



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.253/2024

Sudhir s/o Narayanrao Shende

...Versus...

Shri Devidas s/o Laxmanrao Shirbhate

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. S.N. Tapadia, Advocate for petitioner

Mr. Anand Parchure, Advocate a/w Mr. Nikhil Valesha, Advocate for respondent

CORAM : N.R. BORKAR, J.

DATE : 19/07/2024

1. This petition takes exception to the order dated 10/08/2023 passed by the Joint Charity Commissioner, Amravati Region, Amravati in Appeal No.175/2022.

2. The petitioner herein had filed the change report under Section 22 of the Maharashtra Public Trusts Act, 1950. By the order dated 27/01/2020, Deputy Charity Commissioner allowed the said application. The order of Deputy Charity Commissioner reads thus :

“2. The record reflects that the tenure of the executive body said to be elected by way of present change report is already over and the change report has become academic. Although the change report is seriously objected by the objector/s parties conceded that the change report be disposed off and the names of the de-facto trustees i.e. names reflected in the present change report be recorded on the Schedule-I with a view that the liability shall be of the person/body actually

functioned duly the said tenure. Since the change report has become academic and is hereby filed, rejected and disposed off. It is to be noted here that as per the contention of Adv. Pathak concerned body took charge from the administrator of this office on 05.04.2016. However, the directions are hereby issued for recording the de-facto trustee of the present change report on the Schedule I of the trust, for the period they actually functioned in the trust. No order as to costs.”

3. Being aggrieved by the order of Deputy Charity Commissioner, the respondent herein filed the appeal before the Joint Charity Commissioner. By the order impugned, the learned Joint Charity Commissioner has allowed the appeal and remanded the matter back to the Deputy Charity Commissioner, for deciding it afresh.

4. The learned Joint Charity Commissioner has observed thus :

“13. It is significant to note that as per section 22 of the Maharashtra Public Trusts Act, 1950 the authority is under obligation to decide the legality and validity of the change report. The learned Deputy Charity Commissioner has completely overlooked the purport of section 22 of the Maharashtra Public Trusts Act, 1950. The learned Deputy Charity Commissioner has not recorded any finding about the election held on 21/10/2012. The authority is under obligation to decide that whether the election of the trust has been held amongst the valid members of the trust? Whether the election has been held as per the constitution of the trust? The present appellant and other objectors have filed the written objection on record but learned Deputy Charity Commissioner has completely overlooked the said written objection. The learned Deputy Charity

Commissioner has recorded finding that the tenure of the executive committee has expired. Hence the change report has become academic. The impugned judgment and order is cryptic. The impugned judgment and order is not based on proper and correct appreciation of evidence on record. It is seen that administrator has been appointed to look into the administration of the trust. The documents relied upon by the reporting trustee has not been proved. Notices have not been issued to the affected parties. It is very strange and surprising that the learned Deputy Charity Commissioner has directed that the names of newly elected trustees be recorded in schedule I instead of deciding the change report on merits. Hence this matter requires to be remanded back to the learned Deputy Charity Commissioner to decide the legality and validity of the change report. The impugned judgment and order is not legal, proper and correct. Hence, I answer point No.1 in the negative. Hence interference by this authority is called for. Hence, I answer point No.2 in the affirmative.”

5. The learned counsel for the petitioner submits that the order passed by the Deputy Charity Commissioner was consent order and therefore, the learned Charity Commissioner ought not to have interfered with it. However, in view of the findings recorded by the learned Joint Charity Commissioner in the order impugned, I am not inclined to entertain the present petition. The writ petition is dismissed. No order as to costs.

(N.R. BORKAR, J.)