

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

WRIT PETITION NO. 5644 OF 2024

Laxminarayan Deosthan, Kapsi, through (Trustee) Secretary, and others Vs.
Charity Commissioner, Mumbai

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.V. Sohoni, Advocate for petitioners
Shri. H.D. Futane, Advocate for respondent
Shri. S.K. Bhoyar, Advocate for caveator

CORAM : SMT M.S. JAWALKAR, J.

DATE : 28.02.2025

The present petition is filed challenging the order passed by the learned District Judge 2, Hinganghat, in MJC No. 23/2021 (Shri. Lakshminarayan Devsthan Vs. Yashwant Vairagade and others). The present petitioner moved trust application praying for alteration of the Scheme settled by judgment in Trust Suit No. 4/1964. The said application came to be rejected on 27/03/2023 by the learned District Judge 2, Hinganghat. The said order was under challenge before this Court by way of Writ Petition No. 5299/2023. This Court vide order 14/03/2024 remanded the matter and directed the District Judge to decide the application afresh within two months from the date of receipt of the copy of the said order.

2. It is the contention of the petitioners that Shri Laxminarayan Deosthan Trust is registered with Assistant Charity Commissioner, Wardha, and the Scheme of Deosthan is settled by District Court, Wardha, vide judgment and decree dated 26/11/1969 in Trust Suit No. 4/1964. By the said

judgment, the District Court also appointed trustees. The applicants are trustees of the Deosthan and, therefore, they issued notice to the Charity Commissioner, Mumbai, for filing present proceeding. As Scheme was framed in the year 1969, the present petitioners are facing some difficulties in administrating the Trust. Therefore, some alterations in some clauses of the Scheme were necessary. Applicant want to alter the appointment, tenure of trustees and payment fell under Clause 9 (a) and (b) of the Scheme. They also want to alter Clause 16 in respect of authorized person for issuance of notice. On this count and some other alterations by passing a resolution applied to the District Judge.

3. The application was opposed by the learned Assistant Government Pleader.

4. The learned District Judge framed only point for determination that whether the application can be allowed and he answered it in the negative.

5. The petitioners herein pointed out to the learned District Judge that for smooth functioning of the Deosthan, these alterations are necessary. There are earlier orders passed in Trust application No 2/2004, 3/2004 and MJC No. 39/2006, by which, trustees were appointed. It is held by learned District Judge, though as per Clause 38 of the Scheme, application for alteration in the Scheme can be filed by the trustees but the Act of 1950 contemplated otherwise. In such situation, provisions of the Act of 1950 shall prevail upon the Scheme and according to the Act of 1950, suit is required to

file for alteration in Scheme.

6. He relied on Section 50 Sub Clause (iv) (j) and held that for settlement of the scheme or for variations or alterations therein, the suit can be instituted as stipulated therein. In view of Clause 38 of the Scheme, the application for alteration in the Scheme can be filed by the trustees but the Act of 1950 contemplates otherwise. On perusal of Section 50, second proviso, it appears that when such application is moved by the Charity Commissioner for variation or alteration, he need not file a suit and can file application on leave to that effect.

7. In the present matter the Charity Commissioner has not moved any application requesting for such alteration or change in the Scheme, therefore, what order is passed by the learned District Judge cannot be interfered with. However, if petitioners want to make such alteration, variation in the Scheme he will require to file suit after obtaining consent of Charity Commissioner. As such, petition is dismissed. However, this Court expect that respondent Charity Commissioner may file application before the District Judge, if he also feels that alteration or change which petitioner is seeking are necessary so as to avoid the exercise of proceeding of suit.

(SMT M.S. JAWALKAR, J.)