

IN THE HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11994 OF 2019

WITH

WRIT PETITION NO.11995 OF 2019

WITH

WRIT PETITION NO.11996 OF 2019

Dr.Subir Kumar Banerjee and ors. ... Petitioners V/s. Mrs.Neetu Singh and ors. ... Respondents

Mr.R.V.Pai with Mr.A.R.Pai, Ms.N.N.Thakkar, Mr.Akshay Pai, Ms.Nikita Dharamshi, Mr.Vinay Carlo i/by Mrs.B.R.Pai Advocate for the Petitioners. Mr.P.S.Dani, Senior Advocate with Mr.Dhirendra Sinha i/by M/s Vidhi Partners, Advocate for Respondent Nos.1 to 4. Mr.P.V.Nelson Rajan, AGP for the Respondent-State in Writ Petition No.11994 of 2019. Mr.S.L.Babar, AGP for the Respondent-State in Writ Petition No.11995 of 2019. Mrs.V.S.Nimbalkar, AGP for the Respondent-State in Writ Petition No.11996 of 2019.

CORAM : UJJAL BHUYAN, J.

1. Heard Mr.R.V.Pai, learned senior counsel for the petitioners; and Mr.P.S.Dani, learned senior counsel for respondent Nos.1 to 4; also heard Mr.P.V.Nelson Rajan, learned AGP for the respondent-State in Writ Petition No. 11994 of 2019, Mr.S.L.Babar, learned AGP for the respondent-State in Writ Petition No.11995 of 2019 and Mrs.V.S.Nimbalkar, learned AGP for the respondent-State in Writ Petition No.11996 of 2019, . 2. Issue raised in all the three writ petitions is identical. However, for the sake of conveyance Writ Petition No. 11994 of 2019 is taken as the lead case. In this writ petition petitioners have challenged legality and validity of order dated 27th August, 2019 passed by the Joint Charity Commissioner-II, Maharashtra State, Mumbai, whereby it has been held that the question as to whether there is delay in filing the related revision application has been kept open; to be decided alongwith the revision application. 3. Petitioners and respondent Nos.5 to 8 were the Trustees of the Trust known as "Nagar Yuwak Shikshan Sanstha Airoli" at the relevant point of time. The said Trust has been registered for charitable public purpose and manages several schools and colleges in and 3 around Airoli, Panvel and Thane. At present, petitioners are the trustees of the said Trust though respondent Nos.5 to 8 have ceased to be the trustees. 4. Petitioner No.7 was appointed as member of Managing Committee for the period from 1st April, 2010 to 31st March, 2014. Her appointment was reported by the trustees to the Assistant Charity Commissioner by filing Change Report No.807 of 2010 under Section 22 of the Maharashtra Public Trust Act, 1950. The change report was duly accepted by the Assistant Charity Commissioner vide order dated 15th December, 2011. 5. After about four years and three months respondent No.1 filed Revision Application No.291 of 2015 before the Joint Charity Commissioner-II, Maharashtra State, Mumbai assailing the order dated 15th December, 2011 passed by the Assistant Charity Commissioner. 6. Petitioners contested the said revision application by filing their reply. They also filed an application contending 4 that the revision application was filed belatedly and therefore, the said issue should be decided as a preliminary issue at the outset before proceeding with

the revision application. 7. Joint Charity Commissioner by the impugned order dated 27th August, 2019 rejected the said application at that stage and observed that point of delay was kept open to be decided alongwith the main revision application. 8. Learned senior counsel for the petitioners submits that view taken by the Joint Charity Commissioner is wholly erroneous. Unless delay is condoned, the revisional authority does not get the jurisdiction to decide the revision application on merit. Therefore, the course of action adopted by the Joint Charity Commissioner, that is, to hear the point of limitation alongwith the main revision application is wholly illegal and liable to be set aside. In support of his submissions, he has referred to a Division Bench decision of this 5 court in the case of Achutrao Vs. 2 Topaji, 1963 Mh.L.J. 93 as well as two subsequent Single Bench decisions in the cases of National Building Construction Corporation Limited Vs. Regional Labour Commissioner, 2006(2) L.L.N. 149 and Hanmant Jaisingh Ahirekar Vs. Baburao Raghunath Ahirekar, 2019 SCC Online Bom. 1662. 9. On the other hand, Mr.P.S.Dani, learned senior counsel for respondent Nos.1 to 4 submits that the revision application is under section 70A of the Maharashtra Public Trust Act, 1950 (Act). No period of limitation is prescribed thereunder. Drawing a distinction between filing of appeal under section 70 and a revision application under Section 70A, he submits that as opposed to an appeal under Section 70 where limitation period of 60 days is provided, there is such limitation period prescribed for filing of a revision application under Section 70A which can be initiated either suo-moto or on application. However, such exercise of revisional power has to be within a reasonable period. What is a 6 reasonable period would depend upon facts and circumstances of each case and no definite time frame can be prescribed. In support of his contention, Mr.Dani has placed reliance on an order passed by this court dated 7th April, 2010 in Writ Petition No.1826 of 2010, Prabhakar Rao Bantwal Vs. Praveen Kandle and other connected cases decided on 7th April, 2020. 10. Submissions made by learned counsel for the parties have been considered. 11. At the outset, it may stated that there is no dispute at the Bar that the revision petition before the Joint Charity Commissioner filed by respondent No.1 is under Section 70A. Section 70 provides for filing of appeal against findings or orders of the Deputy Charity Commissioner or Assistant Charity Commissioner under various provisions of the Act including under Section 22. Section 22 deals with change in Trust. In case of an 7 appeal under Section 70 limitation period of 60 days is provided. 12. Under Section 70A the Charity Commissioner may in any of the cases mentioned in Section 70 either suomoto or on application call for and examine the record and proceeding of such cases before any Deputy or Assistant Charity Commissioner for the purpose of satisfying himself as to correctness of any finding or order recorded or passed by the Deputy Charity Commissioner or by the Assistant Charity Commissioner, as the case may be. He may either annul, reverse or modify or confirm such finding or order or also direct the co-authorities to make further inquiry or take such additional evidence as he may think necessary or he may himself take such additional evidence. 13. Therefore, a Charity Commissioner may invoke jurisdiction under Section 70A in any of the cases mentioned in Section 70. While under Section 70 limitation period is prescribed, for invoking jurisdiction 8 under Section 70A in any of the cases mentioned in Section 70, no limitation period is prescribed. It is trite that though there is no period of limitation prescribed for invoking jurisdiction under Section 70A, nonetheless such jurisdiction must be invoked or exercised within a reasonable period. There is no definition of reasonable period or what can be construed as reasonable period. What is reasonable period in one case may not be a reasonable period in another case. No fixed time frame can be prescribed to determine reasonability. Whether revisional jurisdiction under Section 70A has been

invoked within reasonable time or not would have to be decided in the facts and circumstances of each case having regard to the 60 days limitation period prescribed for filing appeal under Section 70. 14. In Prabhakar Rao Bantwal (supra) this court after referring to several decisions of the Supreme Court as well as of this court drew a distinction between a provision where limitation period is prescribed and a provision where limitation period is not prescribed. In respect of a provision where limitation period is prescribed, if an appeal etc. is filed beyond such limitation period then it has to be accompanied by an application for condonation of delay. Only after the delay is condoned the appeal etc. can be taken up for consideration on merit. Before condonation of delay, the appellate authority would have no jurisdiction to hear the appeal on merit. On the other hand, in respect of a provision where no limitation period is prescribed there may not be any statutory requirement of filing any application for condonation of delay. However, the authority assigned to deal with such application has to satisfy itself that the application is within reasonable period. 15. Viewed in the above context, the impugned order of the Joint Charity Commissioner deciding to hear the point of limitation alongwith the main revision application may require modification. Joint Charity Commissioner has to first decide whether the revision application is within reasonable time. Only if he comes to the conclusion 19 that the revision application is within reasonable time, he may proceed to deal with the revision application on merit. However, for dealing with the above aspect it is not necessary to have separate proceedings; a common proceeding will suffice, but the point relating to whether the revision application has been filed within reasonable period or not has to be decided first. If the decision is in the negative, proceeding further with the revision application will not be necessary. However, if the answer is in the affirmative then the revision application would have to be decided on its merit. Impugned order dated 27th August, 2019 is therefore modified accordingly. 16. Consequently, impugned orders in the other two writ petitions would also stand modified in the above terms. 17. All the three writ petitions are accordingly disposed of. (UJJAL BHUYAN, J.)