IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6339 OF 2019

Ramesh Balwant Baxi__ Vs. ___The Joint Charity Commissioner, Nagpur and ors

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. N.D.Khamborkar Advocate for petitioner
Mr. S.D.Abhyankar, Advocate for Respondent Nos.2, 3, 5, 10, 11
Mr. Akshay Sudame, Advocate for Respondent Nos. 9 & 13
Mrs. M.A.Barabde, AGP for Respondent No.1

CORAM : AVINASH G. GHAROTE, J.
DATE : 22/02/2023

1] The petition challenges the judgment dated 4.9.2019 (pg.42), passed by the Joint Charity Commission, Nagpur, whereby the order dated 3.11.2011 passed by the Assistant Charity Commissioner rejecting Change Report Inquiry No. 1732/1998 at the behest of Shri Shriniwas Shridharrao Warnekar, claiming to have held the election of Bhartiya Vidya Prasarak Sanstha, PTR No. F-14236 (N) for the duration 1998 to 2001 held in the meeting dated 26.9.1998 claimed to have been conveyed by the founding trustee Mr. V.G.Senad, has been set aside and the revision is allowed.

2] Mr. Khamborkar, learned counsel for the petitioner submits that in view of the earlier judgment passed in Enquiry No. 1042/1995, dated 14.8.2009, which has been confirmed in appeal, it was not permissible for Change Report No. 1732/1998 to have been filed, as it was the body which was accepted by the Assistant Charity Commissioner in the judgment dated 14.8.2009, which was the legally elected body and therefore none other than the said body was capable of holding any election and this was more so when Mr.V.G. Senad was not a member of that body, as accepted by the Assistant Charity Commissioner (pg.134). He therefore submits that on this ground itself, the Joint Charity Commissioner in revision could not have accepted Change Report No. 1732/1998.

3] Mr. Abhyankar, learned counsel for respondent nos. 2, 3, 5, 10 & 11 supports the impugned judgment by contending that the same is based upon the correct position.

4] Mr. Sudame, learned counsel for respondent nos. 9 & 13 supports the petitioner. Learned AGP supports the impugned judgment.

5] The factual position in the matter is as under:

The application for registration of the aforenamed trust came to be filed, which was registered as Inquiry No. 1042/1995. The Assistant Charity Commissioner by his order dated 26.6.1998 accepted the registration and issued a certificate in favour of the then managing committee, as shown in the application. This order of the Assistant Charity Commissioner dated 26.6.1998 was challenged in appeal before the Joint Charity Commissioner vide Appeal no. 32/1998, which came to be rejected by the judgment dated 30.9.1998. This in turn came to be challenged in a further appeal under Section 72 of the Bombay Public Trust Act before the learned District Judge in Misc. Civil Appeal No. 785/1998, who by the judgment dated 19.8.2005 was pleased to set aside the earlier order and remanded the matter back to the Assistant Charity Commissioner.

6] Upon remand, the Assistant Charity Commissioner by order dated 14.8.2009 accepted the Inquiry no. 1042/1995 filed by Mr. Ramesh Balwant Baxi and held that the managing committee shown in the application at Exh. 1 was legally in management and administration of the trust [Bhartiya Vidya Prasarak Sanstha, Nagpur PTR F-14326 (N)] since 9.10.1995 till 26.6.1998, whose names were duly recorded in the order at Sr.No. 3(1) to (13) (pg.134). This order of the Assistant Charity Commissioner dated 14.8.2009 came to be challenged in Appeal No. 39/2009 before the Joint Charity Commissioner, who by the judgment dated 7.1.2012 dismissed the appeal (pg. 148). No further proceedings were taken against this, as a result of which the order dated 14.8.2009 passed by the Assistant Charity Commissioner became final.

7] Change Report No.1732/1998 came to be filed by one Shriniwas Warnekar, who was shown as the member of the first managing committee in the order dated 14.8.2009 passed in Inquiry no. 1042/1995, claiming to have reported the election held by the then managing committee, which had claimed to have been elected in the year 1998. This Change Report Inquiry came to be rejected by the Assistant Charity Commissioner by his order dated 3.11.2011 (pg.216) against which revision was filed by one Ram Shridhar Munje, who was not one of the persons who had claimed to have been elected to the managing committee. It is in this revision, that the learned Joint Charity Commissioner by the impugned judgment has allowed the same, accepting Change Report No.1732/1998.

8] A perusal of the impugned judgment indicates that though the Joint Charity Commissioner has noted the order dated 14.8.2009 passed in Inquiry no. 1042/1998 and the fact that the certificate of registration was issued in pursuance thereto and finding is recorded that the petitioner Ramesh Baxi and the managing committee shown in the application at Exh.1 in Inquiry No. 1042/1995 was legally in management and administration of the trust since 26.6.1998, surprisingly, the Joint Charity Commissioner delves into an inquiry regarding the legality of the order dated 14.8.2009, by observing that on 26.9.1998 there was no legal document to show that the original objector Shri Ramnesh Baxi was in any way connected with the affairs of the said trust, though he claims to be the secretary and legal member of the same. In my considered opinion once the legality of the managing committee of which Shri Ramesh Balwant Baxi was the secretary, has been upheld in Inquiry No. 1042/1995 by the Assistant Charity Commissioner under his order dated 14.8.2009, which in turn has been confirmed in Appeal No. 39/2009 by the Joint Charity Commissioner by his judgment dated 7.1.2012, which has not been challenged further, on account of the same having attained finality, it was not permissible for the learned Joint Charity Commissioner to undertake an Inquiry regarding the legality of the managing committee of which Shri Ramesh Baxi was the secretary, which was accepted and recognized by the Assistant Charity Commissioner by his order dated 14.8.2009. It is clearly apparent that the learned Joint Charity Commissioner has undertaken an exercise which was not permissible in law for the reason that the issue in that regard had already attained finality on account of rejection of appeal No. 39/2009 by the judgment dated 7.1.2012, which remained unchallenged. This being the position, the judgment dated 4.9.2019 passed in Revision No. 8/2012 (pg.42) by the learned Joint Charity Commissioner cannot be sustained. The same is hereby quashed and set aside and the revision is dismissed. No costs.

10] The pending civil applications, if any, are disposed of in terms of this judgment. Petition is allowed in above terms. No costs.

JUDGE

Rvjalit