(2017) 07 BOM CK 0288

In the Bombay High Court

Case No : 811 of 2016

Adv. Babasaheb Wasade, & Ors. APPELLANT

Vs

Manohar Gangadhar Muddeshwar, & Ors. RESPONDENT

Date of Decision : 20-07-2017

Acts Referred:

Societies Registration Act, 1860, Section 15, Section 22 - Member defined

Bombay Public Trusts Act, 1950, Section 17, Section 72 -

Citation : (2017) 07 BOM CK 0288

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : S.V. Manohar, S.D. Abhyankar, P.A. Gode, M.R. Joharapurkar

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment and order dated 29/07/2016 passed by District Judge4, Chandrapur, in M.C.A. No. 50/2016.

2. By the impugned order, District Judge4, Chandrapur has allowed the application/appeal filed under Section 72 of the Maharashtra Public Trust Act, 1950 (hereinafter will be referred to as "Act" for convenience), thereby setting aside the judgment and order of Joint Charity Commissioner, Nagpur (for short, "JCC") in Appeal No. 29/2010 dated 12/04/2016. By the said order, the JCC has allowed the appeal filed under Section 17 of the Act, challenging the order dated 16/06/2010 passed in Change Report Inquiry No. 668/2002 by the Assistant Charity Commissioner, Chandrapur (for short, "ACC") and accepted the said Change Report, which was rejected by the ACC, vide his order dated 16/09/2010.

3. Brief facts of the appeal, can be stated as follows: Shikshan Prasarak Mandal, Mul is a registered Public Trust, bearing PTR No. F-41(C). Initially, the said Trust was registered as a society under the Societies Registration Act, 1860. The Trust is having its own byelaws for running its daytoday administration. As per the last

entry in ScheduleI of the Trust, for the year 1998, appellant no.1 is working President of the Trust. As the election of the Executive Committee of the Trust was not held since long time and the recorded Secretary, President and Vice President of the Trust were also no more, the members of the General Body of the Trust, by letter dated 20/08/2002, requested the appellant no.1, in his capacity as working President to call General Body Meeting for the election of the Executive Committee of the Trust. Accordingly, appellant no.1, by the notice dated 03/09/2002, called the General Body Meeting of the Trust on 08/09/2002 at Panchayat Raj Prashikshan Kendra, Mul. The notice of the said Meeting was sent to all its members by hand delivery and by Under Certificate of Posting. In the said General Body Meeting held on 08/09/2002, a new Executive Committee was elected unanimously. The Change Report no. 668/2002 pertaining to the said election came to be filed before the ACC.

4. The erstwhile members of the Trust, namely, Shri Rishidev Choudhary, Narayan Choudhary, Muralidhar Patil, Dhanji Shah, Vinayak Dhote, Dattatraya Nagose and one Shrawan Pendholkar, however filed objections to the said Change Report. The main grievance raised by the objectors was that they had not received the notice of the Meeting dated 08/09/2002, though they were the members of the Trust, and hence whatever resolution was passed in the said Meeting, was not at all legal, proper and correct. As against it, the contention of the appellants was that none of the objectors had paid the subscription fees of their membership as per clause (5) of the byelaws of the Trust, hence they could not be counted as the members of the Trust on the date of election, therefore, there was no question of calling them to remain present for the said Meeting.

5. Another contention raised by the objectors was that appellant no.1 was not competent to convene the Meeting in his capacity as working President; only the Secretary of the Trust could convene such Meeting, and therefore, the Meeting itself was illegal.

6. The third contention was that there were irregularities in the conduct of the Meeting, which were going to the root of the matter and as a result of it, even the appointment of the members to the Executive Committee was also not proper and the said executive Meeting had no right to pass any resolution.

7. Before the learned ACC, Chandrapur, objector no.1 Rishidev Choudhary and objector no.2 Dhanji Shah examined themselves in support of their objections. As against it, appellant no.1 also led his own evidence and also led the evidence of Shri Prakash Virgamgade.

8. On appreciation of this evidence, learned ACC was pleased to hold that as the objectors, who were very much members of the Executive Committee, were not issued notice of the Meeting, the Meeting itself was not convened properly, and hence whatever resolutions were passed in the said Meeting, cannot have any legal value. It was also held by the ACC that appellant no.1 was not competent to even convene the said Meeting. Accordingly, ACC rejected the Change Report.

9. When the appellants took the matter before the JCC, Nagpur, it was held that as admittedly the objectors had not paid the membership fees, they had no right to remain present or to vote in the Meeting convened by the appellants. It was held that when objectors have themselves admitted the fact that they have not paid the subscription fees, there was nothing much to be considered, and hence the learned ACC has wrongly rejected the Change Report. The learned JCC, therefore, allowed the appeal and accepted the Change Report.

10. However, the respondents herein, who were brought on record during pendency of the appeal before the JCC, in view of the death of the original objectors, when challenged this order of the JCC before the District Judge4 in the appeal under Section 72 of the Act, the learned District Judge4 was pleased to uphold the order passed by ACC and hold that objectors could not have been expelled or removed from the membership without following the due process of law, like issuance of notice to them and passing the requisite resolution to that effect. Hence, till the time they were members of the Trust, they were entitled for the notice of the Meeting. As admittedly they were not issued such notice, Change Report, which was on the basis of the resolution passed in the said Meeting, could not have been accepted by the JCC. The learned District Judge4, therefore, set aside the order passed by JCC and restored the order passed by the ACC of rejecting the Change Report.

11. While challenging this order of the First Appellate Court, submission of learned Senior Counsel Shri S.V. Manohar is to the effect that when it is admitted by the objectors that they had not paid the subscription fees, as per section 15 of the Societies Registration Act, 1860, they were no more the members of the Trust. Hence, they were also not entitled to vote in the Meeting. Therefore, there was nothing wrong in nonissuance of notice to them. It is submitted by him that appellants are not saying in any way that the objectors were expelled or removed from the Trust. The only contention raised by the appellants is that as objectors were not entitled to vote, having not paid the subscription fees, the notice of the Meeting to them was not essential, and hence convening of the Meeting without issuing notice to them and passing resolution therein, for which the objectors were not entitled to vote, cannot constitute any illegality so as to reject the Change Report.

12. In support of this submission, learned Senior Counsel for the appellants has placed reliance on the decision of Shri Sarbjit Singh and others VsAll India Fine Arts and Crafts Society and others, ILR (1989) II Delhi 585. According to him, learned ACC has not placed reliance on this decision, only on the ground that the appellants are now the Public Trust and hence provisions of Societies Registration Act, 1860, cannot be made applicable. It is urged that, when admittedly the appellants were initially registered as a society and is still continued to be society, even though subsequently automatically it became a Public Trust, the provisions of section 15 of the Societies Registration Act clearly become applicable, and hence as per those provisions, if the objectors have ceased to be

the members on account of the nonpayment of subscription fees, they had no right to vote. It is urged that both the ACC and First Appellate Court has committed an error in assuming that appellants were proceeding on the footing that these objectors were expelled from the membership. It is urged that only in case of removal or expulsion of members from the society or the Trust, the show cause notice and formal resolution to that effect is essential, not otherwise.

13. By placing reliance on the various clauses of the Constitution of the Appellant society, it is urged that, it empowers working President in the absence of the President, Vice President and Secretary of the Trust to convene the Meeting. Here in the case, it was on the request of the members of the General Body of the Trust, appellant no.1 has convened the General Meeting for election of the Executive Committee of the Trust, and hence there was nothing wrong in it.

14. Lastly, learned Senior Counsel for the appellants has submitted that the objectors, who were the members of the Executive Committee, are no more as all of them have expired. Now this proceeding is being taken up and continued by some third party, who has no locus standi to challenge the Change Report, on the ground on which the objectors have challenged it.

15. To sum up, therefore, according to learned Senior Counsel for the appellants, the impugned order passed by the First Appellate Court being not legal, proper and correct, needs to be set aside.

16. Per contra, learned counsel for respondents, has supported the said order, by pointing out various irregularities committed in convening the Meeting and also by submitting that even under section 15 of the Societies Registration Act, 1860, a member, who has not paid the subscription fees, cannot be automatically removed or expelled from the Trust or the society unless the proper procedure is followed, like issuance of show cause notice and passing of resolution to that effect. No such procedure was followed and despite that the notice of the Meeting was not issued to the objectors, and therefore, the resolution passed in the Meeting for election of the new members to the Executive Committee was not legal and proper. The learned counsel for the respondents has also submitted that appellant no.1 in his capacity as working President was not competent to convene the Meeting; even the constitution of the Trust does not confer on him any such power, and therefore, Meeting itself was illegal.

17. On these rival submissions advanced by learned counsel for both the parties, the only issue which arises for my determination is, whether the objectors, who had admittedly stopped paying subscription fees, were entitled to receive the notice of the Meeting, in which the new members were elected to the Executive Committee of the Trust?

18. In this case, it is admitted by the objectors Dhanji Shah and Rishidev Choudhary that subscription fees of the Trust was Rs.11/per year and whenever the subscription fees was paid, the receipt is to be issued. It is further admitted by them that after the death of Shri Nagpure, ExPresident of the Trust, in the

year 1998 no one has demanded subscription fees to them and they have also not paid the subscription fees. According to them, after the death of Nagpure, they and other objectors have not attended any Meetings of the Trust, as they were not accepting the leadership of new President Shri Wasade.

19. On this factual aspect, thus there is no dispute that the objectors had stopped paying the subscription fees of Rs.11/per year since long and they had also stopped to attend the Meetings of the Trust, convened by the new President Wasade, after the death of Ex-President Nagpure. Clause (5) of the Constitution of the Trust clearly provides that all members who are enrolled in the respective category of members, shall have to pay annual subscription of Rs.11/every year. The Constitution of the Trust, however does not provide for the consequences in case of failure of the members to pay such subscription fees. Those consequences are provided under Section 15 of the Societies Registration Act, 1860. Here in the case, admittedly the Trust was initially registered as a society under the Societies Registration Act and by virtue of the provisions under the Act, it became a Trust with effect from 1950. Hence, though learned ACC has held that as the Change Report is filed under section 22 of the Act, the Societies Registration Act, 1860, has no application, in my considered opinion, as the Trust was also the society registered under the Societies Registration Act, all its activities, its memorandum and Constitution have to confirm to the provisions of Societies Registration Act. All actions of society have to be in accordnce with the provisions of the Societies Registration Act, 1860 and it is not open to the society or its member to do any act or formulate any Article of Association which is at variance with, or contrary to the provisions of the Societies Registration Act, 1860. Hence, for the purposes of the present appeal, it is necessary to refer to the provisions of Section 15 of the said Act, which reads as under:

" 15. Member defined. Disqualified member. - For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations, thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations; but in all proceedings under this Act no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been in arrears for a period exceeding three months."

20. From the perusal of Section 15 of the Societies Registration Act, 1860, thus it is apparent that section 15 does not postulate removal or expulsion of any member from the membership of the society. All that it postulates, is that a member once admitted to membership, shall continue to be a member of the society. It also postulates that a person whose subscription is in arrears for a period exceeding three months, shall not be entitled to vote or to be counted as a member.

21. This provision came for interpretation in the case of Shri Sarbjit Singh and others VsAll India Fine Arts and Crafts Society and others (supra) and it was held

that, "the provisions of section 15 of the Societies Registration Act does not postulate expulsion of any member from the membership of the society. All that it postulates, is that a person may resign from the membership of the society. In case a member is in arrears of subscription for a period of over three months, he is not entitled to vote. Thus the emphasis in section 15 appears to be on voting alone as it is reiterated in that section that a person whose subscription is in arrears for a period more than three months, shall not be counted as a member. Prima facie, a person is likely to be counted as a member only at the Meetings of the society, and when any particular matter is sought to be voted upon, and not otherwise".

22. It was further held in this judgment that, "there is no provision in the Societies Registration Act, 1860, which permits any society registered under that, to expel its members". Even in case of the default committed by a member in payment of subscription, it was held that, "if the society wants to expel or remove any member, even on the count of nonpayment of subscription fees, then the necessary procedure, as contemplated under the principles of natural justice is required to be followed. The rules of natural justice would require that before any member of the society can be expelled from the society, he may be served with notice calling upon him to pay the arrears, failing which he shall ceased to be counted as a member of the society. There should also be necessary resolution of expelling or removing him from the membership. Mere entry in the ledger folio indicating that such member was in arrears of subscription fees since long time ago and hence he ceased to be a member is also not sufficient". In para no.30 of this judgment it was further held that, "Section 13 of the Act postulates reference of disputes between the members and the society, and therefore if there is any cause for expulsion of member, then such dispute should be referred to the court under section 13 of the Act".

23. Thus, the law on this aspect is not only spelt out in section 15 of the Societies Registration Act, 1860, but also it is crystallized to the effect that no member of the society can be expelled or removed for nonpayment of subscription fees. The only consequence contemplated under section 15 of the Societies Registration Act is that he may not be entitled to vote and may not be counted as a member for the purpose of voting on any particular matter.

24. The submission of learned Senior Counsel for the appellants in this case is that it is not the case of appellants that these objectors, who had committed default in payment of subscription fees were expelled or removed from the membership of the society. It is submitted that as they were not entitled to vote and were also not counted to be member of the society on account of the failure on their part to pay the subscription fees, there was justification not to issue notice to them of the Meeting convened by the working President. Ultimately even if the notice was issued to them to remain present in the Meeting, they could not have voted for the resolution passed in the Meeting and hence it was merely an empty formality which was not going to serve any fruitful purpose.

25. However, this submission advanced by the learned Senior Counsel for appellants, cannot be accepted for two reasons; the first reason is that if they were not expelled or removed from the membership, then they were definitely entitled to get notice of the Meeting and to remain present in the said Meeting. Merely because they could not have voted or would not have been counted as a member, is not sufficient to not issue notice to them at all, of the Meeting which was convened. Their right as a member of the society, unless and until, they were expelled from the society comprises of right to know all the affairs of the society and one of the affair about the management of the society includes the election of the members to the Executive Committee. At the most after attending the Meeting, they would not have been able to cast their vote, but that doesn''t mean that appellants should not issue notice of the Meeting to them at all. As admittedly such notice was not issued to objectors, on this very ground itself, the holding of such Meeting was illegal and the resolutions passed therein, which resulted into filing of Change Report, also cannot be called as legal.

26. It is pertinent to note that in the minutes of that Meeting also nowhere it was stated that as the objectors had not paid the subscription fees, their membership has come to an end, and therefore, the notices were not issued to them. As a matter of fact, in this case in evidence before the court, appellant no.1 has categorically stated that due to nonpayment of subscription fees by these objectors, their membership came to an end, and therefore, notice was not issued to them. If it was so, then indirectly appellants are admitting that these objectors were removed or considered to be removed and expelled from the society, therefore notice was not issued to them. However, in view of the principles of natural justice which are discussed above, these objectors were entitled for show cause notice and only after giving them an opportunity to clear the arrears of subscription fees, they could have been expelled for nonpayment of subscription fees, by passing necessary resolution to that effect. Their membership could not have been terminated otherwise. There is no such provision in the Societies Registration Act for automatic expulsion, removal or termination of membership for nonpayment of subscription fees. Even the Constitution of the appellant Trust does not provide for expulsion of its members for nonpayment of subscription fees.

27. In such situation, the learned ACC and the First Appellate Court had rightly held that as the notice of the Meeting was not issued to the objectors, though they were the members of the Trust and that too of the Executive Committee, the General Body Meeting was not convened legally and validly. Accordingly, the resolution passed in such Meeting electing the new members to the Executive Committee also cannot be said to be legal and valid. As these objectors were deprived from participation in the said Meeting in which election of the members of the Executive Committee has been held, the election of new members of Executive Committee is illegal and for this purpose, the Change Report filed by the appellants could not be accepted and is rightly rejected by the ACC and the First Appellate Court.

28. As to the objection raised by the learned Senior Counsel for the appellants about maintainability of this proceeding on the count that original objectors, who had grievance of not being served with notice of the Meeting, have already expired and hence some third party like respondent no.1 cannot raise grievance on that issue. It is needless to state that as the very nature of the appellants Trust is charitable and social, any beneficiary can challenge its activities on the ground that they are illegal. Moreover, it is the duty of the ACC to ensure whether the Trust either as a collective body of members or majority had adhered to the Constitution, rules, regulations or byelaws adopted by it and according to the legal provisions.

29. There is also some substance in the contentions raised by the respondents and accepted by the First Appellate Court that there is no provision in the constitution of the Trust empowering the working President to call the Meeting and that too, without notice to those, who were the members of the Executive Committee. On this count also, the resolution passed in the said Meeting cannot be called as legal and valid.

30. The impugned order, therefore, passed by the First Appellate Court restoring the order of the ACC, rejecting the Change Report, being just, legal and correct, needs to be upheld.

31. Appeal, therefore, holds no merits, hence stands dismissed.

32. At this stage, learned counsel for appellants submit that the interim order passed by this Court may be extended for a period of four weeks. Learned counsel for respondents raised objection to the same. However, in the interest of justice, the interim order is extended for a period of four weeks as requested.