

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1322 OF 2023

Andhashraddha Nirmulan Samiti Maharashtra .. Petitioner

Versus

Rahul Devidas Kolhapure and Anr. .. Respondents

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- Mr. Vishwajit P. Sawant, Sr. Adv. a/w. Mr. Nitin Dhumal and Mr. Prabhakar M. Jadhav for Petitioner
 - Mr. S. D. Rayrikar, AGP for State Respondent No.2
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 01, 2023

P.C.:

1. Heard Mr. Sawant, learned Senior Advocate for Petitioner and Mr. Rayrikar, learned AGP for Respondent No.2

2. None appears for Private Respondent No.1 though Petitioners have issued the notice to the Private Respondent No.1. The Respondent No.1 has been issued notice through speed-post. The details of which are shown to me. However acknowledgment of the same is awaited. Mr. Sawant would submit that the acknowledgments have been received from the Postal Department which are appended to details which are placed before the Court. He submitted that the tracking report of receipt of service by Respondent No.1 would be submitted on record in the course of the day.

3. The Writ Petition takes exception to twin orders, viz; dated

11.12.2015 passed below Exh.16 and dated 15.03.2016 passed below Exh.21 in Change Report No.401 of 2012. At the outset, Mr. Sawant has brought to my notice the order dated 29.01.2020 passed in Writ Petition No.14277 of 2016 by this Court which is placed on Page No.43 of the Writ Petition, the operative part which reads thus:-

- “1. The petition is partly allowed.*
- 2. The impugned orders dated 11/12/2015 and 15/3/2016 are hereby set aside.*
- 3. The Applications (Exh.23 and 29) are remitted back to the learned Assistant Charity Commissioner for deciding them afresh on their own merits and in accordance with law.*
- 4. The parties shall be entitled to supplement their pleadings both in the application as well as in the reply within a period of three weeks from the date of their appearance.*
- 5. The order dated 27/11/2014 passed in Application No.112/2013 is also set aside and the learned Assistant Charity Commissioner shall decide afresh as to whether said application needs to be heard independent of the Change Report No.378/2012.*
- 6. The rival contentions of the parties are left open.*
- 7. In the circumstances there shall be no order as to costs.”*

4. Mr. Sawant would submit that by virtue of the above order the orders dated 11.12.2015 and 15.03.2016 have been set aside and he would submit that the challenge in the present Writ Petition, is also to the same identical orders, viz; 11.12.2015 and 15.03.2016. He would submit that the contents of the orders passed in the present Change report and Writ Petition are identical to the orders which have been set aside by the Order dated 29.01.2020. Mr. Rayrikar learned AGP, confirms the submissions and statement made by Mr. Sawant after verifying the record. Considering this, the present Writ Petition can be

disposed of similarly by issuing appropriate direction on remand for a fresh hearing of the Applications.

5. In view of the above statement, the impugned order dated 11.12.2015 and 15.03.2016 passed below Exh.16 and Exh.21 in the present Writ Petition deserves to be set aside and thus stands quashed and set aside. Writ Petition stands allowed in the aforesaid terms. In view of the above order, the Application filed below Exh.16 and Exh.21 in Writ Petition No.1322 of 2023 is remanded back to the learned Assistant Charity Commissioner for deciding it afresh on its own merits and strictly in accordance with law. Parties shall be entitled to submit further pleadings in the said Application as well as in the Reply therein within a period of four weeks from today. In so far as issue relating to challenge to the order dated 27.11.2014 is concerned, no separate challenge is maintained in the Writ Petition since the said order passed in Application No.112 of 2013 was also set aside by the order dated 29.01.2020 and the learned Assistant Charity Commissioner was directed to decide the Change Report No.378 of 2012 afresh. The same order would also apply to the present Writ Petition. Needless to state that all rival contentions of parties are expressly kept open at the time of hearing of the Application before the statutory Authority. Both the Applications below Exh.16 and Exh.21 are remanded for a fresh hearing on its own merits and strictly

in accordance with law.

6. With above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]