

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2624 OF 2023

Haji Ismail Vazir Maknojia and Anr. .. Petitioners

Versus

Abdul Rashid Munshi and Ors. .. Respondents

-
- Mr. Yatin R. Shah a/w. Mr. Vipul Makwana and Mr. Keyur Adhvaryu Advocates for Petitioners.
 - Mr. Nikita Bhavsar i/by N.P. Bhavsar, Advocate for Respondent No.1.
 - Mr. Manish Upadhye, AGP for Respondent Nos.2 and 3 – State.
-

CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 20, 2023.

P.C.:

1. Heard Mr. Shah, learned Advocate for Petitioners; Mr. Bhavsar, learned Advocate for Respondent No.1 and Mr. Upadhye, learned AGP for Respondent Nos.2 and 3 – State at length.

2. On 30.06.2023, this Court had passed the following order:-

“1. Heard Mr. Shah, learned Advocate for Petitioners, Mr. Upadhye, learned AGP for State and Ms. Bhavsar, learned Advocate for Respondent No.1.

2. In this case, Petition takes exception to the order dated 20.04.2023 passed by the Assistant Charity Commissioner – VII, Greater Mumbai Region, Mumbai (K. K. Ghule) in proceedings under Section 41 (A) of the Maharashtra Public Trusts Act, 1950, inter alia, concerning holding of elections as also supervision of the Trust activities.

3. At the outset, Mr. Shah, learned Advocate appearing for Applicant / Petitioner would submit that the officer who has passed the impugned order has not heard the Petitioners at all in the said proceedings. Infact according to him the proceedings

were heard for over a period of two years by a completely different officer. That it was only on the eve of passing of the order that the said order has been passed by Mr. K. K. Ghule who has not heard the proceedings at all. I have brought this fact to the notice of the learned Government Pleader – Mr. Upadhye and impressed upon him to take appropriate instructions as to whether Mr. Shah is correct or otherwise and inform the Court accordingly. In the alternative, the Roznama of hearing before the Assistant Charity Commissioner be placed on record on Affidavit to ascertain the above factual position.

4. *Stand over to 07th July, 2023.”*

3. Today, Mr. Upadhye, learned AGP for Respondent Nos.2 and 3 – State has tendered certified copy of the Roznama of the hearings which had taken place before the Assistant Charity Commissioner in the subject proceedings instituted under Section 41(A) of the Maharashtra Public Trusts Act, 1950 (for short “the said Act”) between 20.09.2019 to 20.04.2023. He would submit that in the present case admittedly before the impugned order was passed by the Assistant Charity Commissioner namely Mr. K.K. Ghule, it is evident that the Petitioners were not heard by the said Authority. In that view of the matter and the proceedings conducted before the said Competent Authority, he would submit that appropriate orders be passed by the Court.

4. In view of the above, without delineating and expressing any opinion on the merits of the matter and after considering the Roznama placed on record, it is clear that Petitioners were not heard by the concerned Competent Authority and in that view of the matter, both

the orders passed below Exh.1 which are appended at Exhibit – D at page No.97 and Exhibit – E at page No.102 of the Writ Petition are quashed and set aside with a specific direction to the in-charge, Assistant Charity Commissioner-VII, Greater Mumbai Region, Mumbai to hear all concerned parties afresh on their Application filed below Exh.1 and more specifically numbered as Application No.ACC/VII/48/2019 and Application No.ACC/VII/26/2022 and only thereafter pass a reasoned order strictly in accordance with law.

5. It is clarified that, this Court has not expressed any opinion whatsoever on the merits of the matter nor in respect of the two orders which have been set aside and the fresh order shall be passed on both Applications under Section 41(A) of the said Act strictly in accordance with law.

6. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE
Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2023.10.20
18:38:30 +0530