

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3395 OF 2024

Shital D Kauthekar & Anr ...Petitioners
Versus
Niraj Ramesh Jariwala & Ors ...Respondents

Mr. Santosh S Jadhavar, with Mr. Chaitanya Khade, for the
Petitioners.
Mrs. V.S. Nimbalkar, AGP, for the Respondent-State.

CORAM AVINASH G. GHAROTE, J.
DATED: 11th June, 2024

PC:-

1. The Petition questions the Judgment and Order dated 31.1.2019 passed by the learned District Judge-4, Solapur in Civil Miscellaneous Application No. 177 of 2012 by which challenge to the Judgment and Order passed by Joint Charity Commissioner dated 4.6.2012 in Revision Application No. 27 of 2012 was turned down.

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2. The facts indicate that Respondent No. 1 who was the Trustee of late Sushilatai Gaikwad Bahuuddeshiya Sanstha,

Solapur was removed as a Trustee by Resolution dated 20.1.2008 on the ground that Respondent No.1 had gone abroad. This change was presented under Section 22 of the Maharashtra Public Trust Act, 1950 to the Assistant Charity Commissioner vide Change Report No. 398 of 2008 which came to be accepted by the order dated 8.9.2008. This order dated 8.9.2008 accepting the change was questioned by Respondent No. 1 by filing a Revision Application under Section 70A of the the Maharashtra Public Trust Act bearing Revision Application No. 27 of 2012 before the learned Joint Charity Commissioner who by Judgment dated 4.6.2012 set aside the order passed by the Assistant Charity Commissioner dated 8.9.2008 rendering a finding that the Resolution dated 20.1.2008, was without any notice to Respondent No.1 and therefore the meeting in which it was passed itself was invalid. This Judgment of learned Charity Commissioner came to be questioned before the District Judge 4, Solapur, under Section 72 of the Maharashtra Public Trust Act in Civil Miscellaneous Application No. 177 of 2012 who by his

Judgment dated 31.1.2019 has dismissed the application, being aggrieved, by which the present the Petition has been filed.

3. Mr Jadhavar, learned Counsel for the Petitioner taking exception to the Judgment of the Joint Charity Commissioner as well as of the District Judge contends, that since Respondent No. 1 had left the country, there was no question of any issuance of any notice to him of the Resolution dated 20.1.2008 and as such the removal of Respondent No. 1 was clearly legal. He also relies upon the Affidavit of Respondent No.1 dated 11.7.2008 (page 38) to contend that Respondent No.1 himself had given his no objection for the purpose of accepting the Change Report No. 398/2008 on account of which the challenge raised by him was not justified.

4. With the assistance of learned Counsel for the Petitioner, I have perused the notice dated 13.1.2008 of the meeting to be held on 20.1.2008. The notice dated 13.1.2008 at page 22 clearly indicates that it was never served upon Respondent

No.1 on the ground that he had settled out of the country on account of his service which is the endorsement made against his name in the said notice. This would clearly indicate that the removal of Respondent No.1 as a Trustee of the abovesaid Trust, was without any notice. The meeting dated 13.1.2008 held consequent to the aforesaid notice also suffered from the same infirmity. It is a settled position of law that a person cannot be removed from his position without notice to him as that would clearly be against the principles of natural justice which required him to be noticed before such action is to be taken.

5. In the instant case the notice dated 13.1.2008 of the meeting to be held on 20.1.2008, clearly indicates that the notice of the meeting was never served to Respondent No.1 on which ground alone, I do not see any reasons to interfere in the impugned Judgment and order, which take into consideration this position. The very fact that Respondent No.1 himself has challenged the acceptance of Change Report

under Section 22 of the the Maharashtra Public Trust Act, by the Assistant Charity Commissioner would indicate, that no reliance can be placed on the communication dated 11.7.2008 (page 38).

6. That apart, that is not the ground on which the Change Report has been accepted by Assistant Charity Commissioner as is indicated by, a perusal of the order dated 8.9.2008. It is also material to note that the mode of removal of the members of the Trust is as per Clause No. 6 of the constitution of the Trust, as per Schedule C at page 87 and the removal of Respondent No. 1 on account of he having left the country is not one of the mode as indicated.

7. The petition therefore is without any merits and it is dismissed. No costs.

(AVINASH G. GHAROTE, J)