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**(2014) 06 BOM CK 0027**

**In the Bombay High Court**

**Case No : Writ Petition No. 2516 of 2014**

Pankaj Ghanashyam Rannavre

APPELLANT

Vs

Arvind Narayan Dhawad

RESPONDENT

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**Date of Decision : 11-06-2014**

**Acts Referred:**

Bombay Public Trusts Act, 1950 — Section 5

**Citation :** (2014) 5 ALLMR 505 : (2014) 4 BomCR 843

**Hon'ble Judges :** A.P. Bhangale, J

**Bench :** Single Bench

**Advocate :** M.V. Masodkar, Advocate for the Appellant; M.P. Lala, Advocate for Respondent No. 1 and Mr. D.M. Kale, AGP for Respondent No. 2, Advocate for the Respondent

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## **Judgement**

A.P. Bhangale, J.—Rule. Heard forthwith by consent.

2. The petitioner has questioned propriety and legality of the order passed by the learned Joint Charity Commissioner rejecting the application of the petitioner to transfer Inquiry No. 1538 of 1997 from the file of Assistant Charity Commissioner, Nagpur to the file of Deputy Charity Commissioner, Nagpur. In the impugned order, the learned Charity Commissioner, Nagpur also imposed costs in the sum of Rs. 1,000/- upon the petitioner as a condition precedent payable within three days w.e.f. 8.5.2014. Furthermore the Assistant Charity Commissioner was directed to proceed with the inquiry on day-to-day basis without granting adjournment to the applicant. The petitioner has taken exception to the impugned order on the ground that the learned Joint Charity Commissioner, Nagpur could not have on his own modified earlier order dt. 13.4.2009 passed in the Revision Application No. 3 of 2008 by the same Authority i.e. Joint Charity Commissioner, Nagpur. That order was confirmed when challenged before the District Judge-7, Nagpur by filing Regular Civil Application No. 21 of 2009. The learned District Judge has confirmed the order on the ground that it is legal and proper. Thus, the learned District Judge,

Nagpur had, by reasoned order, agreed with the learned Joint Charity Commissioner that Inquiry No. 1538 of 1997 is required to be remitted back to the Deputy Charity Commissioner, Nagpur for de novo trial by specifically directing that the record and proceedings of the inquiry be sent back to the Office of Deputy Charity Commissioner, Nagpur. The learned Joint Charity Commissioner, Nagpur by the impugned order rejected the application preferred by the petitioner for transfer of the record and proceedings in Inquiry No. 1538 of 1997 to the Deputy Charity Commissioner, Nagpur.

3. I am now informed that the learned Assistant Charity Commissioner, Nagpur, in view of the impugned order, proceeded with the inquiry on day-to-day basis. According to the learned Counsel for the petitioner, the petitioner was constrained to participate in the inquiry as it was to be concluded as early as possible. The grievance of the petitioner is that when earlier order for remanding the inquiry to the Deputy Charity Commissioner, Nagpur was passed and when the order became final, there was no propriety for the learned Joint Charity Commissioner to change the earlier order which had attained finality so as to direct the Assistant Charity Commissioner to dispose of the inquiry expeditiously without granting adjournments.

4. The learned Counsel appearing on behalf of the respondent submitted that since the Assistant Charity Commissioner has now concluded inquiry, in which the petitioner also participated, it may be appropriate if the same Authority delivers the Judgment. On the other hand, the learned Counsel for the petitioner contended that the Deputy Charity Commissioner is a higher judicial Authority with more experience as may be seen from the provision contained in Section 5 of the Bombay Public Trusts Act, 1950. While the Assistant Charity Commissioner is required to have one year or more experience as a Civil Judge (Jr. Dn.) or four year or more experience as an Advocate or Attorney of High Court or Pleader or five or more years" experience as having worked in the Office as Superintendent or Legal Assistance. Although the Deputy and Assistant Charity Commissioners may exercise powers and perform their duties and functions in accordance with the Bombay Public Trusts Act irrespective of distinct qualifications and experience. The post of Deputy Charity Commissioner requires experience as a Civil Judge (Jr. Dn.) or as Judge of the Small Causes Court at Mumbai or equivalent Office or minimum eight years" experience as an Advocate or as Attorney of two High Courts or a Pleader or experience of atleast five years" as an Assistant Charity Commissioner. This would indicate that Deputy Charity Commissioner is higher in rank than the Assistant Charity Commissioner experience-wise also. That being so, when there was specific order passed by the Joint Charity Commissioner, Nagpur on 13.4.2009 to remit back the matter to the Deputy Charity Commissioner, Nagpur, it would be appropriate and just if he decides the matter notwithstanding the fact that the Assistant Charity Commissioner may have proceeded with the inquiry pursuant to subsequent order passed by the Joint Charity Commissioner, Nagpur, which is impugned in this petition as inappropriate and incorrect. This Court has, by passing order dt.

23.5.2014 after hearing the submissions, has kept open the contention that the matter was specifically required to be heard by the learned Deputy Charity Commissioner.

5. The learned Counsel for the respondent submitted that the Assistant Charity Commissioner is entitled to deliver the Judgment because of subsequent modification by the Joint Charity Commissioner as stated in the impugned order. However, perusal of the impugned order would show that there was no any application to modify/alter the earlier order by which proceedings were required to be heard by the Deputy Charity Commissioner. The learned Counsel for the petitioner submitted that the petitioner is ready to go before the Deputy Charity Commissioner and advance arguments on merits and no further evidence is required before the Deputy Charity Commissioner since there were earlier orders which attained finality for remitting the inquiry to the Deputy Charity Commissioner, Nagpur. In the facts and circumstances appearing from the record, it would be just and proper if inquiry with its proceedings till date is transferred to the Deputy Charity Commissioner, Nagpur, who shall, after hearing arguments in the matter, deliver Judgment on the basis of evidence led by the parties in Inquiry No. 1538 of 1997.

6. For the afore-said reasons, therefore, the impugned order stands modified with a direction to the Assistant Charity Commissioner, Nagpur that he shall transfer the record and proceedings in Inquiry No. 1538 of 1997 to the Deputy Charity Commissioner, Nagpur. The Deputy Charity Commissioner shall hear the final arguments in the matter and decide the Inquiry proceedings.

The parties shall appear before the Deputy Charity Commissioner, Nagpur on 30.6.2014. No further notice shall be required to be given to the parties.

Rule is made absolute accordingly. No order as to costs.