

(2008) 12 BOM CK 0051
In the Bombay High Court
Case No : Second Appeal No. 162 of 2001

Abdul Sattar Sher Mohammad Qureshi and Others	APPELLANT
Vs	
Haji Mustaq Ahmad Sher Mohd. and Others	RESPONDENT

Date of Decision : 01-12-2008

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22, 72

Citation : (2009) 1 BomCR 43 : (2009) 1 MhLj 411

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : A.M. Gordey, for the Appellant; S.P. Hedao, for Respondent No. 2, Z.A. Haq, for Respondents 3 and 8 and T. Khan, for Respondents 6 and 7, for the Respondent

Final Decision : Dismissed

Judgement

C.L. Pangarkar, J.—This Second Appeal is filed by the original non applicants before the Deputy Charity Commissioner in a Change Report Enquiry.

2. The facts are as follows:

There is a Public Trust known as Fakkruddin Shikshan Sanstha at Nagpur. One Haji Mustaq Ahmed and others filed a Change Report u/s 22 of the Bombay Public Trust Act before the Deputy Charity Commissioner on 02.04.1992. It was registered as an Enquiry No. 895 of 1992. It was alleged that the election of managing committee was held on 19.01.1992 and Jainab Mustaq Kanoje was elected as Vice President and Chand Bee Suleman, Shaikh Ismail and Batul Bee were elected as Members of the Executive Committee. It was further alleged that Padmakar Bhanudas Ambore, Vice President, Dr. Habib Sher Mohd. Kanoje, Secretary, Shashikala Mudholkar and Mohd. Mustafa had resigned. Hence prayer was made to delete the names of these 4 trustees to substitute the names of those reporting trustees.

3. The Change Report was accepted on 04.08.1992. Necessary entry was taken

in Schedule I. This order dated 04.08.1992 was challenged by filing revision No. 10 of 1992 by the respondent No. 5. The revision and the appeal were allowed and the order passed was set aside. The matter was remanded by the Joint Charity Commissioner. Appeal was therefore preferred by Mustaq Mohamad i.e. the present respondent No. 1 before the High Court and the said appeal was dismissed by the High Court on 15.11.1995. Therefore review application was preferred being Review Application No. 259 of 1995. Review application was disposed of and the orders passed by the Additional District Judge as well as Joint Charity Commissioner were set aside and the Joint Charity Commissioner was directed to hear the parties giving them opportunity of personal hearing and then decide the matter afresh. The Joint Charity Commissioner once again heard the revision and the appeal being Revision No. 10 of 1992 and Appeal No. 7 of 1993 and he remanded the matter to the Deputy Charity Commissioner for enquiry. The Deputy Charity Commissioner rejected the Change Report on the ground that the parties were reluctant to lead any evidence in the matter and prove that the change had occurred. This order was challenged by reporting trustees i.e. Haji Mustaq and others before the Joint Charity Commissioner once again. After giving opportunity to the parties and recording the evidence Joint Charity Commissioner accepted the Change Report. Being aggrieved by that the present appellants preferred application u/s 72 before the District Judge. The Additional District Judge who heard the appeal confirmed the order of the Joint Charity Commissioner and being aggrieved by that the present appellants that is the original non applicants have preferred this Second Appeal.

4. The Second Appeal was admitted on the following substantial question of law:

Whether findings recorded by the Authorities that the appellants were not inducted as life members in the year 1986 is liable to be set aside for the reason that the material evidence tendered by the appellants on the aforesaid issue was not considered by the Authorities before rendering the aforesaid finding?

5. I have heard Shri Gordey learned Counsel for the appellant, Shri Haq learned Counsel for respondents 3 and 8, Shri Hedao learned Counsel for respondent No. 2 and Miss. T. Khan learned Counsel for respondents 6 and 7.

6. Since this appeal has been admitted on the substantial question of law as referred to above I need to look into those aspects alone and none else although the matter was argued at great length by both the sides.

7. Shri Haq learned Counsel for the respondent No. 1 at the out set contends that there is no substantial question of law involved and what is being agitated is a question of fact only.

8. Shri Gordey on the other hand submitted that substantial question of law has been rightly formulated by the Court because according to him non consideration of the evidence renders the judgment perverse and whenever the judgment is perverse it becomes a substantial question of law. Shri Gordey submits that the Change Report should not have been accepted by the Joint Charity Commissioner

at all. According to him the Joint Charity Commissioner had failed to consider the evidence available on record, and had he considered this evidence he would not have come to conclusion that Change Report should be accepted. He submits that evidence was enough to conclude that the appellants had become life members in 1986 of the Trust and were duly elected as office bearers in 1987 itself. He submits that this would show that the substantial question of law is rightly formulated. There cannot be two opinions that where the Court ignores the evidence on record which could turn the tables then that question can certainly be agitated in second appeal and it could be treated as substantial question of law.

9. Shri Gordey submits that the appellants had placed on record the receipts showing that they had paid the subscription required to be paid to become life member and their names were in fact shown as members in the list of the members displayed by the Secretary. He submits that they had paid subscription in the year 1986 and the Meeting was held on 02.11.1987 and they had thus become members. Shri Gordey invited my attention to the receipts Ex. No. 112 to 115 and the list of members Ex. 116. Shri Gordey submits that since the appellants became members in 1986 the respondents were in fact bound to issue notice to the appellants of Meeting dated 19.01.1992. He submits that since no notice was issued to the defendants although they had become members the meeting dated 19.01.1992 can be said to be illegal and the decisions taken therein can also be said to be illegal.

10. Therefore, what needs to be seen is whether the story of the appellants that they became members in 1986 and whether they were accepted as members is correct and true? Shri Gordey learned Counsel invited my attention to the receipts filed at Ex. No. 112 to 115. Those are receipts dated 01.06.1986 in the name of appellants 1 to 4. It is deposed by appellant No. 1 Abdul Sattar before the Joint Charity Commissioner that these receipts are given to them by Haji Mustaq respondent No. 1 and are signed by respondent No. 5 Dr. Habib Sher Kanoje. The original receipts were brought before the Court. Those receipts can certainly be said to be proved since Dr. Habib Kanoje does not enter into witness box to depose that he ever issued such receipts to the appellants. The question however is whether they were accepted as members of the Executive Committee at all. Simple payment of subscription does not make one member of the trust automatically, what is required to be shown is approval of such membership by the executive committee or by the general body meeting. Shri Gordey learned Counsel relies on the list of members dated 29.06.1986 at Ex. 116. There is an endorsement on this list that members shown at Sr. No. 8 to 29 were accepted as members in the meeting held on 01.06.1986. It is even suggested to respondent No. 1 Haji Mustaq in the cross examination on behalf of the appellants that on 01.06.1986 meeting of executive committee was held and 29 new members were enrolled and the list of the members was published on 29.06.1986. The suggestion is denied but that is theory put up by appellants. Obviously these appellants who are amongst those 29 members claimed to have

been approved as members in the meeting dated 01.06.1986 but this does not appear to be true and correct. In fact the other evidence on record completely indicates the theory of their being in meeting dated 01.06.1986 and the appellants being accepted as members from that dated is not true. Ex. 119 is a copy of the covering letter dated 3/11/1987 allegedly sent by Mustaq Mohd. to Deputy Charity Commissioner forwarding along with it the Change Report dated 03/11/1987 and other accompaniments. These documents have been filed by the appellants and therefore they can certainly be used against the appellants. Along with this Ex. 119 i.e. Change Report, there is a copy of Resolution said to have been passed in meeting held on 02.11.1987. In all 4 Resolutions seem to have been passed in the alleged Meeting. Resolution No. 1 pertains to appellants 1 to 4 being accepted as Members. Second, pertains to acceptance of resignation of Padmakar Ambore, Dr. Habib Kanoje, Shashikala Ambore and Mohd. Mustaq. Third Resolution pertains to appellant No. 1 being elected as Vice President, No. 2 as Secretary, No. 3 and 4 as Members. Resolution No. 4 is in respect of appellant No. 2 Galib Abdul agreeing to provide funds to the Institution. As can be seen from the Resolution No. 1 appellant No. 1 to 4 only were approved as Members on 02.11.1987. Thus if this document Ex. 119 is considered the theory of meeting being held on 01.06.1986 and their approval on that date has to be negated. Consequent to this the list of the members Ex. 116 which is dated 29.06.1986 has to be treated as false or forged or fabricated list. Since no meeting was held on 01.06.1986 and the alleged approval is said to be given on 02.11.1987 the list prepared on 29.06.1986 as approved list cannot be said to be approved list of the members of the trust. Further no Resolution of meeting dated 01.06.1986 is at all placed on record. It is therefore doubtful if at all any meeting was held either on 01.06.1986 or on 02.11.1987.

11. We may refer to oral evidence of P. W. 1 Haji Mustaq, Ex. 119 the Change Report. The covering letter is said to be signed by Haji Mustaq i.e. respondent No. 1. As we have already seen that Haji Mustaq was examined as a witness in enquiry before the Joint Charity Commissioner but the appellants had failed to show Ex. 119 and documents along with it to respondent No. 1 Haji Mustaq during the course of the cross examination. If according to appellants Haji Mustaq had infact signed the Change Report Ex. 119, he should have been confronted with those documents. The fact that appellants chose not to show the documents to Haji Mustaq though he had entered witness box shows that appellants were apprehensive if Haji Mustaq would accept those documents as genuine. Further one thing of which cognizance must be taken is the conduct of the appellants. The appellants claim to have sent the Change Report on 03.11.1987 as per the decision in the meeting dated 02.11.1987 Ex. 119. It is tried to be shown that the Change Report was actually lodged in the office of the Charity Commissioner. Although the appellants have tried to show that they had lodged such a report they never made a request to the Joint Charity Commissioner or Deputy Charity Commissioner to reconstruct the record of the Change Report which they had allegedly lodged. They did not care to see that

the said application is registered and enquiry is made on their application. Even when the present Change Report in Case No. 895 of 1992 came up for enquiry they did not insist that their Change Report of 1987 should be considered first by tracing out the earlier change report. They could have thus helped the Charity Commissioner to reconstruct the record and get their Change Report approved. Instead of prosecuting that, they merely chose to contest this application No. 895 of 1992. This conduct of not prosecuting own application and opposing the other applications speaks volumes against the appellants. The inference that can be drawn from this conduct is that they were quite aware that they will not succeed in proving the Change Report as well they having become members in 1986 or even in 1987.

12. Much ado was made of the conduct of Dr. Habib Kanoje respondent No. 5. He initially contested the application No. 895 of 1992 but later rescaled and supported the respondents. Why he did so is best known to him and nothing turns on that. 13. The conduct of neither party appears to be very fair but then both the Courts below have considered the preponderance of probabilities and have been found that the respondents stand on a better footing. Further it may be mentioned that admittedly respondent No. 1 is working as a President since the year 1984. The appellants claim that meetings were held on 01.06.1986 and 02.11.1987 and appellant No. 1 claims that he was elected as Vice president in a meeting dated 02.11.1987. Now the respondent No. 1 Haji Mustaq was all the while the President of the Trust. We must therefore, assume that he ought to be present in both these meetings if at all they were so held. Although Haji Mustaq has entered into the witness box nothing could be elicited even from him that he had presided over these meetings and that he had signed the proceeding book. Haji Mustaq was never called upon by the appellants to produce the original proceedings before the Court. Since nothing has been elicited from Haji Mustaq which they could have, it may not be assumed that no such meetings as alleged by the appellant were held on 01.06/1986 and 02.11.1987. Since I have found that no such meetings were held there was no approval to the membership of the present appellants. Those documents upon which the appellants seek to rely upon are of no help to the appellants. Even if they are considered they do not go to show that appellants had become Members. Therefore, there was no need to issue any notice to them. The substantial question of law is answered accordingly. There is no substance in the appeal. It is dismissed with costs.