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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4955 OF 2024

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Shashikant J. Vora

... Petitioner

V/s.

Joint Charity Commissioner & Ors.

... Respondents

Mr. Ravi Kadam, Senior Advocate with Mr. Dharendra Sinha, & Mr. Raghav Taneja i/by Vidhii Partners for the petitioner.

Mrs. V.S. Nimbalkar, AGP for respondent No.1/State.

Mr. S.D. Abhyankar with Yash M. Oza for respondent Nos.2 & 3.

CORAM : AMIT BORKAR, J.

DATED : APRIL 2, 2024

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner is challenging an order passed by the Charity Commissioner while rejecting an application under Section 73A of the Maharashtra Public Trusts Act, 1950 ("the said Act" for short) refusing to allow the petitioner to be impleaded as party-respondent to the revision application.

2. The proceeding arise out of change report. Curiously by order dated 16 April 2005 the Charity Commissioner passed following order:

"Note issued. Copy of minutes of meeting or resolution not produced. Hence, C.R. is filed."

3. This order was challenged by the respondents by way of revision. During pendency of the revision, the petitioner being a Trustee filed an application under Section 73A of the said Act that he being interested person is entitled to be impleaded as party-respondent in the revision application. By the impugned order, the Revisional Authority has rejected the application. Hence, present writ petition.

4. Mr. Kadam, learned Senior Advocate invited my attention to Sections 2(10) and 73A of the said Act to urge that the petitioner being Trustee is entitled to be impleaded as respondent in a proceeding arising out of an order passed under Section 22 of the said Act. He submitted that the order impugned before the Revisional Authority neither rejects nor accepts the change report which is impermissible. The inquiry under Section 22 being quasi-judicial, it is expected from the Charity Commissioner to adjudicate on merits. However, passing order of “filed” is impermissible and amounts to failure to perform statutory duties conferred under the Statute.

5. Per contra, learned advocate for the opponents submitted that the petitioner being appointed as Trustee in 2004 and the change in question is in relation to the period 1998, he is not necessary party and the only question which arises for consideration before the Charity Commissioner under Section 22 of the said Act is validity and legality of the resolution electing or appointing incoming Trustees. The validity and legality of such change is the only subject matter of inquiry and, hence, the petitioner is not necessary parties.

6. I have heard advocates for the parties. Section 22 of the said Act reads thus:

“22. Change.-- (1) Where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept. Such report shall be made in the prescribed form.

(1A) Where the change to be reported under sub-section (1) relates to any immovable property, the trustee shall, alongwith the report, furnish a memorandum in the prescribed form containing the particulars (including the name and description of the public trust) relating to any change in the immovable property of such public trust, for forwarding it to the sub-registrar referred to in sub-section (1) of section 18. Such memorandum shall be signed and verified in the prescribed manner by the trustee or his agent specially authorised by him in this behalf.

(2) For the purpose of verifying the correctness of the entries in the register kept under section 17 or ascertaining whether any change has occurred in any of the particulars recorded in the register, the Deputy or Assistant Charity Commissioner may hold an inquiry.

(3) If the Deputy or Assistant Charity Commissioner, as the case may be after receiving a report under sub-section (1) and holding an inquiry, if necessary under sub-section (2), or merely after holding an inquiry under the said sub-section (2), is satisfied that a change has occurred in any of the entries recorded in the register kept under section 17 in regard to a particular public trust, he shall record a finding

with the reasons therefor to that effect. Such finding shall be appealable to the Charity Commissioner. The Deputy or Assistant Charity Commissioner shall amend the entries in the said register in accordance with such finding and if appeals or applications were made against such finding, in accordance with the final decision of the competent authority provided by this Act. The amendments in the entries so made shall, subject to any further amendment on the occurrence of a change, be final and conclusive.

(4) Whenever an entry is amended under sub-section (3), the Deputy or Assistant Charity Commissioner, as the case may be, shall forward the memorandum furnished to him under sub-section (1A), after certifying the amended entry to the sub-Registrar referred to in sub-section (1) of section 18, for the purpose of registering the change.”

7. Section 22 requires the Charity Commissioner to make entries in the register kept under Section 17 within 90 days from the date of the occurrence of such change. Sub-section (2) of Section 22 requires the Charity Commissioner to verify correctness of the entries in the register kept under Section 17 of the said Act.

8. It is well settled that the power exercised by the Charity Commissioner is quasi-judicial power. Moreover, the order passed under Section 22 is appellable. The Charity Commissioner is, therefore, required to either reject the change report or accept the same after holding inquiry as prescribed. The order of “filed” is not recognized in law. The expression “file” has no place while exercising quasi-judicial powers or judicial powers. The expression “filed” is used only in administrative inquiry or passing administrative orders which has no civil consequences. However, Section 22 being quasi-judicial power which affects rights of the

parties and has civil consequences, disposing such application under Section 22 of the said Act by using expression “filed” for concluding the inquiry is impermissible.

9. It is, therefore, directed that the Assistant Charity Commissioner and Deputy Charity Commissioner while exercising powers under Section 22 henceforth shall either reject the application or may allow the same after holding inquiry under Section 22 of the said Act.

10. Reverting back to the facts of the case, it appears that the respondents were constrained to challenge the order of “filed” as no inquiry was held and the application under Section 22 of the said Act was neither accepted nor rejected.

11. It would be, therefore, in the interest of justice that instead of keeping revision pending before the Revisional Authority, order dated 16 April 2005 is quashed and set aside and the proceedings are restored on the file of the Assistant Charity Commissioner who shall decide Change Report No.ACC/II/2688/1998 in accordance with law.

12. It will be open for the petitioner to apply before the Charity Commissioner under Section 73A and on such application being filed, the Assistant Charity Commissioner shall decide the same in accordance with law.

13. With these observations, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)