

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13768 OF 2019

Babasaheb Nivrutti Landge and Another PETITIONERS

VERSUS

The Assistant Charity Commissioner and Other RESPONDENTS

.....

Mr. Amol S. Gandhi, Advocate for the petitioners

Mr. S. N. Kendre, AGP for respondent - State

Mr. V. D. Hon, Senior Advocate i/b Mr. Ashwin V. Hon, Advocate
for respondents No.3A to 9

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 10th OCTOBER, 2023

ORDER :

1. By this petition, filed under Article 227 of the Constitution of India, petitioners challenge the order dated 15th October, 2018 passed by learned Joint Charity Commissioner, Pune Region, Pune in Appeal No. 93 of 2018, thereby setting aside order passed by the Deputy Charity Commissioner, Ahmednagar in Change Report Inquiry No.996 of 2007.

2. Scheme of respondent No.3, Shri Virbhadrha Public Temples and Festival Trust, Rahata was framed on 6th January, 1981. As per the original scheme, there was provision for appointment of 7 Trustees on the Managing Committee of the Trust. The scheme

was amended in the year 2001 and instead of 7 Trustees, provision for appointment of 15 Trustees on the Managing Committee for the period of 5 years, was made. As per the scheme, Trustees of Managing Committee were to be elected in Gram Sabha and in case, Trustees cannot be elected in Gram Sabha, for any reason, then Charity Commissioner, Ahmednagar has the power to appoint new Trustees on the Managing Committee, by inviting applications from the members of public of Rahata.

3. It is the case of the petitioners that the then Trustees of respondent No.3 Trust prepared false record of proceedings, in defiance of the order dated 26th June, 2001 and shown to have elected 8 more Trustees and on the basis of the same, they filed Change Report Inquiry No.101 of 2002. Learned Assistant Charity Commissioner, by order dated 18th January, 2005, rejected the said Change Report.

4. Appeal No.11 of 2005, under section 70 of the Maharashtra Public Trusts Act, was filed before learned Joint Charity Commissioner. The same was rejected by order dated 13th June, 2005, with a direction to the Trustees, to approach learned Assistant Charity Commissioner, for appointment of 8 new

Trustees, as per the scheme. This order was challenged by filing Trust Inquiry Application No.8 of 2005, before the District Court, but the same was withdrawn on 31st July, 2007.

5. It is further case of petitioners that contrary to the scheme of the Trust and the order passed by the learned Joint Charity Commissioner, Trust appointed 15 trustees, on the Managing Committee. Change Report No. 996 of 2007 reporting said change was filed. Learned Deputy Charity Commissioner partly allowed the Change Report, thereby directing deletion of names of two deceased Trustees from Schedule I and further directed the Inspector from Charity Commissioner's office to start the process of election of Trustees on the Managing Committee of the Trust.

6. Respondent No.3 Trust challenged this order by filing Appeal No. 93 of 2018 under section 70 of the Trusts Act. Learned Joint Charity Commissioner, by the impugned order, partly allowed the appeal and accepted Change Report No. 996 of 2007 and stayed the election process till appeal period is over. Hence, the present petition.

7. Heard learned advocate for the petitioners, learned Assistant Government Pleader for State and learned Senior

Advocate for respondents No.3A to 9. Perused the memo of writ petition, its annexures and the impugned order.

8. It is transpired during the hearing of this petition that subsequently, four elections of the Managing Committee of respondent No.3 Trust were held i.e. for the years 2007 to 2012, 2012 to 2017, 2017 to 2022 and 2022 to 2027. Said elections are allegedly held by *de facto* trustees, who claim to be on the Managing Committee of the Trust. It further appears from the impugned order that Change Reports No.1178 of 2010, 1171 of 2012, 64 of 2013, 1074 of 2015, 1249 of 2015, 47 of 2018 and 48 of 2018 were filed reporting changes, including elections held for the subsequent period. All these Change Reports are rejected on the ground that Change Report No.996 of 2007 has been partly allowed and as it is mentioned in the order that election process is already started.

9. Perusal of the impugned order further reveals that challenge raised by petitioners in respect of *locus* of respondents / *de facto* Trustees to hold the elections, which according to the petitioners is contrary to the scheme of the Trust, is not dealt with by the learned Joint Charity Commissioner. Learned Deputy Charity Commissioner in the order passed in Change Report No. 996 of 2007, has held in paragraph No.11 that as per the

scheme of the Trust, the term of managing committee was of 5 years, thereafter change report No.101 of 2002 was filed, however, the same was rejected by order dated 18th January, 2005 and the appeal filed against the said order is also dismissed and Trust Application filed by the respondents before District Court is withdrawn. From these facts, it is clear that as per the scheme of the Trust, the term of Trustees appointed on Managing Committee of the Trust has come to an end in the year 2006 itself and, thereafter, there is no election for appointment of Trustees on the Managing Committee, as per the scheme of the Trust. No such change is reported and accepted. Considering this aspect, in clause 3 of the operative order, Deputy Charity Commissioner has directed Inspector of Charity Commissioner's office to initiate process for election of new Managing Committee on respondent No.3 Trust.

10. In the impugned order, this aspect is totally overlooked by the learned Joint Charity Commissioner. *Locus* of the *de facto* trustees in holding subsequent elections needs to be considered on merits, since the same is challenged by petitioners and a finding on that is given by learned Deputy Charity Commissioner. Since, this relevant aspect is ignored by the learned Joint Charity Commissioner while passing the impugned order, the impugned

order is liable be be quashed and set aside.

11. In the result, following order :

ORDER

- A. Writ petition is allowed.
- B. Order dated 15th October, 2018 passed by learned Joint Charity Commissioner in Appeal No. 93 of 2018 is hereby quashed and set aside.
- C. The appeal is remanded back to the learned Joint Charity Commissioner for consideration afresh on merits.
- D. There shall be no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE