



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.1748 OF 2024**

The Charity Commissioner Bombay,
Through Joint Charity Commissioner,
Aurangabad.

..Appellant

Versus

1. Deva s/o Khema Naik,
Age: 60 years, Occu: Agriculture
2. Supada s/o Namdev Sasane,
Age: 55 years, Occu: Service,
3. Bhavrao s/o Laxmanrao Kolte,
Age: 45 years, Occu: Agriculture

Respondent Nos.1 to 3
R/o. Savaladbara, Tq. Soygaon,
Dist. Aurangabad.

4. Chunnilal s/o Seva Chavan,
Age: 50 years, Occu: Service,
R/o. Devrai, Post Savaladbara,
Tq. Soyegaon, Dist. Aurangabad.

..Respondents

**AND
FIRST APPEAL NO.1749 OF 2024
WITH
CIVIL APPLICATION NO.12312 OF 2022
IN
FIRST APPEAL NO.1749 OF 2024**

1. Bhavrao S/o Laxmanrao Kolte,
Age: 54 years, Occu: Agri.,
R/o: Sawaladbara, Tq. Soygaon,
Dist. Aurangabad.
2. Mohan S/o Parshram Naik,
Age: 74 years, Occu: Agri.,
R/o: Charutanda, Post. Sawaladbara,
Tq. Soygaon, Dist. Aurangabad.
3. Chunnilal S/o Seva Chavan,
Age: 59 years, Occu: Agri.,
R/o: Devhari Post. Sawaladbara,
Tq. Soygaon, Dist. Aurangabad.

..Appellants

(Appellant No.1 and 2 are
original defendant no.1 and 3

whereas Appellant no. 3 is
original Plaintiff no. 1)

Versus

1. Namdev S/o Hari Dokale, (died)
2. Deva S/o Khema Naik,
Age: 69 years, Occu: Agri.,
R/o: Ghanegaon Tanda post. Sawaladbara,
Tq. Soygaon, Dist. Aurangabad.
3. Supada S/o Namdev Sasane,
Age: 64 years, Occu: Retired,
R/o: At present residing at plot no.56,
Shuddhodhan, Housing Society,
Mahagruha Nirman Society, Harsul
Tq. & Dist. Aurangabad.

..Respondents
(Orig. Plaintiffs)

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Mr. V. S. Badakh, AGP for Appellant in FA/1748/2024.

Mr. S. R. Sapkal, Advocate for Appellants in FA/1749/2024.

Mr. J. A. Menzes h/f Mr. P. S. Paranjape, Advocate for Respondent
Nos.2 and 3.

Mr. D. S. Chouhan, Advocate for Respondent Nos.4 and 8.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 14th JANUARY, 2025.

ORDER:-

1. The present First Appeals have been filed under Section 42(4) of the Bombay Public Trust Act impugning judgment and order dated 20.11.2013 passed by the District Judge, Aurangabad in M.A.R.J.I. No.300/2013.

2. The First Appeal No.1748/2024 is filed by the Charity Commissioner, Bombay, whereas First Appeal No.1749/2024 has been filed by original defendant nos.1, 4, so also plaintiff no.1. The dispute emerges from change report no.394/2003 and 550/2003 dated 18.07.2003 and 18.10.2003 respectively in connection to

public trust namely Jay Kalanka Devi, Shikshan Prasarak Trust, Sawaladbara registered in the year 1978 vide Registration No.F/545 with Assistant Charity Commissioner at Aurangabad before formation of Jalna District. The change report no.550/2003 was accepted by Assistant Charity Commissioner, Jalna. Consequently, it was carried in Schedule-1. The order accepting change report was assailed in Revision Application No.20/2012 before the Joint Charity Commissioner, Aurangabad, which came to be allowed on 30.05.2013 holding that village Sawaladbara is now merged in district Aurangabad. Eventually, application for change report submitted to Assistant Charity Commissioner, Jalna was directed to be transferred to Assistant Charity Commissioner, Aurangabad, for taking further decision. It was further ordered that Managing Committee for relevant period shall be treated as *de-facto*, since issue of change is merely academic.

3. The order passed by the Joint Charity commissioner was further subjected to challenge in M.A.R.J.I. No.300/2013 before District Judge, Aurangabad, who pleased to allow application vide impugned order dated 20.11.2013, thereby quashed and set aside the order dated 30.05.2013 passed by Joint Charity Commissioner, Aurangabad observing that when the Assistant Charity Commissioner, Jalna was not competent to entertain the change report in question and such objection is ultimately accepted by

Joint Charity Commissioner, then the Joint Charity Commissioner ought to have simply set aside the order of Assistant Charity Commissioner being without jurisdiction. He could not have passed any further order considering subsequent development.

4. The learned Advocates appearing for the appellants submits that there cannot be dispute that now village Sawaladbara falls within district Aurangabad and Assistant Charity Commissioner at Jalna was not having jurisdiction to entertain the change report. However, according to them, further direction given by Joint Charity Commissioner to consider the Managing Committee under change reports as *de-facto* committee could not have been disturbed by the learned District Judge while allowing M.A.R.J.I. No.300/2013. They submit that parties had surrendered to the jurisdiction of Assistant Charity Commissioner, Jalna. Consequently, order accepting change report no.550/2003 was passed. The learned District Judge ought to have considered the aforesaid position and maintained the direction appearing in Clause 1 in operative order passed by Joint Charity Commissioner.

5. Mr. Badakh, learned AGP submits that the learned District Judge committed serious error while setting aside entire order of Joint Charity Commissioner. According to him, the impugned order is not in conformity with Section 22 read with Section 17 of Maharashtra Public Trust Act as well as Rule 4 of Rules of 1951

providing region and sub-region alongwith their limits of jurisdiction.

6. Having considered the submissions advanced, it can be observed that there is no dispute that the village Sawaladbara falls in Taluka Soygaon, District Aurangabad. The Public Trust is registered at village Sawaladbara. The office of the Public Trust is also at village Sawaladbara. Therefore, the Assistant Charity Commissioner at Jalna would not have entertained the application for registering change. The learned Joint Charity Commissioner, Aurangabad was, therefore, justified in setting aside the order accepting change report passed by Assistant Charity Commissioner, Jalna. However, while doing so, he directed that for the period from 2003 to 2008, Managing Committee, which was brought into effect by change report of 2003 shall be treated as *de-facto* committee. The learned District Judge while entertaining challenge to the order of Joint Charity Commissioner in M.A.R.J.I. No.300/2013 observed that, once Joint Charity Commissioner has concluded that Assistant Charity Commissioner, Jalna had no jurisdiction to accept the change report, the said order ought to have been set aside without giving further direction to consider the status of the Managing Committee under the selfsame report as *de-facto* for the relevant period.

7. It is trite that, the Assistant Charity Commissioner within whose jurisdiction the trust is registered can entertain the application for change report. Consequently, the order accepting change report by Assistant Charity Commissioner, Jalna cannot be justified. Similarly, the Joint Charity Commissioner could not have declared the committee that was brought into power under the change report even for academic purpose as *de-facto* committee. It is evident from the memo of application of M.A.R.J.I. No.300/2013 that the order of Joint Charity Commissioner was challenged to the extent of issue no.3 and the directions employed in Clause No.1 in the order dated 30.05.2013. Therefore, the learned District Judge was also justified in setting aside that part of order passed by Joint Charity Commissioner, Aurangabad in Revision Application No.20/2012. Eventually finding of Joint Charity Commissioner that Assistant Charity Commissioner, Jalna holds no jurisdiction to entertain change report pertaining to subject trust is maintained.

8. Consequently, there is no merit in the First Appeals. Hence First Appeals stand dismissed.

9. In view of dismissal of First Appeal No.1749/2024, Civil Application No.12312/2022 does not survive and same is accordingly disposed of.

(S. G. CHAPALGAONKAR)
JUDGE