



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3759 OF 2024

Osman Kha Ahmed Kha Golandaj

VERSUS

Chand Pasha Daud Saheb Bagwan And Others

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Mr. V. D. Gunale, Advocate for the Petitioner

Mr. T. M. Venjane, Advocate for Respondent No. 1

Mr. S. B. Pulkundwar, AGP for Respondent No. 6

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CORAM : R.M. JOSHI, J

DATE : JUNE 10, 2024

PER COURT :

1. By consent of the parties, Petition is heard finally at admission stage.

2. This Petition takes exception to the order dated 29.12.2023 passed by Deputy Charity Commissioner, Latur (DCC) in MCA No. 486/2022.

3. Petitioner is one of the trustee of Dr. Zakir Husain Shikshan Prasarak Manda, Wadhawana (Bk), Tq. Udgir, Dist. Latur with registration no. F-895 (Latur) and societies registration no. MAHA-247/1996/Latur. It is the case of the Petitioner that he is the founder member of the trust. According to him, elections of the

managing committee of the said trust are held from time to time and change reports to that effect were filed and the same were accepted and entries were taken in Scheduled-I by the office of Assistant / Deputy Charity Commissioner as and when change occurred. Petitioner has also given details with regard to the elections which took place from year 2007 to 2022. It is the contention of the Petitioner that the Respondent No. 1 without having authority or jurisdiction has filed MCA No. 487/2022 under Section 79(AA) of the Maharashtra Public Trust Act, 1950 (for short '**the Act**') without making trustees as a party Respondents. It is his contention that the Respondent No. 1 has got record reconstructed behind back of the Petitioner and other trustees. It is specific case of the Petitioner that though change reports are effected in the year 2002 and the charge reports accepted in 2007, concerned authority had no reason to carryout any change in the record.

4. At the outset, learned Counsel for the Petitioner submitted that the DCC has failed to comply with the provision of Section 79(AA) of the Act.

According to him, notice ought to have been issued before carrying out any reconstruction of record to the trustees. According to him, in this case the Respondent No. 1 without any authority has preferred an application and the same was entertained by the DCC for reconstruction of the record. It is his further contention that all the trustees are not issued with notice of the said reconstruction.

5. Learned Counsel for Respondent No. 1 opposed the said contention by drawing attention of the Court to the impugned order wherein it is specifically recorded that in compliance of Section 79(AA) of the Act notice is issued to the trustees and the objection raised by the trustees is duly considered. It is further submission that Section 79(AA) of the Act does not contemplate any notice in advance before reconstruction of the record. According to him, there is no prohibition for Respondent No. 1 to file any application for reconstruction if the same is found damaged or destroyed. Learned AGP also supported the impugned order.

6. At the outset, it would be relevant to refer to provisions of Section 79(AA) of the Act, which reads thus:

79AA. (1) Whenever any record kept in any Public Trust Registration Office is damaged or destroyed due to any cause whatsoever and is reconstructed, the Assistant or Deputy Charity Commissioner may by notice in the prescribed form published in the Official Gazette, and also in any newspapers with wide circulation in the region concerned, announce the fact of the reconstruction of the record, and call upon all persons having interest in the public trusts which are entered in such reconstructed record to show cause in writing within a period of thirty days from the publication of the notice in the Official Gazette, why such record should not be treated as final and conclusive. A copy of such notice may be sent also to the trustees of such public trusts.

(2) On the expiry of the period of thirty days aforesaid, the Assistant or Deputy Charity Commissioner shall, after hearing the trustees and persons having interest, if any, and after duly considering the objections and documents produced, if any, and if necessary, after making an inquiry, record his findings with the reasons therefor, and either confirm or amend the record including any entries therein accordingly. The record so confirmed or amended shall, subject to the provisions of this Act, be final and

conclusive, as if such record was made or maintained under this Act

7. This power is vested with the Assistant/Deputy Charity Commissioner, as the case may be, to finalise the reconstructed record. A bare perusal of this provision indicates that it is within the jurisdiction of this authorities to reconstruct the record if the same is found damaged or destroyed due to any cause whatsoever. No doubt, these Authorities *suo motu* can take cognizance of situation and act upon it, however, there is no embargo that this damaged or destroyed condition of the record cannot be brought to the notice of Authority by any individual. In the instant case, Respondent No. 1 by filing application has pointed out to the concerned authority about the torn condition of the record in respect of the trust. The concerned DCC has directed reconstruction of the same. It is pertinent to note that in the objection raised by the trustees including the Petitioner there is no specific plea taken about the record being not torn or being in appropriate condition requiring no reconstruction. At this stage, it will not be open for the Petitioner to contend that the record was never torn and that it was

not within the authority of DCC to reconstruct the same.

8. The next point raised before this Court is about the non issuance of notice before reconstruction of the record. Section 79(AA) of the Act, as quoted herein above, clearly indicates that it is administrative obligation/responsibility of Authority to reconstruct the record if the same is found damaged or destroyed. Maintenance of record is within domain of such Authorities. As such, no hearing is contemplated before reconstruction of such damaged record. It is only after the reconstruction for the purpose of treating it as final and conclusive a notice is required to be issued to the trustees. The only reason behind issuance of notice to the trustees could be to ensure that the reconstruction is not done contrary to record and the same cannot be taken exception in future.

9. In the instant case, there is specific objection raised by the Petitioner and other trustees with regard to the said reconstruction being carried out by the concerned authority. Apart from this, the

impugned order specifically records about the issuance of notice to the trustees by issuing public notice in news paper "Daily Ekmat" on 04.01.2023. There is no denial to this fact by the Petitioner. Apart from this, the fact of filing objection by the Petitioner along with other trustees clearly indicates their knowledge with regard to the reconstruction being carried out by the DCC. Pertinently in the application for objection filed by the Petitioner and other trustees there is no specific plea raised by them that there are other trustees to whom notice is required to be issued. If it is so, now it is not open for the Petitioner to claim that other trustees were not issued notice. In any case, Petitioner is aggrieved by the impugned order who has been issued notice and was duly conversant with the reconstruction and, therefore, it cannot be allowed to be stated at this juncture that all trustees did not get notice of reconstruction.

10. Perusal of the objections raised by the Petitioner and other trustees do not show that it is their case that record was in proper condition requiring no reconstruction. In absence of any such

plea being raised by any Petitioner, there cannot be any justification in taking any exception to the order passed by the DCC for reconstruction of the record by making oral submissions about the status of record. It is necessary to note that the only objection raised by the Petitioner and other trustees to the said reconstruction was the pendency of the other proceedings before the concerned authorities with regard to the change report. The said aspect has been duly considered by the DCC by passing the impugned order subject to the other orders passed in the pending proceedings.

11. Apart from this, the scope and power of Section 79(AA) of the Act indicates the same only limited to reconstruction of damaged or destroyed record. Having regard to the same, it is not open for the Petitioner to raise objection for the reconstruction on the ground of pendency of other proceedings.

12. Having regard to the aforestated discussion, impugned orders are passed in compliance of provision

of Section 79 (AA) of the Act and that this Court finds no perversity in the impugned order to cause any interference therein. In the result, Petition stands dismissed.

(R. M. JOSHI, J.)

Malani