



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7088 OF 2024

- 1) Chandrashekhar Lemdeoji Titarmare,
Aged Major, Occ.- Not known,
R/o. At Post Shikapur, Post Veltur,
Tah. Kuhi, Distt. Nagpur.
- 2) Purushottam Aasaram Kuthe,
Aged Major, Occ.- Not known,
R/o. At Post Dhamni, Post Navegao
(Chidh), Tah. Kuhi, Distt. Nagpur.
- 3) Dr. Chakradhar Lemdeoji Titarmare,
Aged Major, Occ.- Not known,
R/o. 105, Bapu Nagar, (Umred Road),
Nagpur.
- 4) Pradeep Govindrao Farande,
Aged Major, Occ.- Not known,
R/o. Veltur, Tah. Kuhi, Distt. Nagpur.
- 5) Dr. Kewal Manoharrao Titarmare,
Aged Major, Occ.- Not known,
R/o. At Post Dhanla, Post Gonha,
Tah. Kuhi, Distt. Nagpur.
- 6) Prof. Bhalchandra Harishchandra Ganthde,
Aged Major, Occ.- Not known,
R/o. Anand Nagar, Tiranga Chowk,
Nagpur.
- 7) Sushil Harichandra Dahare,
Aged Major, Occ.- Not known,
R/o. At post Veltur, Tah. Kuhi, Distt. Nagpur.
- 8) Sachin Bhojraj Charmode,
Aged Major, Occ.- Not known,
R/o. At Sawangi, Post Fegad,
Tah. Kuhi, Distt. Nagpur.

- 9) Dnyaneshwar Shankar Talware,
Aged Major, Occ.- Not known,
R/o. Shikarpur, Post Veltur,
Tah. Kuhi, Distt. Nagpur.
- 10) Homeshwar Rushi Ambone,
Aged Major, Occ.- Not known,
R/o. Veltur, Tah. Kuhi, Distt. Nagpur.
- 11) Dr. Chandrashekhar Haribhau Titarmare,
Aged Major, Occ.- Not known,
R/o. At Veltur, Tah. Kuhi, Distt. Nagpur.
- 12) Anand Suryabhan Gaydhani,
Aged Major, Occ.- Not known,
R/o. 108, Krushnakunj, Gawande
Nagar, Nagpur.
- 13) Rajesh Anantrao Tumsare,
Aged Major, Occ.- Not known,
R/o. 97, Sai Sadan, Galli No.4,
Jawahar Nagar, Nagpur.
- 14) Khemeshwar Ratiram Titarmare,
Aged Major, Occ.- Not known,
R/o. At Ratnapur, Post Veltur,
Tah. Kuhi, Distt. Nagpur.
- 15) Dr. Vinod Atmaram Juwar,
Aged Major, Occ.- Not known,
R/o. At Veltur, Tah. Kuhi, Distt. Nagpur.

.... **PETITIONERS**

// **VERSUS** //

- 1) Joint Charity Commissioner,
Nagpur.
- 2) Ramdas Rambhau Thaore,
Aged about 36 years, Occ.-Service,
R/o. At Pochla, Tah. Kuhi,
Distt. Nagpur – 441210.

- 3) Suryabhan Budhasao Denge,
Aged about 70 years, Occ.-Private,
R/o. At Veltur, Tah. Kuhi, deration
Distt. Nagpur – 441210.
- 4) Tushar Suryabhan Denge,
Aged about 32 years, Occ.-Private,
Son Esent, R/o. At Veltur, Tah. Kuhi,
Distt. Nagpur – 441210.
- 5) Megha Suryabhan Denge,
Aged about 35 years, Occ.-Private,
R/o. At Channa, Tah. Kuhi,
Distt. Nagpur – 441210.
- 6) Manik Vikram Dongre,
Aged about 70 years, Occ.-Farmer,
R/o. At Veltur, Tah. Kuhi,
Distt. Nagpur – 441210.
- 7) Vijay Narayanrao Shinde,
Aged about 59 years, Occ.-Retired,
R/o. New Shukrawari, Behind Saban
Karkhana, Singala Market,
In front of Ganpati Temple,
Nagpur 32.
- 8) Deputy Charity Commissioner,
Nagpur.

.... **RESPONDENTS**

Mr. Nitin Khamborkar, Advocate for the Petitioners.
Mr. H. D. Futane, Assistant Government Pleader for Respondent Nos.1 and 8.
Mr. Rohit Ramteke, Advocate for the Respondent Nos.2, 4 to 7.

CORAM : SMT. M.S. JAWALKAR, J.

DATE ON RESERVING THE JUDGMENT : 08.04.2025

DATE ON PRONOUNCING THE JUDGMENT : 09.05.2025

JUDGMENT :

1. **RULE.** Rule made returnable forthwith.
2. Heard finally with the consent of the learned Counsel appearing for the parties.
3. Being aggrieved by the part of the order dated 06.05.2024, passed by the learned Joint Charity Commissioner-II, Nagpur below Exhibit-40 and 44, in Appeal No.35/2022, the Petitioners preferred this writ petition.

The facts in nutshell are as under :

4. The petitioners are the elected Trustees of the “Vishwavapi Shaikshanik Sanstha”, Veltur, a registered Public Trust as per the provisions of Societies Registration Act bearing Registration No.F-266N. The Change Report No.2273 was filed by the petitioner No.1 and the same came to be allowed vide order dated 23.06.2022. The respondent Nos.2 to 7 are so-called appellants before the Charity Commissioner in Appeal No.35/2022. The respondent Nos.2 to 7 are neither members nor have any interest in the affairs of the trust. The respondent Nos.2 to 6 challenged the order passed by the Deputy Charity

Commissioner in C.R. No.22773/2014, dated 23.06.2022 in Appeal No.35/2022. They also moved an application for leave to file appeal. The respondents have not pressed the said application. The order below Exhibit-1 dated 12.09.2022, as the said application was dismissed with liberty to raise all issues of the applicant in appeal. The petitioners appeared and filed an application for dismissal, the said application is still pending.

5. The respondents have filed another application Exhibit-40 and 41 for leave to file appeal. The petitioners filed their reply to the said applications. The said applications came to be rejected vide order dated 06.05.2024. Though the application for leave to file appeal is rejected, the parties were directed to prosecute the appeal, which was the subject matter of this writ petition.

6. Learned Counsel for the petitioners submitted that respondent Nos.2 to 7 are not the party before the trial Court nor the members of the trust, nor can be treated as persons aggrieved. As such whether without the leave of the Court, such persons can prosecute the appeal in view of the *ratio* laid down by the Hon'ble Apex Court, leave is mandatory and since the leave is rejected,

appeal ought to have been dismissed. Learned Counsel for the petitioners further submitted that respondent Nos.2 to 7 are not members of the trust and cannot claim any right to participate in the proceedings as they are not the persons having interest in the trust and therefore, they have no right to challenge the order in appeal. The order passed by the Deputy Charity Commissioner accepting the Change Report after scrutinizing the evidence properly, therefore, the respondent Nos.2 to 7 have no right to take up any appeal as the leave to file the appeal was rejected. Merely the appeal is registered though the application for leave to file appeal is not pressed, it cannot be ground to continue the proceedings when both the application are rejected. Hence, the impugned order needs to be interfered and it be quashed and set aside.

7. Learned Counsel for the petitioners relied on the following citations :

- (i) ***My Palace Mutually Aided Co-operative Society Vs. B. Mahesh & Ors.***, reported in ***2022 LiveLaw (SC) 698***,
- (ii) ***Smt. Jatan Kanwar Golcha Vs. M/s. Golcha Proprietries Private Ltd.***, reported in **AIR 1971 SC 374** and

(iii) ***State of Punjab (now Haryana) & Ors., Vs. Amar Singh & Anr.***, reported in ***AIR 1974 SC 994***.

8. Learned Counsel for the respondent Nos.2, 4 to 7 supported the order passed by the learned Joint Charity Commissioner. Learned Counsel for the respondents submitted that petitioner No.1/Chandrashekhar Titarmare, who has also filed the Change Report No.622/2023 before the Deputy Charity Commissioner, Nagpur and in the said change report, the application came to be moved by the respondent Nos.2 and 4 for joining as necessary party on 06.07.2023. The said application was replied by the Counsel for petitioners on 27.03.2024. After hearing both sides, on 07.05.2024, the learned Deputy Charity Commissioner, Nagpur allowed the said application for joining as party holding that the respondent Nos.2, 3 and 4 are the Donor members of the trust and, therefore, they are allowed to join as party. Petitioners were aware of this fact, however, the petitioners purposefully suppressed the said fact in the present petition and did not whisper about the said order. The petitioners falsely submitted that the respondents are neither members nor they have any interest in the affairs of the said trust. Learned Counsel for the respondents further submitted that petitioners also

suppressed from this Court that the respondent Nos.5 and 6 have also submitted an application for joining as a party in the Change Report No.622/2023. The said application also allowed by the learned Deputy Charity Commissioner, Nagpur vide order dated 06.12.2024 holding that the respondent Nos.5 and 6 are the Donor members of the trust. Accordingly, they are the persons having interest into the affairs of the trust.

9. Learned Counsel for the respondents further submitted that respondent Nos.2, 4, 5, 6 and 7 are the Donors and well wishers of the trust, who have volunteered for the purpose of developing the school run by the trust. In the meeting dated 13.05.2014, wherein the recorded trustees had passed a resolution to accept the educational material useful for the students in the school run by the trust donated by the respondents. Learned Counsel for the respondents submitted that impugned order is just and proper and there is no need to interfere and it be confirmed. He relied on the ***Fakir Mohamed Abdul Razak Vs. The Charity Commissioner, Bombay & Ors.***, reported in ***AIR 1976 Bombay 304***.

10. Heard learned Counsel for both the parties. Perused the impugned order and documents placed on record and considered the citations relied on by both the parties.

11. On perusal of the impugned order, it appears that two applications Exhibit-40 and 44 came to be filed seeking relief in the nature of leave from the Authority to file an Appeal under Section 70 of the Maharashtra Public Trust Act, 1950 (for short the “MPT Act”). It was observed by the learned Joint Charity Commissioner that the said application filed on 08.11.2023. Applicants filed Exhibit-40 and 44 collectively in appeal under Section 70 of MPT Act bearing Appeal No.35/2022 which was filed on 19.08.2022 i.e. almost after 14 months after filing of appeal. The said appeal came to be registered on 12.09.2022. After considering Section 70 and Rule 37, the learned Joint Charity Commissioner held that there is no provision for seeking leave of the Charity Commissioner or the Joint Charity Commissioner for preferring appeal under Section 70 of the MPT Act. Considering the appeal is already preferred and registered on 12.09.2022 and thereafter, the said appeal is rolling on the board regularly, it is rightly observed that there was no propriety in preferring the present application in absence of any provision for

seeking leave to file appeal. The applications are not at all required. As such, the rejection of application is perfectly justified on these grounds. Whether appellants are interested persons or not can be decided at the time of final hearing of the appeal.

12. Learned Counsel relied on ***My Palace Mutually Aided Co-operative Society*** (supra), however, the ratio laid down in the said citation is not at all applicable in the present set of facts. The ratio laid down by the Hon'ble Apex Court in the above referred citation that Section 151 of the Code of Civil Procedure provides for Civil Courts to invoke their inherent jurisdiction and utilize the same to meet the ends of justice or to prevent abuse of process. Section 151 of the Code of Civil Procedure can only be applicable, if there is no alternate remedy available in accordance with the existing provisions of law. In the present matter, in fact, persons filing appeal are objectors or applicant before the Deputy Charity Commissioner. Moreover, there is no provision of seeking leave under Section 70 of the Maharashtra Public Trust Act. In view thereof, reliance placed on the citation is misplaced.

13. Learned Counsel for petitioner also relied on ***State of Punjab*** (supra), however, the said citation is in respect of Section

10 A(c) of Punjab Security of Land Tenures Act, 1953, it has no application in the present set of facts.

14. Learned Counsel also relied on ***Smt. Jatan Kanwar Golcha*** (supra), present citation is not at all relevant as in the said matter, the appellant who was not party to the original suit held that have remedy of appeal under Code of Civil Procedure with the leave of the Appellate Court. In the present matter Section 70 is invoked for filing appeal before the Joint Charity Commissioner and the persons filing appeal are prime facie appears to be having interest in the Trust. There is no provision of seeking any leave while filing appeal under Section 70 of the Maharashtra Public Trust Act.

15. Learned Counsel relied on ***Fakir Mohamed Abdul Razak*** (supra), in the said matter, the suit was filed for framing of the scheme for management of Darga. There was preliminary objection raised that the appellant being merely an intervenor could not file an appeal to this Court under Section 96 of the Code of Civil Procedure read with Section 76 of the Bombay Public Trust Act. This Court held that there is no substance in this objection "this court further observed that We find nothing in

Section 96 of the Code of Civil Procedure, which is applicable to the proceedings under the Bombay Public Trust Act, in view of Section 76 of the Act, which lays down that it is only a party to the suit who can file appeal. The well-settled position in law appears to be that normally any party to the suit adversely affected by the decree or a transferee of the interest of such party, or even an auction purchaser may appeal. As already held, there is no provision, as such, to seek leave from the Joint Charity Commissioner, while filing appeal under Section 70 of the Maharashtra Public Trust Act. The appellants are claiming to be interested person, as such, there is no need to interfere in the order passed by the learned Joint Charity Commissioner, Nagpur, in Appeal No. 35/2022, in the matter of Vishwavyapi Shaikshanik Sanstha, Vulture.

16. As such, the Writ Petition stands **dismissed**. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

At this juncture, learned Counsel for petitioners prayed for stay of this order for another four weeks. Learned Counsel Mr. Vivek Awachat holding for Mr. Rohit Ramteke, learned Advocate for respondents opposed the same.

To grant fair opportunity, to the effect and execution of this order is stayed for another four weeks.

(SMT. M.S. JAWALKAR, J.)

Kirtak/Jayashree..