

(2015) 08 BOM CK 0272
In the Bombay High Court
Case No : Second Appeal No. 375 of 2015

Laxman Baburao Avale and Others

APPELLANT

Vs

Surendra and Others

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22, 73

Citation : (2015) 08 BOM CK 0272

Hon'ble Judges : Anand Vasant Nirgude, J.

Bench : Single Bench

Advocate : Patil N.P. Jamalpurkar, Advocate, for the Appellant; S.S. Thombre, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Anand Vasant Nirgude, J.—Despite giving time to file reply to Stay Application, no reply is filed till today. I am, therefore, duty bound to decide the stay application. Learned counsel for the respondent tried to stop me saying that he did not have sufficient notice of today's application. I did not agree with this submission because on last occasion it was me, before whom this application was moved and ad-interim stay was pressed. I allowed the respondents to file reply and I adjourned the case for their reply to come on record. I expected such reply on 11th day of this month. It is still not filed and today by seeking circulation, the application is pressed. Even today, the learned counsel for the respondent Mr. Thorat moved application for adjournment. I reject that application for the reasons mentioned above.

2. Learned counsel for the applicant indicated that the issue in this case is of validity of membership of applicant Laxman and four others, who, according to them, were enrolled in 1966. He said that due to impugned judgment, passed by the learned District Judge, they are now deprived of exercising their right as member. I then asked him as to what rights are required to be exercised. He pointed out that during the course of litigation, at one stage, the authorities held

that they are validly enrolled members. On the strength of this decision, Laxman and four others participated in the election and were elected in the year 2013 as executive members [trustees]. They are now managing the Trust. He further pointed out that if no stay is granted, his clients would be deprived of utilizing their powers as trustees.

3. Substantial questions of law that arises in this Appeal are;

"i] Whether in the facts and circumstances of this case, issue of membership of Laxman and four others [appellants] was relevant?

ii] If it was not relevant, what course ought to have been adopted by the authorities below?"

4. There was Education Society in Latur in 1995 or so. Therefore, usual rules and regulations were prescribed for managing this Society. Since the Society is having charitable objects, it was not registered as Public Trust. There is an executive committee of seven members, who are also the trustees. This litigation started because the change report was filed in 2001. One Vasant Yadav filed this change report for the Society. A new body elected unopposed for a period of five years from 16.09.2001 and their tenure would come to an end in September, 2006. One Shivappa filed this change report, but he died in the year 2007. Vasant Yadav took over charge as one of the trustees. During the pendency of this change report, intervenor Shri Agrawal asserted that appellants Laxman and four others were not validly enrolled members. Some other members also joined them and they sought declaration under Section 73 of the Bombay Public Trust Act that Laxman and others are not valid members of the society.

5. The main two issues arose for consideration that whether the Deputy Charity Commissioner held that the change was valid; and whether Laxman and other four persons are validly enrolled members. Learned Deputy Charity Commissioner recorded finding that the change was valid. On going through this, it is found that all the parties to the litigation in clear terms admitted that the change was proper. The election was held unopposed and new Committee should be permitted to manage the trust. The main bone of contention between the parties however was, whether Laxman and others are validly enrolled members. On this question, the learned Deputy Charity Commissioner held on facts that they are validly enrolled members. Thereafter, several appeals and revisions were filed before the Joint Commissioner where question of jurisdiction was raised. It was argued before him that validity of membership was not relevant at the time of deciding Change Report under Section 22 of the Bombay Public Trust Act. The Joint Charity Commissioner on facts held that the reported change was not valid because there was delay in reporting the change and no application seeking condonation of delay was moved. On such technical reasons, the change report was rejected. As regards the validity of members of Laxman and four others, he said that the issue is not relevant if the reported change is not in dispute.

6. The matter then went before the learned District Judge. The learned District Judge held that the change is valid because it went unopposed. The learned District Judge also discussed the Law as to when Assistant/Deputy Charity Commissioner should make inquiry under Section 22 of the Act and decide the issue of validity of membership. He rightly held that the issue of validity of membership at-least in this case was not relevant for the purpose of deciding the change report. However, he further discussed the facts of the case, and on facts, he held that Laxman and four others were not validly enrolled members. So, on one hand he allowed the change report, but on the other hand, he held that Laxman and others are not validity enrolled members of the Society.

7. The moot question in this case was, whether the question of validity of membership of appellants Laxman and four others was relevant? In other words, in what circumstances the authority deciding the change report had jurisdiction to go into the question of validity of membership. The authorities below rightly observed in their Judgment that when a change report is contested on the ground that the election was vitiated due to voting made by the persons who are not validly enrolled. At such occasion, the authorities would get jurisdiction to decide legality of membership. But, when the change is not in contest, the issue of validity of membership feeds into insignificance. In other words, when the election is not challenged on the ground that invalid members are participated in it, the question of validity of membership would not arise and it is not a relevant factor to be decided. In this case, therefore, the authorities below unnecessarily went into the question regarding evidence etc. as to whether Laxman and others are members or not. The learned District Judge, whose judgment is impugned here, held that the issue of membership is irrelevant and outside his jurisdiction, yet he could not resist temptation of deciding the same on merits. This, according to me, was unnecessary exercise of powers. The learned District Judge ought to have held that since the change has gone unopposed, the same should have been allowed, and the question of validity of membership would be kept back until such issue becomes relevant. To that extent, I need to set right the judgments of the authorities below where findings on question of authority of membership is recorded. I held that in the facts of this case, issue of membership was irrelevant, and therefore, all the findings recorded by the authorities below deserves to be set aside. The findings on this issue are held non est. However, I must make it clear that when Laxman and four others would try to participate in the election either for voting or for contesting the election, the issue of validity of their membership can be raised and at such event, the Assistant Charity Commissioner/Joint Charity Commissioner should hold inquiry under Section 22 of the Bombay Public Trust Act and would have jurisdiction to decide the issue.

"1. The Appeal therefore is allowed partly.

2. The finding recorded on the validity of membership of appellants Laxman and others is set aside.

3. Rest of the impugned Judgment is kept as it is."

In view of disposal of the Second Appeal, Civil Application No. 9049 of 2015 stands disposed of.