



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9200 OF 2019

Nandkishor Dagdu Deshmukh And Others

VERSUS

The Joint Charity Commissioner, Pune And Others

- Mr. A. A. Nimbalkar, Advocate for the Petitioners
- Mr. N. D. Raje, AGP for the Respondent Nos. 1 and 2/State
- Mr. V. S. Bedre, Advocate for the Respondent No. 4
- Mr. V. P. Latange, Advocate for Respondent Nos. 5 and 6

CORAM : R.M. JOSHI, J

DATE : NOVEMBER 13, 2024

PER COURT :

1. This Petition takes exception to the order passed in the Lok Adalat in an application filed under Section 22 of the Maharashtra Public Trusts Act. Petitioner amongst other contentions has raised locus standi of the Lok Adalat to pass any order/award in such proceedings.

2. learned Counsel for the Petitioners, without prejudice to his other contentions, has mainly relied upon the judgment of the Division Bench of this Court in case of Rajabhau Damodar Raikar vs. Assistant Charity Commissioner, Pune and Others, 2016 (1)

Bom.C.R. 233 wherein in paragraphs 14 and 17 it is unequivocally held by the Division Bench that proceedings in the nature of change report under Section 22 of the said Act of 1950 cannot be disposed of without holding an enquiry only on the basis of consent of the parties or settlement between the parties. Therefore, the issue formulated in paragraph 6 therein was answered in negative.

3. Learned Counsel for the Respondent has drawn attention of the Court to the order passed by this Court dated 25.07.2019 wherein the issue of locus standi of the Petitioner to take exception to the impugned order is considered by this Court. It is his further submission that the order impugned is passed in the year 2012 whereas the Petition is filed in the year 2019, as such, there is inordinate delay in filing of the Petition. He also drew attention of the Court to the judgment of the Hon'ble Supreme Court in the case of K. Srinivasappa v. M. Mallamma, AIR 2022 SC 2381 in order to support his submission that unless the alleged fraud is established, there is not question of causing interference in the impugned order.

4. In response thereof, learned Counsel for the Petitioner has drawn attention of the Court to the affidavit-in-reply (page 74) wherein it is specifically stated that he is the visitor to the temple (Trust). Apart from this, it is his submission that though order was passed in the year 2012, the entry thereof is taken in the year 2018, and it is thereafter the said order came to be known to Petitioner and, as such, the Petition is maintainable.

5. This Court does not find any reason to go into any other issue sought to be raised by the petitioner but for the jurisdiction of the Lok Adalat to pass award in the matters of change report under Section 22 of the Act, as the judgment of the Division Bench of this Court (supra) specifically deals with the said issue as recorded in paragraph 6 of the judgment, which reads thus:

6. The issue which arises for consideration in this petition is "whether a Lok Adalat constituted under the Legal Services Authorities Act, 1987 (in short 'the said Act of 1987') is empowered to adjudicate upon a change report filed under section 22 of the Bombay Public Trust Act, 1950 on merits?".

6. The Division Bench has decided the issue in negative and relevant observations are found in paragraphs 14 to 17 which reads thus:

14. Thus, a change report, whether contested or not, has to be decided after holding an inquiry in a manner provided in Rule 7 of the Bombay Public Trusts Rules, 1951. No change report can be accepted unless the Assistant Charity Commissioner or Deputy Charity Commissioner, as the case may be, after holding an inquiry, comes to a conclusion that the change as reported has occurred. Sub-Section 3 of Section 22 requires findings to be recorded with reasons while disposing of the change reports whether there is a contest or not.

15. On plain reading of the said Act of 1987, we find that, the Lok Adalat has no power to make an adjudication by following the procedure which is required to be followed in case of trial of suits. Considering the peculiar scheme of Section 22 of the said Act of 1950, a change report cannot be allowed even by consent without holding an inquiry and without recording reasons.

16. Now coming back to the impugned order, the change report has been allowed by the Maha Lok Adalat only on the ground that the change report is uncontested. It is merely observed that the documents produced by the applicant in the change report show that the trust has followed the due process to report the change.

17. Therefore, the Lok Adalat had no jurisdiction to decide the change report on merits. In this case, there was no compromise recorded before the Lok Adalat. Even otherwise, the proceedings in the nature of a change report under section 22 of the said Act of 1950 can not be disposed of without holding an inquiry only on the basis of a consent of the parties or a settlement between the parties. Therefore, the answer to the issue formulated in paragraph 6 is in the negative.

7. Since there is no dispute about the fact that the order impugned is passed by the Lok Adalat and it pertains to change report under Section 22 of the Maharashtra Public Trusts Act, in view of the judgment of the Division Bench of this Court, the Lok Adalat had no jurisdiction to pass such order. As such, the order is without jurisdiction and hence, *non est* in the eyes of law.

8. Since it is a temple trust, the affidavit filed by the Petitioner is sufficient to indicate that he is the person interested as contemplated by Section 2(10) of the Act. As such, this Court find no substance in the contention of learned Counsel for Respondent challenging his locus to file Petition. Moreover, in view of the fact that the order passed in the year 2012

was implemented in the year 2018 i.e., entry was taken in record of the Charity Commissioner, as such, there is no delay in filing of the Petition. Thus, objection raised by Respondents to be tenability of the Petition on both counts sans merit.

9. In view of above discussion, impugned order cannot sustain and deserves to be set aside. The original proceeding bearing Change Report No. 975/2011 is relegated back to Assistant Charity Commissioner, Ahmednagar for its decision in accordance with law. Petition stands allowed in terms of prayer clauses 'A to C'.

(R.M. JOSHI, J.)