

क्रमांक. 3337/2022

धर्मदाय आशुत भवन,

२ रा मजला, सावित्रा उमारत,

सावित्रा मार्ग, वरली,

मुंबई - ४०० ०३०.

17 JUN 2022

CIRCULAR NO. 594 DATED 17-06-2022

Reference-

- (1) Order passed by the Hon'ble Division Bench, High Court of Judicature at Bombay, Nagpur Bench, Nagpur dated 27-04-2022 in Writ Petition No. 3296 of 2020 with C.A.W.Nos. 1365 of 2020 and 1366 of 2020.
- (2) Circular No. 587/2022 dated 02-06-2021 issued by the Charity Commissioner, Maharashtra State, Mumbai.
- (3) Letter No.Jud.Branch/2417/2021 dated 17-06-2021 issued by the Charity Commissioner, M.S., Mumbai to all Presiding Officers.

The Hon'ble Division Bench, High Court of Judicature at Bombay, Nagpur Bench in the above referred No.(1) Writ Petition, ordered that "Copy of the order be sent to the Charity Commissioner, State of Maharashtra to consider if any instructions can be issued to the Charity Authorities to bring to their notice the mechanism available under the Amending Act of 2017.". The mechanism available under the Amending Act of 2017 is as under: -

"22. Change :

- (1) Where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept. Such report shall be made in the prescribed form.

Provided that the Deputy or Assistant Charity Commissioner may extend the period of ninety days for reporting the change on being satisfied that there was a sufficient cause for not reporting the change within the stipulated period subject to payment of costs by the reporting trustee, which shall be credited to the Public Trusts Administration Fund.

(1A) Where the change to be reported under sub-section (1) relates to any immovable property, the trustee shall, along with the report, furnish a memorandum in the prescribed form containing the particulars (including the name and description of, the public trust) relating to any change in the immovable property of such public trust, for forwarding it to the Sub-Registrar referred to in sub-section (7) of Section 18.

Such memorandum shall be signed and verified in the prescribed manner by the trustee or his agent specially authorized by him in this behalf.

(2) For the purpose of verifying the correctness of the entries in the register kept under section 17 or ascertaining whether any change has occurred in any of the particulars recorded in the register, the Deputy or Assistant Charity Commissioner may hold an inquiry in the prescribed manner.

Provided that, in the case change in the names and addresses of the trustees and the managers or the mode of succession to the office of trusteeship and managership, the Deputy or Assistant Charity Commissioner may pass order provisionally accepting the change within period of fifteen working days and issue a notice inviting objections to such change within thirty days from the date of publication of such notice:

Provided further that, if no objections are received within the said period of thirty days, the order accepting the change provisionally under the first proviso shall become final and entry thereof shall be taken in the register kept under Section 17 in the prescribed manner:

Provided also that, if objections are received within the said period of thirty days, the Deputy or Assistant Charity Commissioner may hold an enquiry in the prescribed manner and record a finding, as provided by sub-section (3) of this section, within three months from the date of filing objections.

(3) If the Deputy or Assistant Charity Commissioner, as the case may be, after receiving a report under sub-section (1) and holding an inquiry, if necessary, under sub-section (2), or merely after holding an inquiry under the said sub-section (2), is satisfied that a change has occurred in any of the entries recorded in the register kept under section 17 in regard to a particular public trust, or that the trust should be removed from the register by reason of the change, resulting in both the office of the administration of the trust and the whole of the trust property ceasing to be situated in the State, he shall record a finding with the reasons therefor to that effect and if he is not so satisfied, he shall record a finding with reasons therefor accordingly. Any such finding shall be appealable to the Charity Commissioner. The Deputy or Assistant Charity Commissioner shall amend or delete the entries in the said register in accordance with the finding which requires an amendment or deletion of entries and if appeals were made against such finding, in accordance with the final decision of the competent authority provided by this Act. The amendments in the entries so made subject to any further amendment on occurrence of a change or any cancellation of entries, shall be final and conclusive.

(3A) The Deputy or Assistant Charity Commissioner may, after such detailed and impartial inquiry and following such procedure as may be prescribed, de-register the trust on the following grounds: -

- (a) When its purpose is completely fulfilled; or
- (b) When its purpose becomes unlawful; or
- (c) When the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or
- (d) When the trust, being revocable, is expressly revoked; or
- (e) When the trustees are found not doing any act for fulfilling object of the trust:

Provided that, no trust shall be de-registered under clause (e) unless its trustees have committed default in reporting the change under sub-section (1), in submission of the audited accounts as prescribed by sub-section (2) of section 33 or sub-section (1A) of section 34 or in making any other compliance prescribed by or under this Act for a period of five years from the last date of reporting the change, submission of the accounts or making the compliance, as prescribed by or under this Act or the rules made thereunder, as the case may be.

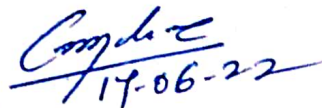
(3B) The Deputy or Assistant Charity Commissioner may take over the management of properties of the trust de-registered under sub-section (3A) and pass such necessary orders for the same as he deems fit and may, if he considers it expedient, dispose them of by sale or otherwise and deposit the sale proceeds in the Public Trusts Administration Fund established under section 57.

(4) Whenever an entry is amended or the trust is removed, from the register under sub-section (3), the Deputy or Assistant Charity Commissioner, as the case may be, shall forward the memorandum furnished to him under sub-section (1A), after certifying the amended entry or the removal of the trust from the register, to the Sub-Registrar referred to in sub-section (7) or section 18 for the purpose of filing in Book No. I under section 89 of the Indian Registration Act, 1908, in its application to the State of Maharashtra."

Earlier the Circular No. 587 dated 02-06-2021 (Ref. No. 2) was issued on 02-06-2021 to implement Section 22 of the Amending Act of 2017. In view of the above referred circular, some guidelines were sought about the draft notice required to be issued under first proviso. Those draft notices were also circulated to all the Presiding Officers on 17-06-2021 (Ref. No. 3).

Thus, in view of the order passed in Writ Petition No. 3296 of 2020 with C.A.W. Nos. 1365 of 2020 and 1366 of 2020 and earlier circular, all the Presiding Officers i.e. Assistant Charity Commissioners/Deputy Charity Commissioners in State of Maharashtra are directed to implement Section 22 of the Amending Act, 2017 to subserve the legislative intent.

Date : 17/06/2022
Place : Mumbai


(Mahendra K. Mahajan)
Charity Commissioner,
Maharashtra State, Mumbai

Copy to :-

- 1) All Joint Charity Commissioners
- 2) All Deputy Charity Commissioners
- 3) All Assistant Charity Commissioners
- 4) Office Circular File
- 5) Computer Branch for publication on website.

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