IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.15027 OF 2022

Shridhar Baburao Pachhade (dead)
through Legal Heirs
Sachin Shridhar Pachhade and Ors. ... Petitioners
versus
Shrimant Gayatridevi Bhagwantrao
Pantpratinidhi of Aundh and Ors. ... Respondents

Mr. Dilip Bodake, for Petitioners.
None for Respondents.

CORAM: N.J.JAMADAR, J.

DATE : 20 JULY 2023

P.C.

1. Heard the learned Counsel for the Petitioners.

2. The challenge in this Petition is to an order dated 7 December 2018 passed by the learned Joint Charity Commissioner in Revision Application No.6 of 2015 whereby the revision application came to be partly allowed by modifying the order passed by the Assistant Charity Commissioner in Change Report No.847 of 2009 dated 13 March 2014.

3. By the said order, the learned Assistant Charity Commissioner, Satara had accepted the Change reported by the Petitioner's father Shridhar Baburao Pachhade and later's brother Prabhakar Baburao Pachhade to appoint Shridhar and Prabhakar as trustees of Shrimant Gayatridevi Bhagwantrao Pantprattinidhi of Aundh,

in view of the death of Baburao Pachhade, who was the trustee of the said Trust, accepting their claim that they were entitled to be appointed as hereditary trustees.

4. By the impugned order, the learned Joint Charity Commissioner was persuaded to modify the order passed by the Assistant Charity Commissioner holding, inter alia, that in view of the death of Baburao Pachhade, the erstwhile trustee, only one person could have been appointed as trustee in place of Baburao Pachhade.

5. Mr. Bodake, learned Counsel for the Petitioners submitted that the revision application could not have been entertained as the order accepting the Change Report is appealable under Section 70 of the Maharashtra Public Trusts Act, 1950. An endeavour was made to persuade the Court to construe sub-Section (2) of Section 70A of the Act, in such a fashion as to hold that any order, which is appealable under Section 70 of the Act, cannot be revised in exercise of the power under Section 70A of the Act.

6. Plainly, the submission is untenable. Sub-Section (2) of Section 70A reads as under :

> "(2) Nothing in sub-section (1) shall entitle the Charity Commissioner to call for and examine the record of any case -
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> (a) during the period in which an appeal under Section 70 can lie against any finding recorded by the Assistant or Deputy Charity Commissioner in such case, or
>
> (b) in which an order has been passed in an appeal made under section 70."

7. An embargo on the power of the Charity Commissioner to call for and examine the record is placed only during the period in which the appeal under Section 70 can be preferred against an order which is sought to be revised. It does not imply that the revisional power cannot be exercised in respect of any order which is amenable to appeal under Section 70 of the Act. It is imperative to note that the Charity Commissioner is also empowered to suo motu exercise the revisional powers.

8. Mr. Bodake urged that since Respondent Nos.2 and 3, in the revision application, had passed away during the pendency of the revision application, the revision applicant could not have been proceeded with, without impleading the legal representatives of late Prabhakar Baburao Pachhade and Parvati D. Guarav, Respondent Nos.2 and 3.

9. The learned Joint Charity Commissioner was of the view that since Respondent No.1 – Prabhakar, son of deceased Baburao was alive and can be appointed as trustee in place of deceased Baburao, the non-impleadment of the legal representatives of Shridhar did not matter.

10. The view taken by the learned Joint Charity Commissioner is justifiable. In the place of Baburao, one of the legal heirs of Baburao could have been appointed and Prabhakar – Respondent No.1 in Revision Application, has been ordered to be brought on record as a trustee of the trust, and accordingly amend the Schedule I of the Trust.

11. An endeavour was made on behalf of the Petitioners to urge that Smt Parvati, daughter of deceased Baburao, was also entitled to be appointed as a Trustee. Again the learned Joint Charity Commissioner rightly repelled the contention by observing that while accepting the Change Report, the learned Assistant Charity Commissioner had not appointed her as trustee in place of Baburao and Parvati had not called in question the said order, and therefore, it was not open for the Petitioners to agitate the same. In any event, in place of deceased Baburao, only one of his heirs could have been appointed as a hereditary trustee and Prabhakar has been so appointed. Hence, there is no merit in this Petition.

12. Resultantly, the Writ Petition stands dismissed.

(N.J.JAMADAR, J.)