

(1983) 02 BOM CK 0022

In the Bombay High Court

Case No : Civil Revision Application No. 838 of 1982

Dinanath Ajabrao Ingole and Another

APPELLANT

Vs

Shetkari Shikshan Prasarak Mandal and Others

RESPONDENT

Date of Decision : 03-02-1983

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 80

Citation : AIR 1983 Bom 404

Hon'ble Judges : Puranik, J

Bench : Single Bench

Judgement

1. The revisional applicants are original defendants, while the non-applicants 1 to 3 are the original plaintiffs. The non-applicants instituted a Regular Civil Suit No. 359 of 1981 for declaration and injunction before the court of 4th Joint Civil Judge, Junior Division, Wardha. In the said suit, inter alia, they claimed declaration that original plaintiffs No. 2 and 3 are the President and Secretary of the original plaintiff No. 1 society, which is a registered public trust. They further sought a declaration to the effect that the original defendants present applicants, are no longer the President and Vice President of the said registered public trust, and lastly they claimed permanent injunction restraining the defendants from functioning as President and Vice-President respectively.

2. The background of the facts resulting in the filing of the said suit are also necessary for appreciation of the grounds contended in this revision.

3. The plaintiff No. 1 is a society registered under the Societies Registration Act, 1960 bearing Registration No. Maharashtra/47/76(W). The said Society is also registered as a public trust under the Bombay Public Trusts Act, 1950, bearing registration No. F-223(W). The said Society runs 3 schools -- 2 of them are Wardha and one at Bhuigaon. It was alleged that the original defendants Nos. 1 and 2 i. e. present applicants Nos. 1 and 2m were the President and Vice-President of the plaintiff society (public trust). They further alleged that defendant No. 2 came to be disqualified and removed for non-payment of the

requisite monthly subscription to the Society by an order dated 9-10-1979. The said declaration regarding disqualification of defendant No. 2 came to be confirmed in General Body meeting dated 3-1-1981. It was also alleged that the said disqualification was informed to the Deputy Charity Commissioner vide change report, which came to be accepted on 25-9-1980. It was then alleged in the plaint that defendant No. 2 filed an application on 14-4-1980 stating that he would make the payment regularly. Thereafter, the defendant No. 2 again came to be enrolled as a member of the said society and Vice-President by a resolution of the Executive Body dated 15-4-1980. It was again alleged that on 15-12-1980 the plaintiff No. 3 received a representation signed by members of the society calling upon him to hold an urgent general body meeting in view of the unauthorised acts performed by the defendant No. 1. In pursuance of the said representation, plaintiff No. 3, issued a notice of meeting dated 18-12-1980. The said meeting was held on 25-12-1980 and was attended by 16 members. It was also alleged that on 18-12-1980, the defendant No. 1 issued a letter informing the plaintiff No. 3 that the meeting dated 25-12-1980 would be illegal since it would not be in consonance with clause 11 of the Constitution of the society.

4. The plaint further alleges that in the meeting dated 25-12-1980, both the defendant applicants and 12 other members of the society were declared to be disqualified and were consequently removed as the members of the society vide resolution No. 6 of even date. The plaint also alleges that on 19-1-1981 the plaintiffs elected an Executive Committee amongst themselves, of which plaintiff No. 2 was elected as President and one Shri S. V. Wagh came to be elected as Vice-President.

5. A change report dated 22-1-1981 was accordingly submitted on 23-1-1981 to the Deputy Charity Commissioner, Nagpur Division, Nagpur, which came to be registered as C. R. 366/81. The plaint further alleges that a change report of the defendants Nos. 1 and 2 was also registered with the Deputy Charity Commissioner, Nagpur Division, Nagpur, contending that the plaintiff No. 3 was removed by no Secretary of the plaintiff No. 1 society. The plaint further states that both the change reports are pending before the Deputy Charity Commissioner for decision. The plaint lastly alleges that on 7-9-1981 the plaintiff filed an application u/s 41-A of the Bombay Public Trusts Act before the Deputy Charity Commissioner, but the same was rejected.

6. It is in these circumstances that the plaintiff filed the present suit before the Civil Judge, Senior Division, Wardha, claiming that plaintiffs Nos. 2 and 3 are the duly elected President and Secretary of the plaintiff Nos 1 society. The plaintiff alleged that since the Deputy Charity Commissioner has no jurisdiction to entertain the dispute the Civil Court should grant an injunction and necessary declaration against the defendants Nos. 1 and 2 permanently restraining them from functioning as the President and Vice-President of the Society and restraining them from interfering with the management of the society.

7. During the pendency of the suit, the plaintiff filed an application under Order

32, Rules 1 and 2 of the CPC for grant of temporary injunction. An ex parte injunction came to be issued along with a notice to the defendants to show cause why the same should not be made absolute.

8. On receipt of the show cause notice, the defendants who are the present applicants filed a petition raising a preliminary issue regarding the jurisdiction of the Civil Court to entertain the suit itself. On hearing the counsel of both the parties, the trial Court came to the conclusion that the Civil Court has the jurisdiction to entertain the said suit and that the suit is maintainable before it and directed that the suit shall proceed further. This order of the trial Court passed by Joint Civil Judge, Junior Division, 4th Court, Wardha, is dated 8-10-1982, which is impugned by the applicants defendants in this revision.

9. Shri S. V. Manohar, Advocate, appeared for the applicants defendants, while Shri V. P. Salve, Advocate, appeared for the non-applicants 1 to 3, the original plaintiffs. The additional non-applicants were joined as necessary parties and they were served but are not represented. They are formal parties and are not interested in the outcome of the result of this revision on the question of jurisdiction.

10. With the assistance of the counsel of both the parties I have gone through the impugned order as well as the points raised before maintenance by both the parties.

11. The learned trial Court in the impugned order has given a detailed statement of facts and pleadings leading to the suit as well as the objection of the defendants to the maintainability of the suit. It then frames the preliminary issue for determining whether the suit is maintainable or not. The trial Court has then proceeded to give its reasoning. A perusal of the reasoning given by the trial Court shows that it has merely reproduced the contentions of the plaintiffs and the defendants, and it is only in the last paragraph that it has come to the conclusion that the present suit is maintainable before the Civil Court. The last paragraph may, therefore be usefully reproduced:--

"On going through the plaint and the relief claimed by the plaintiffs and also the various provisions of the Bombay Public Trust Act, I find that it cannot be said that this suit is hit by Section 50 or 80 of the Bombay Public Trusts Act for the simple reason that the suit defendants Nos. 1 and 2 as Trustees. The order passed by the Deputy Charity Commissioner cannot be said to be final and conclusive since admittedly it was an interlocutory order. Even for res judicata the order or decision is to be final which is not the case in this suit.

In view of the above discussion I reach to the conclusion that the present suit filed by the plaintiffs is maintainable and hence I answer the above point for determination in the affirmative. The suit to proceed further."

12. From the narration of the contentions of the different parties it appeared that the learned trial Court has been impressed by the ruling relied upon by the

plaintiffs in the matter of Keki Pestonji Jamadar and Another Vs. Kohodadad Merwan Irani and Others, The trial Court writes down the ratio of the said decision in the following words:--

".....It has been held that Section 80 of the Bombay Public Trusts Act is no bar to Civil Court's jurisdiction to decide the question irrespective of whether or not plaintiff was or not a party to the proceeding u/s 80 of the Bombay Public Trusts Act". Apparently the learned, Judge has not gone through the said ruling. It is a Full Bench ruling of the High Court of Bombay delivered by Hon"ble Chief Justice Mr. S. P. Kotwal, as he then was, Mr. Justice Chandrachud, as he then was, and Mr. Justice Deshmukh, as he then was. In the said suit the question whether the author of a trust was the lawful owner of the property of which he has created the trust or had otherwise authority to create the particular trust is not covered the trust or had otherwise authority to create the particular trust is not covered by Section 79 read with Section 80 of the Bombay Public Trusts Act, 1950, was considered and their Lordships of the Full Bench have held that the Civil Court will have the jurisdiction to decide such a question in the sense that Section 80 of the Act cannot operate as a bar to that jurisdiction. It also held that for determining whether the bar u/s 80 of the Act arises, it is irrelevant whether the person who wants to raise the above question was or was not a party to the proceedings u/s 19 of the Act. Their Lordships also held that the question of ouster (under) Section 80 has to be decided by applying an objective test: Is the particular question one which by or under the Act is to be decided or dealt with by the Deputy or Assistant Charity Commissioner and is his decision made final and conclusive by the Act?

13. The material observations of the Full Bench from the said ruling in respect of bar of Civil Court's jurisdiction to deal with certain matters which are exclusively to be tried by the Charity Commissioner may be referred as follows:--

".....It must be stated that in order that the jurisdiction of the civil Court to decide or deal with a question may be barred u/s 80, it is necessary both that by or under the Act the particular question has to be decided or dealt with by an officer or authority under the Act and the decision of such officer or authority has been made final and conclusive by the Act. The word "or" which originally appeared in Section 80 before the last clause "in respect of which the decision or orderhas been made final and conclusive" had evidently crept in through oversight. It has been deleted by Maharashtra Act XX of 1971, probably, to make clear what was not sufficiently clear....."

14. In elaborating the question as to how the matter has to be seen in substance and not merely in form is the nature of claim made in the suit and the real relief sought therein, their Lordships further observed as follows:--

".....For deciding whether Section 80 is attracted in a give case, one must consider what, in substance and not merely in form, is the nature of the claim made in the suit and the real relief sought therein. If in order to afford that relief

it is necessary for the Court to decide or deal with a question which by or under the Act is to be decided or dealt with by an officer or authority appointed under the Act, the Civil Court's jurisdiction in that behalf is ousted. Such question must be left to the sole and exclusive decision of the authorities specified in the Act, whether they are question of fact or of law and whether they are simple or complicated. It is true that ouster of jurisdiction of civil Courts is not to be readily inferred and the normal rule is the one contained in Section 9 of the CPC that civil Courts have jurisdiction to try all suits of a civil nature. But this rule is subject to the exception contained in that section itself and the exception is that the cognizance of certain suits by civil Courts may be expressly or impliedly barred. Section 80 contains an express provision of ouster and though its dual conditions must be satisfied strictly before the decision of a question can be barred from the cognizance of a normal jurisdiction, it would be wrong to import into that provision any extraneous or collateral considerations, as for example whether the question involved is simple or complicated. If law provides that a question must be decided by a particular authority to the exclusion of the Civil Courts that authority cannot throw up its hands in despair and refuse to decide the question on the ground that it involves consideration of intricate problems. Nor, indeed, can the civil Court displace the jurisdiction of that authority by arrogating to itself the sole power to decide complicated question. Once the normal presumption arising under S. 9 of the CPC is overborne, there is no scope for limiting the jurisdiction of an exclusive forum to simple and straightforward questions. What must therefore be considered here is whether the two conditions of S. 80 are satisfied....."

15. In the present suit under consideration, what the plaintiffs are claiming is that earlier the defendants were the President and the Vice-President of the plaintiff society, which is a registered public trust. They also allege that they were removed subsequently and the change report has been preferred by them which is pending before the Deputy Charity Commissioner, Nagpur Division, Nagpur. In the plaint they also alleged that the defendants Nos. 1 and 2 have also preferred a change report against the plaintiffs and that change report is pending before the Charity Commissioner. In spite of these circumstances, the plaintiffs have preferred a Civil Suit claiming declaration that the plaintiffs be declared to be duly elected President and Secretary of the said society, and that the defendants be declared to be ineligible to work in any capacity in the administration of the said public trust. They claimed permanent injunction against the defendants accordingly.

16. Thus, in the present suit the Trial Court will have to go into the question as to whether, in fact, the original defendants were removed legally from the office of President and Vice-President of the said public trust and also to find out whether the present plaintiffs Nos. 2 and 3 have been validly elected as the President and Secretary of the said public trust.

17. The procedure for registration of a public Trust is incorporated in Section

18(1) to 18(5) of the Bombay Public Trusts Act, 1950. The inquiry that is to be conducted by the Charity Commissioner is stated in Section 19 of the said Act and the findings of the Charity Commissioner regarding the various aspects of a public trust to be registered or not are to be recorded u/s 20 of the said Act. After the procedure for inquiry, finding and registration of the public trust are carried out, the entries of a public trust are recorded u/s 21 of the said Act. It is pertinent to note that under the said Section such entries, after the findings are given, are made final and conclusive.

18. In the present case, both the plaintiffs and the defendants have filed their change reports before the Charity Commissioner and the same are pending for decision. Section 22 of the Bombay Public Trusts Act, 1950, shows the mode in which a change in respect of entries relating to the public trusts and its trustees is to be effected. Sub-Clause (1) of Section 22 enjoins a duty upon the persons interested in the trust to make a report within 90 days from the date of the occurrence of such change to the Charity Commissioner. Sub-clause (2) of the said Section authorises the Charity Commissioner to hold an inquiry for verifying the correctness of the entries and the change that has occurred in respect of any of the particulars record u/s 17 of the said Act.

19. Section 22 (3) of the Act, as applicable to Maharashtra State, states that after holding such an inquiry as contemplated by sub-clause (2), and after the Charity Commissioner is satisfied that a change has occurred in any of the entries recorded in the register, he shall record a finding with the reasons to that effect. It further lays down that the amendments to be recorded after the change has been found shall be subject to appeal before the competent authority provided by the Act. Finally, it states that 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.

20. It is in this light that Section 80 of the Bombay Public Trusts Act come into play which imposes a bar on the jurisdiction of a Civil Court. If it is seen that by or under (the Act the particular question) has to be decided or dealt with by an officer or authority under the said Act and, further, if the said decision of such officer or authority has been made final and conclusive by the said Act, then certainly there is a bar to the jurisdiction of the Civil Court.

21. For deciding whether Section 80 is attracted in a given case, one must consider what in substance and not merely in form, is the nature of the claim made in the suit and the real relief sought therein. If, in order to afford that relief, it is necessary for the Court to decide or deal with a question, which by or under the Bombay Public Trusts Act is to be decided or dealt with by an officer or authority appointed under the Act, then the Civil Court's jurisdiction in that respect will be ousted.

22. In the instant case, the plaintiff s are claiming that the defendants were earlier the President and Vice-President of the plaintiff society, that the plaintiff

society is a registered public trust; and that the change reports have been preferred both by the plaintiffs as well as by the defendants and the same are pending for final decision before the Deputy Charity Commissioner, Nagpur Division, Nagpur. The plaintiffs further are claiming a declaration that they should be declared by the Civil Court to be the duly elected president and Secretary of the said society, whereas the change reports before the Charity Commissioner are still pending for decision. It is in view of this declaration sought by the plaintiffs that they are also claiming consequential relief of permanent injunction against the defendants restraining them from interfering with the administration of the said public trust.

23. The suit in substance claims a relief of declaration that the plaintiffs 2 and 3 are the duly elected President and Secretary of the said society. They indirectly claim a declaration that the defendants are no longer the President, Secretary or officer-bearers of the said Trust, and it is in these circumstances that they are seeking permanent injunction against the defendants. In my opinion, therefore, the question which are to be determined by the Civil Court are those which are to be determined by the Charity Commissioner, before whom the change reports are pending for inquiry and decision. It is equally true that u/s 22 (3) of the Bombay Public Trusts Act the decisions given by the Charity Commissioner in that regard are made final and conclusive under the Act, and in that view of the matter, the bar to the jurisdiction of the Civil Court, as imposed by Section 80 of the Bombay Public Trusts Act, will become operative. Even otherwise, Section 50 of the Bombay Public Trusts Act enjoins a duty upon the plaintiffs to seek consent of the Charity Commissioner for preferring the suit where the claim involves decree question of relief in favour or against a trust in the matter of declaration and injunction. In the absence of such consent on behalf of the Charity Commissioner, the Civil Court in the instant case could not entertain the said suit.

24. After giving careful thought to various provisions of the Bombay Public Trusts Act, 1950, as well as to the Full Bench decision quoted Supra I am of the opinion that the instant case is not tenable before the Civil Court, and the same will have to be dismissed for want of jurisdiction.

25. In the result, therefore, the Civil Revision Application No. 838 of 1982, succeeds and is allowed. The impugned order of the Trial Court is quashed and set aside, and the Civil Suit preferred by the non-applicants is dismissed. In the circumstances of the case there shall be no order as to costs.

26. Revision allowed.