AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.188 OF 2024

The Nusserwanjee Maneckjee Petit Charitable Institution & Anr. … Petitioners

V/s.

The State of Maharashtra & Ors. … Respondents

Mr. Naushad Engineer with Ms. Shweta Jaydev, Ms. Sraddha Kedia & Ms. Aznaa Mullwalla i/by Rashmikant & Partners for the petitioners.

Mr. P.G. Sawant, AGP for the respondents/State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 7, 2024

P.C.:

1. The petitioners are challenging order passed by the Charity Commissioner, Maharashtra State, Mumbai on an application filed by the petitioners requesting condonation of delay of two months in filling vacancy of Trustees and seeking direction to appoint Trustees mentioned in the prayer clause.

2. Section 22(1) of the Maharashtra Public Trusts Act, 1950 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 subsection (1) relates to any immovable property, the trustee shall, along with 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 SubRegistrar referred to in subsection (7) of Section 18.
>
> Such memorandum shall be signed and verified in the prescribed manner by the trustee or his agent specially authorized by him in this behalf."

3. On perusal of sub-section (1) of Section 22, it is evident that power to decide change under Section 22 lies with Deputy or Assistant Charity Commissioner. The Deputy and Assistant Charity Commissioners are defined under Section 2(2) and (5) of the Act. The Charity Commissioner is defined under sub-section (3) of Section 2. On perusal of Sections 70 and 70-A, it is evident that the Charity Commissioner is conferred with appellate power against the findings or order of Deputy or Assistant Charity Commissioner.

4. Therefore, under the scheme of the Maharashtra Public Trusts Act, 1950, the Charity Commissioner has no power to decide change report under Section 22 of the Act.

5. Prayer clause (b) of paragraph 13 of the application seeks primary relief of appointment of two persons as Trustees. However, alternative relief was to direct the Deputy Charity Commissioner to accept change report of said two Trustees. Therefore, it was obligatory on the Charity Commissioner to direct the Deputy Charity Commissioner or Assistant Charity Commissioner to decide change report.

6. Issuance of such direction by the Charity Commissioner would have effect on direction to the Deputy Charity Commissioner to decide change report as per the provisions of law. Whether the change report filed was within time or whether the appointment made by the petitioner was in accordance with the provisions of the Trust Deed or provisions of the Act need to be decided by either Deputy Charity Commissioner or Assistant Charity Commissioner in exercise of power under Section 22.

7. Therefore, keeping issue of legality and validity of change to be decided by the Deputy or Assistant Charity Commissioner, the impugned order passed by the Charity Commissioner on 14 September 2023 on Miscellaneous Application No.CC/105 of 2023 dated 19 July 2023 is set aside.

8. Miscellaneous Application No.CC/105 of 2023 filed before the Charity Commissioner is transmitted to the Deputy Charity Commissioner for decision in accordance with law.

9. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)