

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 8503 OF 2018

Ghanshyam Bakaram Badwaik,
Age 77 years, Occupation : Retired,
R/o. Tumsar, District : Bhandara,
Rajendra Nagar, Tumsar – 441912
Bhandara.

.... **PETITIONER.**

// VERSUS //

1. Mahavirprasad Tekchand Agrawal,
Age 70 years, Occupation : Business,
R/o. Bose Nagar, Tumsar, Tah.Tumsar,
District : Bhandara.
2. Parasram Narayan Sakharwade,
Age 53 years, Occupation :Business,
R/o. Abhyamkar Nagar, Tumsar,
Tah.Tumsar, District : Bhandara.
3. Assistant Charity Commissioner,
Bhandara.

.... **RESPONDENTS.**

Shri S.D.Abhyankar, Advocate for Petitioner.
Shri A.P.Thakare, Advocate for Respondent Nos. 1 and 2.
Shri H.D.Dubey, A.G.P. for Respondent No.3.

CORAM : **ANIL S. KILOR, J.**
DATED : **JULY 25, 2023**

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. The application moved by the petitioner for grant of permission to examine objector came to be dismissed by the Assistant Charity Commissioner, Bhandara on the ground that the affidavit filed by the Objector is subject to cross-examination of the deponent, if permitted by the Charity Commissioner in appropriate case, as per the amendment made in Section 73 of the Maharashtra Public Trusts Act (Second Amendment) Act, 2017. It is well settled law that while conducting inquiry under Section 22 of the Act the Charity Commissioner functions as a judicial authority. Moreover, it is a settled law that without cross-examination the evidence on affidavit cannot be considered.
4. In that view of the matter, I am of the opinion that the reasons recorded by the Assistant Charity Commissioner, Bhandara, while rejecting the application of the petitioner Exh.124 for grant of

permission to cross-examine the Objector, is erroneous and contrary to law. Accordingly, I pass the following order:

- i) The writ petition is allowed.
- ii) The impugned order dated 06/08/2018 passed below Exh.124 by the Assistant Charity Commissioner, Bhandara is hereby quashed and set aside and thereby application Exh.124 is allowed.

Rule is made absolute accordingly. No order as to costs.

(ANIL S. KILOR, J)

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