

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 19399 OF 2024
WITH
INTERIM APPLICATION NO. 15897 OF 2024

Shri. Ajaykumar S. Yadav & Ors. ...Petitioners
Vs.
The State of Maharashtra & Ors. ...Respondents

Mr. S. M. Sabrad with Mr. Amey Sawant i/b. Mr. Pratik Sabrad for
Petitioners.
Ms. Vrushali Raje, AGP for State.
Mr. Saket Mone with Ms. Anchita Nair i/b. Vidhii Partners for Respondent
No.9.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
DATED: 03 JANUARY 2025

P.C.

1. The dispute between the parties and subject matter of the present proceedings arises in relation to change reports which came to be filed by the petitioner with the Assistant Charity Commissioner and on which decision is pending. At the outset, we may observe that this is not the first time the petitioners have approached this Court and as there were earlier petitions filed by the petitioners on which orders came to be passed, which are relevant in so far as the present order is concerned.

2. The reliefs as prayed for in the petition are required to be noted which read thus:-

- “a) to direct Respondent No.8 to permit Petitioners to enter the premises of Respondent No.10 Trust and Respondent Nos.4 to 7, and operate its bank accounts as per order dated 14.07.2022 passed in Change Report No. ACC(Hosp.)/949/2011 by Respondent No.2 as well as order dated 06.02.2023 passed by this Hon’ble Court in Writ Petition No. 450 of 2023, on such terms and conditions as this Hon’ble Court may deem fit and proper;
- b) to direct the Respondent Nos.4 to 7 to deposit all the cash amounts lying with them in the bank accounts maintained by Respondent No.10 Trust and also further be pleased to direct Respondent Nos. 4 to 7 to continue to deposit the amounts of cash received by them in the bank accounts maintained by Respondent No.10 Trust (mentioned in ground “D”), pending the hearing and final disposal of the present writ petition.
- c) interim/ad-interim relief in terms of prayer clause (b) and above, be granted.”

3. The petitioners had earlier approached this Court in the proceedings of Writ Petition No. 5598 of 2024 which came to be disposed of by an order dated 12 April 2024. By such order, the petitioners were permitted to approach the learned Assistant Charity Commissioner by an application seeking a relief for early decision on the change report dated 15 January 2024. Such change report was filed in pursuance of the election of the trust-Yadav Sang, Mumbai (Public Trust) held on 08 January 2024. The said order passed by this Court reads thus:-

“ Not on board. Mentioned. Upon mentioning, taken on production board.

Heard learned Counsel for the parties.

2 This Petition under Article 226 of the Constitution of India, prays for the only substantive relief in terms of prayer clause (a), which reads as under:-

“(a) by an appropriate, writ order or direction of this Hon’ble Court, this Hon’ble Court be pleased to direct Respondent No.2 to take steps for accepting the change report dated 15.01.2024 filed by Petitioners pursuant to election results of Yadav Sang, Mumbai declared on 08.01.2024, by the Respondent No.3, within period of two weeks.”

3 Thus the only direction in this Petition is that Respondent No.2 be directed to decide the change report of the Petitioners, which is stated to be pending. Such change report pertains to 15th January, 2024.

4 In the facts and circumstances of the case, we are of the opinion that the Petitioner be permitted to set out urgency before Respondent No.2-Assistant Charity Commissioner who shall consider the order of priority to be given to the said proceedings and in accordance with law.

5 Let such application be moved by the Petitioners before Respondent No.2 within a period of ten days from today. If such an application is made, the learned Assistant Charity Commissioner shall take appropriate view of the matter on the adjudication of the change report.

6 All contentions of the parties are expressly kept open.

7 Writ Petition is disposed of. No costs.”

4. It appears that the change report nonetheless was not decided, hence, the petitioners approached this Court by filing a second writ petition i.e. Writ Petition No. 11291 of 2024 which came to be disposed of by an order dated 13 August 2024 passed by a co-ordinate Bench of this Court which reads thus:-

“1. The above Writ Petition is filed inter alia seeking a direction to Respondent No.2 to decide the change report dated 15th January 2024 bearing No.ACC/5/481/2024 filed by the

Petitioners as well as the change report bearing No.ACC/5/6779/2023 dated 22nd November 2023 filed by Respondent Nos.9 and others. There is also a direction sought to quash and set aside the proceedings initiated under section 145 of the Code of Criminal Procedure, 1973, and which is on the file of 66th Metropolitan Magistrate's Court, Andheri, Mumbai. Though these are the reliefs sought in the above Petition, without going into the controversy raised by the Petitioners and Respondent No.9, in light of the Order dated 12th April 2024 passed in Writ Petition No.5598 of 2024, the following Order is passed with the consent of the Petitioner and Respondent No.9:-

(a) Respondent No.2 - Assistant Charity Commissioner is requested to decide the Application dated 22nd April 2024 filed by the Petitioners, and which was pursuant to the directions of this Court in Writ Petition No.5598 of 2024, on or before 21st August 2024. It is needless to state that the said Application shall be decided on its own merits in accordance with law.

(b) As and when the Petitioners' change report dated 15th January 2024 is taken up by Respondent No.2 for hearing, he shall also take up the Application filed by Respondent No.9 dated 31st July, 2024 seeking dismissal of the change report dated 15th January 2024 filed by the Petitioners.

2. It is made clear that this Court has not gone into the merits of the case, which shall be decided by Respondent No.2 in accordance with law.

3. Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

4. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order."

5. The petitioners have contended that in pursuance of the aforesaid orders passed by this Court, the petitioners moved the learned Assistant Charity Commissioner by an application for early hearing of the change report which came to be decided by an order dated 22 August 2024. The operative part of the said order reads thus:-

“ ORDER

1. The application is allowed.
2. The change report bearing No. 481/2024 is hereby expedited. The change report bearing No. 6779/2023 will be taken up for hearing along with this change report. The matter will be posted as per the convenience of this authority and the parties by giving sooner dates which must ensure the expeditious disposal of the change reports as intended by the applicant.
3. The parties to take note and to co-operate in expeditious hearing of both the change reports.
4. No order as to costs.”

6. The petitioners, being aggrieved by the aforesaid order passed by the Assistant Charity Commissioner, again approached this Court by filing Writ Petition No. 12421 of 2024 which came to be disposed of by an order dated 04 September 2024 passed by learned Single Judge of this Court whereby the petitioners were granted liberty to agitate their grievance before the Assistant Charity Commissioner. There was also a direction that the petitioners’ grievance would also include the urgency sought to be made out by the petitioners in respect of the administration of the Trust. The said order passed by the learned Single Judge reads thus:-

- “1. Heard.
2. This petition takes exception to order dated 22nd August, 2024. This order is nothing but the decision of the Assistant Charity Commissioner for expeditious hearing and disposal of Report bearing No.6779 of 2023 and 481 of 2024. There could be no reason or justification to cause any interference in this order, as no prejudice can be said to have been caused to any party by the same.
3. Learned senior counsel appearing on behalf of the Petitioner however, has drawn attention of this Court to the submissions recorded in the impugned order with regard to the urgency sought to be made out by the Petitioner before Assistant Charity Commissioner indicating need of passing of some orders

for better administration of the Trust. It is his submissions that if this order is maintained and not clarified, the Petitioner would lose the right of making any such application and to agitate the issue before the authority.

4. Considering the facts of the case, the petition is disposed of.

5. Needless to say that the parties are at liberty to agitate their grievance before the Assistant Charity Commissioner in accordance with law. Such grievance would also include the urgency sought to be made out by the Petitioner in respect of the administration of the justice.”

7. It is the petitioners’ case that despite the aforesaid order passed by this Court, the learned Assistant Charity Commissioner is not deciding the change report. It is contended that it is in these circumstances, the petitioners are compelled to approach this Court seeking reliefs as prayed for in this petition which we have noted in paragraph 2 above.

8. It clearly appears to us that there are two groups of trustees. The change report is being opposed by the respondent group. Their objections also came to be rejected vide an order dated 15 October 2024. The said order is stated to be independently challenged before this Court by the respondents group.

9. Be that as it may, we are of the opinion that the learned Single Judge in the order dated 04 September 2024 (supra) has clearly granted liberty to the petitioners to agitate all grievances before the Assistant Charity Commissioner, including the urgency to which a reference is also made in

paragraph 3 of the said order. We have been fairly informed by Mr. Sabrad, learned counsel for the petitioners that espousing such liberty, the petitioners have not moved any application before the Assistant Charity Commissioner seeking specific interim orders and that the petitioners have directly approached this Court by this petition, making the aforesaid prayers.

10. In this view of the matter, we are of the clear opinion that it would be proper for the petitioners to move an application seeking appropriate prayers including the prayers as made in the present petition before the Assistant Charity Commissioner in accordance with the liberty granted to the petitioners by the learned Single Judge in the order dated 04 September 2024 passed on Writ Petition No. 12421 of 2024 (supra), so that the Assistant Charity Commissioner can hear the parties and pass appropriate orders on such application. Mr. Sabrad states that such application shall be filed within a period of one week from today as also served on the contesting respondents. If the same is filed, such application be decided as expeditiously as possible and in any event within a period of four weeks from the date of filing of such application. It is directed that all the parties shall co-operate in the early disposal of the said proceedings.

11. We also direct that any opposition to such application by the rival groups may also be filed within a period of one week of service of such

application on the said trustees/groups. We keep open all contentions of the parties on such application to be considered and decided by the learned Assistant Charity Commissioner in accordance with law.

12. Petition stands disposed of in the aforesaid terms. No costs.

13. Interim Application No. 15897 of 2024 would also not survive. It is accordingly disposed of.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)