

CIRCULAR No.48

SUBJECT : 1)Consolidation of applications for registration relating to the same trust.

2)Powers of Deputy or Assistant Charity Commissioner to re-open an inquiry already completed.

The Assistant Charity Commissioner, Kolhapur has raised the following two questions –

i)As there is no provision for the consolidation of applications in the Bombay Public Trusts Act,1950, is it open to the Deputy or Assistant Charity Commissioner to consolidate applications for registration relating to the same trust ?

ii)Can the Deputy or Assistant Charity Commissioner re-open an inquiry already completed under Section 19, if another application in respect of the same trust, whether made before or after the inquiry, comes up for hearing? If he can not do so, how should he dispose of the second application ?

Regarding the first question :

There is no provision in the Bombay Public Trusts Act,1950, for the consolidation of applications. In the Civil Procedure Code also there is no express provision regarding the consolidation of suits or proceedings. The Civil Courts use their inherent powers under Section 151, Civil Procedure Code to consolidate suits or other proceedings.

It is always desirable that all applications in respect of the same trust should be heard side by side and in the presence of all the rival claimants. This should be borne in mind while scrutinizing applications and if two or more applications are made for registration of the same trust, the Deputy or Assistant Charity Commissioner should hear them simultaneously in the presence of all concerned who wish to be heard. He may then pass a common order in respect of all the applications discussing and disposing of the case of each applicant and keep the order so passed on the record of each application. It will also be open to the Deputy or Assistant Charity Commissioner to pass a separate order in each such application, if he thinks fit to do so.

Regarding these cond. Questions :

Under Section 21 of the Bombay Public Trusts Act,1950, the entries made in the register kept under Section 17 are final and conclusive . Under Section 79 also the decision of the Deputy or Assistant Charity Commissioner relating to the existence or property of a public trust is final and conclusive, unless set aside in the manner laid down in the Act. Further, there is no provision in the Act which empowers the Deputy or

Assistant Charity Commissioner to review or revise his own findings. The only course open to the Deputy or Assistant Charity Commissioner, therefore, is to record a finding to the effect that as he has already recorded his findings in the previous application in respect of the same trust, he can not inquire into the second application and dismiss the application. It will be open to the applicant(s), whose application is so dismissed, to file an appeal to the Charity Commissioner under Section 70 against the finding recorded in the first application or against the dismissal of the second application. These remedies should always be brought to the notice of the applicants whose applications are dismissed in this manner.

Dated : 5th March, 1953

D.R.PRADHAN
Charity Commissioner, Bombay