Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.946 OF 2022

WITH
WRIT PETITION NO.1374 OF 2022

WITH
WRIT PETITION NO.1375 OF 2022

Ajit Uddhav Suryawanshi & Anr … Petitioners
V/s.
Dr. Parag Babanrao Pawar & Ors … Respondents

Mr. N. V. Bandiwadekar, Sr. Advocate a/w Mr. Vinayak Kumbhar, Mr. Rajendra Khaire & Mr. Aniket S. Phapale & Mrs. Ashwini Bandiwadekar, for Petitioner.

Mr. S. S. Patwardhan i/by Mr. Bhooshan R. Mandlik, for respondent Nos.1 to 3.

Mrs. M. S. Srivastava, AGP for State/Respondent No.11.

CORAM : AMIT BORKAR, J.

DATED : MARCH 18, 2024

P.C.:

1. Since, all the writ petitions involved common questions of law and fact and since parties are same, all three writ petitions are being disposed of by this common order.

2. The writ petitions arise out of Change Reports filed by the petitioners for period 2012-2015, 2015-2018 and 2018-2021.

According to the petitioners, all three elections were held uncontested and accordingly, the General Body of respondent No.4 / Trust passed a Resolution appointing petitioners as Managing Committee Members. The Change Report allegedly contained 'no objections' of the contesting respondents. The Assistant Charity Commissioner by order dated 16 November 2015 accepted the Change Reports filed by the petitioners.

3. The contesting respondents i.e. respondent Nos.1 to 3 filed revision application under Section 70A of the Maharashtra Public Trusts Act, 1950 before the Joint Charity Commissioner. The Charity Commissioner allowed all the revisions; hence, present three writ petitions are filed.

4. Mr. Bandiwadekar, learned Senior Advocate on behalf of petitioners submitted that the Revisional Court allowed revision applications broadly on following grounds: (i) the documents on record did not indicate that petitioners were members of respondent No.4 / Trust and the Assistant Charity Commissioner failed to consider the alleged forgery in relation to documents of respondent No.4 / Trust; (ii) in relation to period of 2012-2015 and 2018-2018, the notice of Annual General Meeting was containing 10 days period; however, the meeting was called within 8 days and, therefore, the meeting was illegal; (iii) in relation to period of 2018-2021, an additional ground was furnished to the effect that the election of the office bearers from Managing Committee Members could not have been held in the same Annual General Body Meeting.

5. Based on aforesaid findings, he submitted that the Joint Charity Commissioner ought to have granted an opportunity to the petitioners to produce the documents before the Assistant Charity Commissioner as the proceedings before the Assistant Charity Commissioner remain uncontested.

6. Per contra, Mr. Patwardhan, learned Advocate for respondent Nos.1 to 3 submitted that the Charity Commissioner was entitled to record a finding based on documents on record that the Annual General Meeting was held within 8 days as opposed to the period of 10 days notice required under the constitution. Relying on clause (11) of the constitution, he submitted that the election of office bearers from the Managing Committee could not have been held in the same meeting and, therefore, the Charity Commissioner rightly allowed the revision application.

7. I have heard both sides and after hearing, I am of the opinion that the Charity Commissioner ought to have remanded the matters back to the Assistant Charity Commissioner for giving an opportunity to the parties to furnish documents in support of their case.

8. The principal reason weighed with the Joint Charity Commissioner was absence of material to show petitioners being members of respondent No.4 / Trust. In absence of such issue being raised before the Assistant Charity Commissioner, the petitioners had no opportunity to furnish documents in support of their case that petitioners are the members of respondent No.4 / Trust as proceedings before the Assistant Charity Commissioner remained uncontested and, therefore, only those documents necessary to support Change Report were produced before the Assistant Charity Commissioner. In absence of granting an opportunity to the petitioners to produce material to show that they were members of respondent No.4 / Trust, the Change Report appointing them as a Managing Committee members could not have been set aside by the Revisional Authority on merits.

9. Moreover, even on the point of non-compliance of clause (11) of the constitution, since the main proceedings are to be remanded back to the Assistant Charity Commissioner, it would be in the fitness of things, that the effect of clause (11) of the constitution shall be considered by the Assistant Charity Commissioner. Therefore, in my opinion, the Charity Commissioner instead of rejecting the Change Reports ought to have remanded proceedings back to the Assistant Charity Commissioner. Hence, following order:

(a) The impugned orders passed by the Joint Charity Commissioner dated 3 November 2021 in Revision Application Nos.11 of 2019, 12 of 2019 and 13 of 2019 and the orders passed by the Assistant Charity Commissioner in Change Report Nos.838 of 2014, 1224 of 2017 and 1338 of 2018 are quashed and set aside.

(b) All three proceedings are remanded back to the Assistant Charity Commissioner, Sangli. The Assistant Charity Commissioner, Sangli, shall grant an opportunity to both sides to lead evidence and after considering the evidence lead by parties and after complying with procedure under Section 22 of the Maharashtra Public Trusts Act, 1950 shall decide the Change Reports afresh in accordance with law.

(c) Considering the pendency of the Change Reports, the Assistant Charity Commissioner shall decide the Change Reports within six months from the appearance of the parties.

(d) Parties shall appear before the Assistant Charity Commissioner on **26 March 2024 at 10:30 a.m.**

10. All writ petitions stand disposed of in above terms. No costs.

(AMIT BORKAR, J.)