



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.6571/2024

1. Shri Mahendra Sakharam Deshmukh
Aged major, Occ.: Agriculturist,
R/o Post-Ghat Temni, Tah. Amgaon,
Distt. Gondia.
2. Shri Jogendra Sakharam Deshmukh,
Aged major, Occ.: Agriculturist,
R/o Post-Ghat Temni, Tah. Amgaon,
Distt. Gondia.
3. Sau. Nidhi Jogendra Deshmukh,
Aged major, Occ.: Agriculturist,
R/o Sohanlal Mishra Ward,
Near Manohar Chowk, Hanuman
Mandir Vyayam Shala, At Post Gondia
Tah. & Distt. Gondia.

... **PETITIONERS**

...VERSUS...

1. Shri Dhaniram Kisanji Doye,
Aged major, Occ.: Agriculturist,
R/o Post-Ghat Temni, Tah. Amgaon,
Distt. Gondia-441902
2. The Joint Charity Commissioner,
Nagpur, Civil Lines, Nagpur.
3. The Assistant Charity Commissioner,
Main Administrative Building, Gondia
4. The Assistant Charity Commissioner,
Chandrapur, Civil Lines, Chandrapur

... **RESPONDENTS**

Shri M.M. Dhandekar, Advocate for petitioners
Shri S.D. Abhyankar, Advocate h/f Shri Gopal Sharma, Advocate for
respondent No.1
Ms Soniya Thakur, AGP for respondent Nos.2 to 4/State

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

DATE OF RESERVING THE JUDGMENT : 28/01/2025

DATE OF PRONOUNCING THE JUDGMENT: 17/02/2025

JUDGMENT

. Heard learned Counsel for petitioner and learned
Counsel for respondents.

2. Being aggrieved by the order dated 09.10.2024
passed by the Joint Charity Commissioner and thereby allowed
the appeal and remand back the matter for further inquiry
before the Assistant Charity Commissioner.

3. Petitioners are the Trustees of the Trust namely Shri
Gajanan Maharaj Shikshan Evam Kala Sanstha, Ghattemni,
Distt. Gondia bearing P.T.R.No.F-3525(Bhandara). Petitioner
No.2 had presented the Change Report before the Assistant

Charity Commissioner, Gondia vide Change Report No.494/2012 U/s 22 of the Maharashtra Public Trust Act. In the said Change Report, the respondent No.1 submitted his objection on 03.03.2022 i.e. almost after 10 years of presentation of the Change Report. The said objection was replied by the petitioner No.2 in the capacity of the Reporting Trustee. Thereafter, the Change Report was taken up for recording of evidence and petitioner No.2 filed his evidence on affidavit before the learned Assistant Charity Commissioner, Gondia on 24.11.2022.

4. On 28.12.2023, the evidence of petitioner No.2 was recorded and at that time respondent No.1 and his Counsel were absent. After recording the evidence, the learned Authority proceeded the matter in the absence of respondent No.1 and the same was posted on 11.01.2024. That, on 11.01.2024 though there was ample opportunity available to respondent No.1 to take steps for cross examining petitioner No.2 or to lead his own evidence, respondent No.1 again remained absent. Respondent No.1 consistently negligent in taking steps for

proceeding with the matter, therefore, the Authority closed his evidence and upon hearing petitioner proceeded to decide the Change Report, since it was uncontested and on 11.01.2024, the Change Report was accepted.

5. Respondent No.1 who has absolutely no role to play in the day to day administration of the Trust since long filed an appeal before the learned Joint Charity Commissioner, Nagpur vide appeal No. 03/2024 along with an application for grant of stay. Petitioners submitted their reply. The learned Joint Charity Commissioner allowed the appeal vide order dated 09.10.2024. The operative part of the order was declared on 09.10.2024 by observing that the learned Assistant Charity Commissioner, Gondia, has not given the opportunity to objector for cross examination of reporting trustee. The aforesaid order is the subject matter of challenge in the present writ petition.

6. Learned Counsel for the petitioners contended that the Joint Charity Commissioner, Nagpur, while setting aside the

order in Change Report No. 494/2012 and directing the remand thereof has not considered the material aspect on facts and law and directed that Change Report shall be tried and decided by the Assistant Charity Commissioner, Chandrapur. It is further contended that the learned Joint Charity Commissioner, entirely neglected the fact that objections are raised after ten years of submission of the Change Report, which itself shows that the objector/respondent No. 1 was not diligent about his rights and was slept over his right to raise an objection for ten years after submitting the Change Report. This fact is not taken into consideration by the learned lower authority and passed an impugned order which needs interference and needs to be set aside. It is also contended that there was no reason whatsoever to transfer the said Change Report at Chandrapur.

7. Learned Counsel for petitioners relied on following citations:

- 1) ***Charu K. Mehta Vs. Chetan P. Mehta 2010(1) BCR 605***
- 2) ***Jitendra Singh Vs. Bhanu Kumar and Ors. 2009 (2) MPLJ 463***

8. Learned Counsel for the respondents supported the order passed by the learned lower authority and contended that the Joint Charity Commissioner has rightly observed that the Assistant Charity Commissioner has not given the opportunity to objector for cross examination of the reporting trustee and also has not given the opportunity of evidence and argument, which needs no interference and, which needs to be confirmed.

9. Heard learned Counsel for both the parties. Perused the documents on record, impugned order and considered citations relied on. It is contention of the petitioners that Change Report bearing No.494/2012 came to be accepted by the Assistant Charity Commissioner, Gondia. There are as many as five Change Reports pending before the said authority. The said Change Reports are contested by both the parties. Even Change Report filed by respondent No.2 is also pending. The respondent No.1 filed appeal before the Joint Charity Commissioner who, in turn, set aside the order passed by the Assistant Charity Commissioner in CR No.494/2012. While passing this order, the matter is remanded to the Assistant

Charity Commissioner, Chandrapur instead of transferring it to Assistant Charity Commissioner, Gondia, specifically when there were no allegations of bias, prejudice approach and favoritism. While remanding said matter to the Assistant Charity Commissioner, Chandrapur, no opportunity was granted to the petitioners to submit their contentions. It is in violation of principles of natural justice.

10. I have perused the impugned order, in paragraph No.10 of the order. It is specifically mentioned while arguing the matter, the Advocate for the appellant prayed that if the Hon'ble Authority came to the conclusion to remand the matter for a fresh inquiry or further inquiry in the change report then change report be sent for inquiry to any other Assistant Charity Commissioner. From this statement, it is clear that, at the time of arguments, only Advocate requested for transfer it to any other Charity Commissioner and without applying mind, without granting opportunity to respondent, passed impugned order of transfer to Chandrapur.

11. The learned Counsel for petitioners relied on **Charu K. Mehta (supra)**, wherein this Court held in paragraph No.13 as under:

“13. The transfer of case from one court to another is a very sensitive and delicate issue, which, in case of the order of transfer, casts doubt either on the competence or integrity of the Judge. The court hearing the application for transfer, therefore, requires to deal with it with great care and should take not only the facts of the case or the allegations made therein into consideration but should also examine whether there exists circumstances from which reasonable man would think it probable or likely that the presiding officer will be prejudiced against the applicant. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to grant stay or even to transfer the case for that matter. At the same time, it is a duty of the court to reject frivolous, untenable and irresponsible allegations of bias made by dissatisfied litigant/applicant, more particularly when the court finds that the transfer application is fled with an intention to thwart the proceedings.”

12. The learned Counsel for petitioners also relied on **Jitendra Singh (supra)**, wherein the Hon’ble Apex Court held that Section 24 of the Code of Civil Procedure is merely to

confer on the Court a discretionary power. It may or it may not in its judicial discretion transfer a particular case. This transfer may be on Court's motion or on an administrative grounds. But when an application for transfer is made by a party, the Court is required to issue notice to the other side and hear the party before directing transfer.

13. In my considered opinion, in absence of any allegation of bias, prejudice approach or favoritism, there cannot be remand to the Assistant Charity Commissioner who has not passed the order. Moreover, the said transfer is made to the Assistant Charity Commissioner, Chandrapur, which is at the distance of 242 km. away from Gondia. All the trustees are aged persons and unnecessarily for that Change Report only, they will require to attend Office of Assistant Charity Commissioner, Chandrapur, specifically when five Change Reports are pending on the file of Assistant Charity Commissioner, Gondia. Thus, the order dated 09.10.2024 passed by the Joint Charity Commissioner, Nagpur, is *ex facie* erroneous and liable to be set aside to the extent, which remand the matter to the Assistant

Charity Commissioner, Chandrapur.

14. The order remanding matter to the Assistant Charity Commissioner, Chandrapur is not only erroneous but unjustified. Merely, because the Assistant Charity Commissioner accepted the Change Report in absence of objectors to cross-examine, it cannot be stated that the Judge is bias. From the statement itself, it appears that at the time of argument, such request was made and on such oral request, the Joint Charity Commissioner- respondent No.2 passed the order without following principles of natural justice specifically when there are other Change Reports pending on the file of Assistant Charity Commissioner, Gondia. Hence, I proceed to pass the following order:

ORDER

- (i) The Writ Petition is partly allowed.
- (ii) The order dated 09.10.2024 passed in Appeal No. 03/2024 by the Joint Charity Commissioner, Nagpur is modified as under:-
- (iii) Clause 3 of the said order thus modified as under:

“The Change Report No.494/2012 is remanded back for further inquiry before the Assistant Charity Commissioner, Gondia in accordance with law.”

(iv) Clause -4 be deleted.

(v) Clause- 5 is modified as under:

“The learned Assistant Charity Commissioner, Gondia shall give an opportunity to the appellant as well as respondents to lead evidence if they desire to do so and of arguments.”

(vi) Clause 6, 7 and 8 be deleted.

(vii) Parties to the present proceeding to appear before the Assistant Charity Commissioner, Gondia on 24.02.2025 at 11.00 a.m.

(viii) Record and proceeding in change Report No. 494/2012, if received by Office of Joint Charity Commissioner, Nagpur shall be send to Assistant Charity Commissioner, Gondia, immediately.

The Writ Petition stands disposed of in above terms. No orders as to costs.

(Smt. M.S. Jawalkar, J.)

R.S. Sahare