



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 WRIT PETITION NO. 12263 OF 2024

Sunita Jaywant Lipane And Others
VERSUS
The Joint Charity Commissioner And Others

...

Mr. A. D. Khot, Advocate for the Petitioners
Mr. S. B. Jadhav, AGP for Respondent No. 1
Mr. S. v. Natu, Advocate for Respondent Nos. 2 and 3
Mr. N. S. Salunke, Advocate for Respondent Nos. 4 to 9

AND

906 WRIT PETITION NO. 12287 OF 2024

Abasaheb Jabaji Phatake And Others
VERSUS
The Joint Charity Commissioner Ii And Others

...

Mr. N. S. Salunke, Advocate for the Petitioners
Mr. D. B. Bhanage, AGP for Respondent No. 1
Mr. S. v. Natu, Advocate for Respondent Nos. 2 and 3
Mr. A. D. Khot, Advocate for Respondent Nos. 4 to 6

CORAM : R. M. JOSHI, J
DATE : FEBRUARY 26, 2025

COMMON ORDER :

1. These Petitions take exception to common order dated 12.09.2024 passed below Exhs. 14 and 17 in Appeal No. 49/2024 wherein objection raised by the Petitioners/Original Respondents regarding maintainability of the Appeal came to be dismissed.

2. The facts which led to the filing of these

Petitions, can be narrated in brief as under:

Petitioners are the members/office bearers of the Trust – Samata Shikshan Prasarak Mandal, which is a trust duly registered under the Maharashtra Public Trust Act, 1950 (for short '**the Act**'). It is the case of the Petitioners that in an Appeal arising out of order of acceptance of Change Report No. 954/2022, objection is raised with regard to the maintainability of Appeal on the ground that Appellants have no locus standi to file Appeal. Learned Joint Charity Commissioner (for short '**the JCC**') while passing impugned order observed that though before filing Appeal no leave was sought, the same is a technical objection and that Appeal deserves hearing on merit. It is also held that which the Appellants are members/trustees or not, would be decided at the final hearing of the Appeal. These applications, therefore, came to be dismissed by passing impugned order wherein it is directed to Respondent to file application for leave to Appeal in 10 days.

3. Learned Counsel for the Petitioners has drawn attention of the Court to the constitution of the Trust

wherein there is annual membership of the Trust. According to him, Respondent Nos. 2 and 3 were the Trustees for the previous period but are not members thereafter. He drew attention of the Court to the order passed in Change Report No. 1424/2013 and 832/2020 to indicate that the Respondent Nos. 2 and 3 were ousted as Trustees and since then they are not the members of the Trust. Thus, it is his contention that Respondent Nos. 2 and 3 being not members, they have no locus standi to challenge the order passed in Change Report No. 954/2022. He placed reliance on the judgment of Hon'ble Supreme Court in case of Adv Babasaheb Wasade v. Manohar Gangadhar Muddeshwar, AIR OnLine 2024 SC 55 to contend that in the similar facts the Hon'ble Supreme Court has held that the person who has not objected to the change report or not a valid member of the Society cannot prefer Appeal.

4. Learned Counsel for the contesting Respondents supported the impugned orders. He also drew attention of the Court to the fact that the order passed by the JCC has been implemented to the effect that the application for leave filed by the

Respondents/Appellants is already allowed and as such, Petition has become infructuous.

5. There cannot be any dispute about the fact that a member of the Trust being person interested within the meaning of Section 2(10) of the Act would be entitled to take exception to the order allowing the change report. The Hon'ble Supreme Court in case of Adv Babasaheb Wasade (supra) was faced with the situation wherein the Respondent was neither objected before the Assistant Charity Commissioner nor a valid member of the Society. Thus, only after recording findings that the said person was not a valid member and he did not object to the change report, the challenge to the order in the change in the Appeal was held to be not entertainable.

6. As far as present case is concerned, the contesting Respondents have come out with a specific case that they are members of the Trust. This fact is contradicted by the Petitioners/Original Respondents. On the basis of the said contention of the Petitioners, the order dated 10.04.2024 passed by the Deputy Charity Commissioner in Change Report No. 954/2022 wherein the

list of the valid members is made part of the said order. It is sought to be argued on behalf of Petitioners that the Respondents did not challenge the order of the acceptance of the Change Report Nos. 548/2020 & 832/2020 and hence, they cannot be considered as valid members of the Trust.

7. In this regard, it would be relevant to take note of the constitution of the Trust which permits the yearly membership. There is no dispute about the fact that the Respondents were trustees of the Trust at one point of time, meaning thereby, the initial membership of these Respondents is not in dispute. The question arises as to whether the payment of membership of subscription of Rs. 25 per year will entitle them to become the member at subsequent time and this issue can be entertained only while deciding the Appeal and not at earlier stage. This Court does not wish to offer any comment upon their claim. Suffice it to say that the issue as to whether the Respondents are members of the Trust for the relevant period would be decided by the JCC in the proceeding in question. Perusal of the impugned order indicates that the JCC has recorded the

finding to the effect that the said issue is going to be determined at final hearing, with further observation that this is not the case wherein the Appeal can be summarily dismissed.

8. Having regard to the facts of the case and more particularly in view of the constitution of the Trust, which permits yearly membership, this Court finds it impermissible to accept the contention of the Counsel for the Petitioners that the Appeal ought to have been dismissed summarily.

9. In so far as permission granted by JCC to the Appellants to file applications for leave to Appeal cannot be considered as an erroneous order. In the facts of the case, said direction is possible and hence, sustainable. Thus, there is no perversity in the impugned order in order to cause interference therein. In the result, Petitions stand dismissed.

10. Needless to say that all the issues are kept specifically open. The JCC is not bound by the observations made herein above.

(R. M. JOSHI, J.)