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

WRIT PETITION NO. 8237 OF 2017

1 Vishwanath Pralhad Barahate,
Aged about 65 Years, Occ. Agriculturist.

2 Sk. Ijjatullah Sk. Rehmatullah Jahagirdar
Aged about 75 years, Occ. Agriculturist

3. ~~Jagdish Mahadeo Pathak,~~
~~Aged about 75 years, Occ. Agriculturist~~ Deleted as per order dated 06.12.2023

All R/o Hatrun, Tq. Balapur, District Akola ...Petitioners

// VERSUS //

1. Joint Charity Commissioner,
Amravati Region, Amravati

2. Bhaurao Rajaram Shinde,
Aged about 65 years, Occ. Agriculturist

3. Digamber Dnyandev Thakre
Aged about 40 years, Occ. Agriculturist

4. Madhukar Ramkrushna Nagde,
Aged about 38 years, Occ. Agriculturist
All R/o. Hatrun, Tq. Balapur, Dist. Akola ... Respondents

Shri A.R.Deshpande, Advocate for the petitioners.
Shri U.R.Phasate, AGP for the respondent/State.
Shri S.D.Chande, Advocate for the respondent nos. 2 to 4.

CORAM : ANIL S. KILOR, J.
DATED : 8th JANUARY, 2024.

ORAL JUDGMENT :

Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

2. In this writ petition, the challenge is raised to the judgment and order dated 7th December, 2017 passed by the learned Joint Charity Commissioner, Amravati in Revision No. 11 of 2016, setting aside the acceptance of change report bearing Inq No. 646 of 2000, vide order dated 9th October, 2000.

3. The above referred revision was filed by the respondent nos. 2 to 4 after the lapse of period of 16 years from the date of order dated 9th October, 2000 accepting the change report No. 646 of 2000, without offering any cause for such delay. The learned Joint Charity Commissioner, Amravati therefore held that the revision is liable to be dismissed on the ground of delay. However, he entertained the challenge suo moto and set aside the order dated 9th October, 2000.

4. Hence, the only question arises in the present writ petition is that, whether after the lapse of 16 years, the Joint Charity Commissioner, Amravati was right in entertaining the challenge by taking suo-moto cognizance of alleged illegality in passing the order dated 9th October, 2000 accepting the change report No. 646 of 2000.

5. To answer the above referred question, it would be appropriate to reiterate the law in respect of the delay and powers of the authority to take suo motu cognizance in such matters.

6. The Coordinate Bench of this Court in the case of *Maharashtra Gandhi Smarak Nidhi, Pune Vs. Gandhi Smarak Nidhi (Central), New Delhi and another*[1] has held thus:

> *11. It is true that the Apex Court in the case of Santosh Kumar (supra) was dealing with revisional jurisdiction under Section 257 of the said Code. Under the said Code, the Revenue/Survey Officers are conferred with very wide powers including the power of resumption of land, power of removal of unauthorized occupancies etc. Even under the said Code, there is no specific period of limitation prescribed for a revision under Section 257 of the said Code. The issue before the Apex Court was whether revisional power can be exercised at any time. The Apex Court made a reference to its earlier decision in the case of Mohd. Kavi Mohamad Amin V/s.Fatmabai Ibrahim [1996 (6) SCC 71] and in paragraph No.11, the Apex Court held thus:*
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> > *"It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain exercise of such power within reasonable time is inherent therein." (Underline supplied)*
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> *12-13. Exercise of revisionary power under Section 70(A), whether suo motu or otherwise, will be governed by the law laid by the Apex*

1 2011(4) Mh.L.J 295

> *Court. Reliance placed on the unreported decision of this Court in the case of Mohammad Haider will not help the first respondent in view of what is held by the Apex Court. As held by this Court in the case of Virbala (Supra), the power under Section 70(A) is a discretionary power and, therefore, the said power cannot be exercised arbitrarily. It should be exercised in a reasonable manner. Therefore, it follows that the power has to be exercised within a reasonable time.*

7. From the above referred observations, it is evident that, if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is further evident that where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain exercise of such power within reasonable time is inherent therein.

8. In the matter at hand, the learned Joint Charity Commissioner, Amravati Region, Amravati in Revision No. 11 of 2016, while taking suo motu cognizance has observed thus:

> "12. As the petitioners have not given any sufficient cause for delay in filing the revision the same is liable to be dismissed on this ground only. Whereas the facts remains that the impugned order accepting change report Inq.No.646/2000 is totally illegal, as discussed above. In Section 70A of Maharashtra Public Trusts Act, the discretionary powers are given to the Charity Commissioner even to exercise the revisional powers suo motu in order to ascertain the correctness of any finding or order recorded by Deputy or Assistant Charity Commissioner. No doubt, such discretionary powers are to be used judiciously and within the reasonable time. In the present case the illegality of the change report is brought before this authority only by

> way of this revision. No doubt the petitioners have failed to plead any sufficient cause for delay in filing the revision but this authority having suo motu revisional powers can use such power to set at right the illegalities committed by lower authority.
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> 13. In this matter, as discussed above, the change report being Inq. No. 646/2000 is completely illegal as the alleged decision of induction of new members and election of the members of executive committee was totally against the provision of constitution of the trust and therefore said illegality cannot be allowed to continue when brought to the notice of this authority. Under these circumstances though the revision is liable to be dismissed on point of limitation but this authority can use its suo motu powers of revision to set aside the illegal order passed by the learned lower authority and therefore there is need to interfere in the order passed by learned lower authority….."

9. From the above referred observations made by the learned Joint Charity Commissioner, Amravati, it is evident that on one hand the learned Joint Charity Commissioner, Amravati has accepted that there is an inordinate delay in the filing revision and in absence of any explanation or sufficient cause shown for such delay, he refused to entertain the revision. However, the learned Joint Charity Commissioner, Amravati without applying the same principle while taking cognizance of the matter suo motu, entered into the merits of the matter which is not permissible where the authority has arrived at a conclusion that the revision was filed beyond reasonable period, otherwise it would amount to unsettle the things which are already settled with the lapse of time.

10. In the circumstances, I am of the opinion that the learned Joint Charity Commissioner, Amravati has committed error in taking suo motu cognizance and thereby setting aside the order dated 9th October,

2000 passed by the Assistant Charity Commissioner, Akola accepting the change report No. 646 of 2000. Accordingly, I pass the following order.

i. Writ petition is allowed;

ii. The judgment and order dated 7th December, 2017 passed by the learned Joint Charity Commissioner, Amravati in Revision No. 11 of 2016 is hereby quashed and set aside.

[ANIL S. KILOR, J.]