. Change Report No. 1165/2022 was provisionally accepted by the learned Assistant Charity Commissioner vide order dated 23.08.2022.

5. After hearing both the parties, learned Assistant Charity Commissioner accepted Change Report No. 94/2022 filed by respondents and rejected petitioners Change Report No. 1165/2022. Petitioners challenged both these orders by filing Appeal Nos. 19/2023 and 20/2023, under section 70 of the Maharashtra Public Trust Act. Petitioners by filing applications Exhibit-4 sought stay to the impugned orders. Rejection of both these applications is impugned in the present petition.

6. Perusal of record indicates that names of the petitioners appeared on Schedule-A, pursuant to the order dated 20.12.2019 passed by learned Joint Charity Commissioner in Revision Nos. 1002/2019 and 1007/2019. In Change Report No. 94/2022, respondents have sought deletion of names of the petitioners as executive trustees and have sought substitution of their names as executive trustees. Thus, it is clear that names of the petitioners as executive trustees appeared on Schedule-A of the trust. Therefore, petitioners were entitled to hold elections as per the order dated 01.11.2021. Prima facie, it is obvious that the respondents were not entitled to hold elections in terms of the direction of learned Assistant Charity Commissioner. In this view of the matter, the order of learned Assistant Charity

Commissioner, thereby accepting Change Report No. 94/2022 and rejecting Petitioners Change Report No. 1165/2022, prima facie appears to be unsustainable. Learned Joint Charity Commissioner has ignored these vital aspects while rejecting the stay application filed by the petitioners.

7. In these peculiar facts, stay applications Exhibit-4 filed by the petitioners in both the appeals deserve to be allowed. Hence, the following order:

ORDER

- (I) Writ petitions are allowed.
- (II) Impugned orders dated 27.04.2023 and 28.04.2023 passed in Appeal No. 19/2023 and 20/2023, respectively, to the extent of rejection of stay applications Exhibit-4 are hereby quashed and set aside.
- (III) Applications Exhibit-4 filed in Appeal No. 19/2023 and 20/2023 are allowed.
- (IV) Order of calling record and proceeding of Change Report No. 94/2022 and 1165/2022 and directing to list the appeals for final hearing is maintained.
- (V) Learned Joint Charity Commissioner shall decide both the appeals within a period of three months from the date of receipt of writ of this order.

(VI) Parties shall remain present before the Joint Charity Commissioner on 31st July, 2023. Parties to co-operate.

8. Needless to state that learned Joint Charity Commissioner shall not be influenced by the observations made in this order and shall decide the appeals on its own merits, in accordance with law.

[NITIN B. SURYAWANSHI, J.]