

CIRCULAR No.80

SUBJECT – Inspector's report in section 19 inquiries – Evidentiary value of the report and of the statements of witnesses recorded by him in a local inquiry made by him – procedure to be followed in getting the relevant portion on record.

It has been observed that some Deputy/ Assistant Charity Commissioners, while making an inquiry under Section 19 of the Bombay Public Trusts Act, 1950 have been exhibiting Inspector's report and relying on it as substantive evidence in the inquiry under Section 19. Question for consideration is whether Inspector's report can be relied upon as evidence in an inquiry under section 19 before the Deputy/ Assistant Charity Commissioner.

2. It is quite clear that the report of an Inspector or the statements, recorded by him can not be treated as substantive evidence for the purpose of an inquiry under section 19. Some of the functions to be performed by the Deputy/ Assistant Charity Commissioner are of an administrative nature whereas certain other functions to be performed and powers to be exercised by him are of a judicial nature. When the Deputy / Assistant Charity Commissioner orders a local inquiry by an Inspector the order passed by him is of an administrative nature, as there is no specific provision in the Act which contemplates such an inquiry by an inspector. The report of an Inspector is merely a departmental report of a subordinate to the Deputy / Assistant Charity Commissioner who under the scheme of the Act is not only required to register a public trust when an application is made under section 18 but is also required to make a suo motu inquiry, if necessary, in case he has reason to believe that the existence of a public trust or any particulars relating to it are being suppressed. The report is intended to help him to make an inquiry under section.19. he can not delegate his powers to make an inquiry under section 19 to an Inspector nor can he base his findings on the report of the Inspector or on the statements recorded by him. The findings to be recorded by him are to be based on the evidence produced before him.

The report of an inspector usually comprised of two parts viz. 1) the facts stated by witnesses before him and (ii) the notes of inspection of the site, e.g. sketch drawn, measurements taken, inscriptions on slabs etc. for the proof of the facts stated by the witnesses before the Inspector, the witnesses will have to be examined by the Deputy/ Assistant Charity Commissioner in the inquiry before him and the statements recorded by the Inspector can not be treated as substantive evidence in the inquiry. So far as the notes of inspection of the site are concerned, the same can be taken in evidence but before doing so it will be necessary to examine the Inspector on oath and to get the same produced in evidence through him. That part of the report which relates to the inspection of site can

thus be taken on record and relied upon after examining the Inspector as a witness in the inquiry.

Dated : 11th February, 1955.

D.R.PRADHAN
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