

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

18 WRIT PETITION NO.11557 OF 2023

1. Nandkishor Wamanrao Deshmukh,
Age : 53 years, Occu. Agril.,
R/o Deshmukh Galli, Bhokardan,
Tq. Bhokardan, Dist. : Jalna
2. Vijay Gulabrao Dhongade,
Age : 52 years, Occu. Business,
R/o Saurabh Textile, Main Road,
Bhokardan, Tq. Bhokardan,
District Jalna.

....PETITIONERS

:: VERSUS ::

1. The State of Maharashtra,
Through its Secretary,
Social Justice and Special
Assistant Department,
Mantralaya, Mumbai-32
2. Joint Charity Commissioner
Aurangabad Region,
Aurangabad.
3. Assistant Charity Commissioner,
Jalna Region, Jalna

....RESPONDENTS

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Advocate for Petitioners : Mr. Ankush Nivrutti Nagargoje
AGP for Respondents – State : Mr. S. N. Kendre

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CORAM : KISHORE C. SANT, J.

DATE : 17.10.2023

ORAL JUDGMENT :

1. Heard the learned Advocate Mr. Nagargoje for the petitioners and Mr. Kendre, the learned AGP for the State.

2. This petition is filed challenging the judgment and order passed by the learned Joint Charity Commissioner, Aurangabad dated 28.06.2022. The learned Joint Charity Commissioner has allowed the suo-moto revision petition setting aside the order passed by the learned Assistant Charity Commissioner, Jalna in Change Report Inquiry No. 628/2019.

3. The facts in short are that, deceased Wamanrao Bajirao Deshmukh had filed application under Section 22 as a reporting trustee. The present petitioners were shown as incoming trustees in place of two outgoing trustees as they died. The learned Assistant Charity Commissioner heard the parties and allowed the said change report by judgment and order dated 18.01.2020.

4. The reporting trustee late Wamanrao Bajirao Deshmukh died on 28.02.2021. The learned Joint Charity Commissioner later on took suo-moto cognizance and decided to take up the revision on 04.08.2021 i.e. about 7 months after the death of deceased Wamanrao.

The notice of the revision was sent on 20.01.2022. Since Wamanrao was dead there was no question of effecting service of notice upon him. The learned Joint Charity Commissioner treated that service is effected in view of report Exhibit 7 of the process server. It was reported that notice was served by affixing the same on the office of the trust. The learned Joint Charity Commissioner decided the revision observing that inspite of service the reporting trustee remained absent. The order thus passed against the dead person and cannot be said an order in the eyes of law.

5. The learned AGP submits that the Joint Charity Commissioner was satisfied about the service of notice on the reporting trustee and it is only thereupon has decided a revision. The notice was affixed on the office of the trust, it was for the trustees of other office bearers to respondents in the said notice, none of the trustees of the office bearers is reported death of the reporting trustee. The suo-moto revision was taken up looking to the legality in the order passed by the Assistant Charity Commissioner. The trust would not suffer because of technical reasons.

6. Considering the above undisputed position, this Court finds that the order passed by the learned Joint Charity Commissioner

deserves to be quashed and set aside. However, it is open for the Joint Charity Commissioner to decide the suo-moto revision by issuing fresh notices to the concerned / interested persons and to decide the suo-moto revision after hearing. In view of the above, following order is passed :

ORDER

1. The impugned judgment and order dated 28.06.2021 passed by the learned Joint Commissioner, Aurangabad in Suo Moto Revision Petition No. 82/2021 is quashed and set aside.
2. The matter is remanded back for fresh hearing in accordance with law by giving notices to concerned / interested persons.
3. Hence, Writ Petition stands accordingly disposed off.

(KISHORE C. SANT)
JUDGE

shp/-