

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 448 OF 2020

Mr. Babasaheb Abaji Kudale & Ors

...Petitioners

Versus

Ramdas Gajanan Kudale & Anr.

...Respondents

...

Mr. Ajit Anekar, i/b. Auris Legal for Petitioner.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 14 JULY 2023.

P.C.:

By this petition Petitioners have challenged the order dated September 17, 2019 passed by the Assistant Charity Commissioner-IV, Pune Region rejecting Petitioners application at Exh.45 and 47. The applications were filed by the Petitioners seeking leave to cross-examine Mr. Ramdas Gajanan Kudale, who had recorded change and filed affidavit of evidence in support of change. Assistant Charity Commissioner has proceeded to reject the application *interalia* holding that the Petitioners would have an opportunity to lead their evidence by filing their own affidavit to that effect.

2. In the present petition notice was issued to the Respondent on January 20, 2020. However none appeared on behalf of Respondent No.1. During pendency of the Petition, Petitioner No.1 has expired.

Liberty was granted to the learned counsel for the Petitioners by order dated March 23, 2023 to take steps to bring on record representatives of the Petitioner No.1. Mr. Anekar the learned counsel appearing for the Petitioners has submitted that even though the petition abated *qua* Petitioner No.1, Petitioner No.2 and 3 in their capacity as objectors to the Change Report are entitled to prosecute the present petition notwithstanding abatement of the same *qua* Petitioner No.1. Mr. Anekar would place reliance on the proviso to Section 73 of the Maharashtra Public Trusts Act, 1950 (**the Act**) which reads thus-

“Section 73. In holding inquiries under this Act, the officer holding the same shall have the same powers as are vested in courts in respect of the following matter under the Code of Civil Procedure, 1908 in trying a suit-

(a) proof of facts by affidavits.

(b) summoning and enforcing the attendance of any person and examining him on oath.

1[(c) ordering discovery and inspection, and compelling the production of documents.]

(d) issuing summons :

2[Provided that, while holding enquiry under section 22 of the Act, the Assistant or Deputy Charity Commissioner shall record the evidence in the form of affidavits only subject to the cross-examinations of the deponent, if permitted by him in appropriate case.]”

3. He would submit that proviso to Section 73 would couched in such a manner that the evidence is to be recorded in the form of affidavit only subject cross-examination of the deponent. Next

submission is in absence of cross-examination of the deponent, the evidence cannot be recorded. Alternatively Mr. Anekar would submit that even though the proviso is to be read in a manner as if the same seeks to confer restriction on Assistant Charity Commissioner or Deputy Charity Commissioner to record cross-examination in facts and circumstances of a particular case, Petitioners have made out a case before the Assistant Charity Commissioner for giving an opportunity for cross-examining the deponent.

4. He would take me through the application filed by the Petitioners seeking cross-examination of the deponent.

5. After having heard the learned counsel for the Petitioners, I am unable to agree with the contention of Mr. Anekar that proviso to Section 73 of the Act has to be read as the evidence of a deponent cannot be recorded in absence of cross-examination. The correct reading of proviso to Section 73 would mean that evidence of every deponent before Assistant Charity Commissioner while verifying the enquiry under Section 22 of the Act is to be in the form of affidavit only. This would mean that requirement of evidence in any form is discretion. So far as grant of opportunity to cross-examination is concerned, the same is left to the discretion of Assistant Charity Commissioner or Deputy Charity Commissioner. Such a provision is made keeping in view the object behind expeditious disposal of inquiries under Section 22 of the Act. The Act therefore does not contemplate that in each and every case when the evidence is filed in the form of affidavit there is mandatory to cross-

examine the deponent. Turning to the alternative submission of Mr. Anekar I have gone through the application filed by the Petitioners to seek cross-examination of the deponent. In their application Petitioners pleaded following reasons-

“3) The present opponents submit that the Applicant has filed Evidence Affidavit on last date before this Hon’ble Authority, in support of the Present Change Report. It is pertinent to note that the Present Opponents have challenged the said Change Report on Merit and has raised various issues more particularly triable issues and further, have challenged the said Change Report on basis principles of violation of natural Justice and further, have alleged that no election has ever been taken place as per Rules and Regulations of the said Savata Sevak Mandal.

4) It is pertinent to note that, the General body in its meeting dated 03/04/2014 vide Resolution dated 03/04/2014 has appointed meeting of 7 persons to hold elections or otherwise, to carryout, Supervise the elections and accordingly, various applications of aspiring or deserving candidates were called from the members of the Applicant Trust and accordingly, the said Application of candidates for Elections were scrutinised on dated 08/06/2014 and accordingly, the list of eligible candidates was to be prepared on said date. However, due to certain disputes or disagreement amongst the Members of Scrutiny Committee, the list of eligible candidate could not be prepared or finalised and therefore, the Present Opponents submit that the said Facts needs to be brought on Record by way of cross-examination of the Reporting Trustee.

5) It is pertinent to note that the said Change Report has referred various subsequent resolutions being passed by the General Body of the Applicant Trust. However, no notices of the said impugned General Body are issued or served upon the Member of Applicant Trust and therefore, the said facts needs to be brought on records.”

6. Thus, all the reasons cited by the Petitioners for seeking cross-examination of the deponent was to bring on record alleged factual

position with regard to non-conduct of election despite adoption of resolution dated April, 3, 2014. This factum, in my opinion, can be placed on record by the Petitioners through their on affidavit of evidence. For placing these events on record, cross-examination of the deponent was not warranted.

7. Though this reason is specifically not recorded by the Assistant Charity Commissioner in the impugned order, it is not necessary to set aside the impugned order dated September 17, 2019. On this count also this court has arrived at a conclusion that Petitioners did not make out any case for demanding cross-examination of deponent as a matter of right. In my view, therefore the Assistant Charity Commissioner has rightly exercised discretion vested in him under proviso to Section 73 of the Act in denying opportunity to cross-examine to the petitioners.

9. It must also be born in mind that the same Change Report was filed by Respondent No.1 to report the change relating to the period 2014-2019.

10. Writ Petition being devoid of merit is dismissed without any order as to costs.