

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5382 OF 2024

Prakash Rasiklal Dhariwal (R.T.)

....Petitioner

V/S

Harakchand Maniklal Khabiya & Ors.

....Respondents

Mr. Vivek V. Salunke *for the Petitioner.*

Mr. Utkarsh Desai with Mr. Tukaram Shendge *for Respondent Nos.1 and 2.*

Mr. Y.D. Patil, AGP *for Respondent Nos.3 and 4/State.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 25 FEBRUARY 2025.**

P.C.:

1. The Petition challenges judgment and order dated 1 February 2024 passed by the learned Joint Charity Commissioner, Pune allowing Revision Application No.37 of 2018 and setting aside the order dated 13 February 2017 passed by the learned Assistant Charity Commissioner-II, Pune in Change Report No.731 of 2017.

2. I have heard Mr. Salunke, the learned counsel appearing for Petitioner, Mr. Desai, the learned counsel appearing for Respondent Nos.1 and 2 and Mr. Patil, the learned AGP appearing for Respondent Nos.3 and 4/State.

3. After having heard the submissions canvassed by the learned counsel appearing for parties, it appears that Respondent Nos.1 and 2 who filed Revision Application No.37 of 2018 before the Joint Charity Commissioner were not parties to the Change Report decided by the Assistant Charity Commissioner. In the Revision Application, Petitioner raised a specific objection that Respondent Nos.1 and 2 are not persons having interest in the Trust and did not have locus to file the Revision Application. Though this objection is noted by the Joint Charity Commissioner in his judgment, he has failed to decide the said objection. Status of Respondent Nos.1 and 2 as persons having interest in the Trust is a jurisdictional issue without decision of which, the Joint Charity Commissioner could not have exercised jurisdiction in the matter for interfering in the order passed by the Assistant Charity Commissioner. If it is ultimately found that Respondent Nos.1 and 2 are not the persons having interest in the Trust, the Revision Application will have to be necessarily dismissed. In my view therefore, an enquiry ought to have been conducted by the Joint Charity Commissioner about status of Respondent Nos.1 and 2 and the Revision Application could be considered on merits only after passing the muster by Respondent Nos.1 and 2 of persons having interest in the Trust. In my view therefore, the appropriate course of action to be followed is to remand the proceedings before the Joint Charity Commissioner for being decided afresh for conduct of enquiry into the status of Respondent Nos.1 and 2.

4. The Petition succeeds partly and I proceed to pass the following order:

i) Order dated 1 February 2024 passed by the Joint Charity Commissioner is set aside.

ii) Revision Application No.37 of 2018 shall stand restored on the file of the Joint Charity Commissioner, Pune, who shall proceed to decide the same afresh for deciding the issue as to whether Respondent Nos.1 and 2 are persons having interest in the Trust.

iii) All rights and contentions of the parties on merits are expressly kept open.

5. Writ Petition is **partly allowed** in above terms. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

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