
(2004) 07 BOM CK 0155
In the Bombay High Court
Case No : First Appeal No. 1038 of 2002

Marutirao Vishwanath Bagal and Others	APPELLANT
Vs	
Dinkar Kashinath More and Others	RESPONDENT

Date of Decision : 26-07-2004

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 17, 22, 22(3), 70, 72
Bombay Public Trusts Rules, 1951 — Rule 7
Civil Procedure Code, 1908 (CPC) — Section 100
Penal Code, 1860 (IPC) — Section 193, 219, 228

Citation : AIR 2005 Bom 52 : (2005) 1 ALLMR 266 : (2005) 1 BomCR 779 : (2004) 4 MhLj 982

Hon'ble Judges : Abhay S. Oka, J

Bench : Single Bench

Advocate : Vineet B. Naik and I.M. Khairdi, for the Appellant; G.S. Godbole, for Respondents Nos. 1, 2, 4 to 9 and K.K. Tated, A.G.P. for Respondent No. 10, for the Respondent

Judgement

Abhay S. Oka, J.—This Court issued notice before admission on 31st July 2004. Notice is served on all the parties. On 13th July 2004, this Appeal was heard and the Counsel appearing for the parties agreed that the Appeal should be decided finally at the admission stage. Accordingly this Appeal was finally heard on 13th July 2004 and 19th July 2004.

2. This Appeal arises from an order passed u/s 22 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as "the said Act of 1950") by the learned Assistant Charity Commissioner, Solapur. The Judgment and Order dated 25th September 2000 passed by the learned Assistant Charity Commissioner was confirmed in an appeal u/s 70 of the said Act of 1950 by the learned Joint Charity Commissioner, Pune. Thereafter an application u/s 72(1) of the said Act of 1950 was filed in the District Court. The said application has been rejected. Being aggrieved by the aforesaid Judgments and Orders, this Appeal has been preferred u/s 72(4) of the said Act of 1950. This Court has held in a Judgment

reported in 1998 (1) M.L.J 444, Shivprasad Pradeshi v. Leelabai Kalwar, that though the Appeal preferred in this Court against the order u/s 72(2) of the said Act of 1950 passed by the District court is numbered as First Appeal, for all purposes it is a Second Appeal and therefore, the same will be governed by the intimations imposed by Section 100 of the Code of civil Procedure, 1908 (hereinafter referred as "the Code"). In view of this legal position, this Appeal can be heard and decided only if a substantial question of law arises. After having heard the Counsel appearing for the parties, in my view the following substantial questions of law clearly arise:

(i) Whether the learned Assistant Charity Commissioner committed an error by deciding Change Report Proceedings u/s 22 of the said Act of 1950 without issuing a notice to the outgoing Trustees who were likely to be affected by the order passed in the Change Report Proceedings?

(ii) Whether the Application u/s 72(1) of the said Act of 1950 could not have been entertained on merits as the issues involved in the said Application were merely academic?

When this Appeal was taken up for hearing on 13th July 2004, the learned Counsel appearing for the parties were made aware about the aforesaid substantial questions of law and the Counsel have made submissions on the basis of the same.

3. Sahayog Shikshana Prasarak Mandal, Barloni, Taluka Madha, District Sholapur, is a public Trust duly registered under the said Act of 1950. The controversy is about the election of the Managing Committee which was held in the General Body meeting of the Trust allegedly held on 22nd April 1996. It is the case of the Respondents Nos. 1 to 9 that by Resolution No. 3 passed in the said meeting dated 22nd April 1996, the Respondents Nos. 1 to 9 were appointed as the members of the Managing Committee for a period of five years and the Respondents Nos. 1 to 9 substituted the earlier 10 Trustees. The Appellants are the members of the earlier Managing Committee which was allegedly removed on 22nd April 1996. The Change report u/s 22 of the said Act 1950 was filed by the Respondent No. 1 on 17th July 2000. He produced a copy of the proceedings of the meeting of the General Body allegedly held on 22nd April 1996, consent letters of incoming Trustees and his own affidavit in support of the Change Report. As the Change Report was filed beyond the stipulated period of 90 days, the Respondent No. 1 filed an application for condonation of delay. By order dated 25th September 2000, the Change Report was accepted. the learned Assistant charity Commissioner recorded that no objection has been received from any outgoing Trustee. It is pertinent to note that the Change Report was filed on 17th July 2000 i.e. after lapse of four years from the date on which the alleged change occurred. An Appeal was preferred u/s 70 of the Appellants herein against the Judgment and Order of the learned Assistant Charity Commissioner. The said Appeal was dismissed by the Judgment and Order dated 25th January 2001 by the learned Joint Charity Commissioner. The Appellants

moved an application u/s 72 of the said Act of 1950 to the District Court and the same has been dismissed by the Judgment and Order dated 1st February 2004.

4. The main contentions of the Appellants appears to be that no meeting was held on 22nd April 1996 and some of the signatures appearing on the copy of the alleged Resolution produced alongwith the Change Report are forged. The case of the Appellants is that they were not heard by the learned Assistant Charity Commissioner by issuing notice of the Change Report proceedings. The learned Adhoc Additional District Judge while dismissing the application u/s 72 held that the Appellants did not file any Criminal Complaint on the ground of forgery and no Civil Suit was filed by the Appellants. He held that there was a silence on the part of the Appellants from the year 1996. The learned Adhoc Additional District Judge relied upon the Judgment of this Court reported in 1980 M.L.J. 372, Jagat Nayansing Swarupsingh Chithere v. Swarupsingh Education Society and Anr. The learned Judge held that the term of the body elected on 22nd April 1996 was due to come to an end and therefore, in view of the subsequent events, the issue involved in the application had become academic.

5. The learned Counsel appearing for the Appellants submitted that the order passed by the learned Assistant Charity Commissioner is in contravention of the principles of natural justice. He submitted that the enquiry contemplated by Section 22 of the said Act of 1950 is a judicial inquiry. As the appellants were outgoing Trustees/members of the Managing Committee, the proceedings could not have been decided without issuing notice to the Appellants. The learned Counsel for the Appellants tendered a compilation of documents. A contention has been raised by him that no meeting was held on 22nd April 1996 and a fraud was played by Respondent No. 1 by filing a Change Report. The learned Counsel for the Appellants relied upon a statement of Respondent No. 1 dated 3rd March 1997 which shows that even on 3rd March 1997, the Respondent No. 1 has stated that the term of the Board of Trustees/Managing Committee had expired in July 1996 and there is no reference to any meeting held on 22nd April 1996. He placed reliance on letter dated 22nd July 1997 sent by the Inspector attached to the office of the Assistant Charity Commissioner, Solapur, addressed to the Appellant No. 1 who was then Chairman stating therein that the term of the Managing Committee has expired and election should be held immediately and Change Report should be submitted. He submitted that even during the pendency of the Change Report proceedings, the Committee which was elected in 1991 of which the Appellants were members continued to function. He submitted that on the basis of the Change Report filed in 2000 the so-called newly elected members of the Managing Committee will now claim that the decisions taken by the earlier Managing Committee of which the Appellants were members were not valid. He therefore submitted that as even after 1996 old Managing Committee continued to function and as a result of acceptance of Change Report, the Managing Committee allegedly elected on 22nd April 1996 will claim that the said Committee is existing from that date. He , therefore, submitted that the dispute has not become academic. He submitted that in any event if the Assistant

Charity Commissioner has acted in contravention and in breach of principles of natural justice, the said order cannot be confirmed only on the ground that the dispute has become academic.

6. The learned Counsel appearing for Respondents Nos. 1, 2 & 4 to 9 relied upon the affidavit of Respondent No. 1. The learned Counsel pointed out that there is a concurrent finding recorded by the three authorities that the election of the new Managing Committee is legal and valid. He submitted that the issue involved has become academic as even the term of the Managing Committee which was of 5 years has expired long back and subsequently fresh election has been held. He also submitted that in view of the law laid down by this Court in the case of Jagat Narayan Singh (supra) the Appeal should not be entertained as the dispute involved has become academic.

7. I have considered the rival submissions. There is nothing on record to show that the notice of the Change Report proceedings was issued to the Appellants or to any of the members of the alleged outgoing Managing Committee. The case of the Appellants is that the signatures of the Appellants on the documents produced along with the Change Report are forged and in fact the meeting dated 22nd April 1996 was never held. The allegation of the Appellants is that a false affidavit was filed in support of the Change Report. As the case made out by the Appellants was of the fraud and forgery committed by Respondent No. 1, it cannot be said that the issue involved in this Appeal is merely academic. It is to be noted that as per Section 74 of the said Act of 1950 all enquiries under the said Act of 1950 are deemed to be judicial proceedings within the meaning of Section 193, 219 and 228 of the Indian Penal Code. After due inquiry is held by the Assistant Charity Commissioner, if the Appellants succeed in establishing their contention regarding the forgery and fraud, there will be further consequences and action can be taken against the Respondent No. 1 under the relevant sections of the Indian Penal code. Therefore, merely because the term of the managing Committee allegedly elected on 22nd April 1996 has expired, it cannot be said that the issue involved in this Appeal has become academic.

8. In the case of Jagat Narayan Singh, the learned single Judge held that the inquiry contemplated by Section 22 is a judicial inquiry. The same view is taken by another learned Single Judge of this Court in a Judgment reported in 1997(2) All M.R 456, Prabhakar s/o. Vithobaji Meshram and Ors. v. Dr. Jamnadas s/o. Patruji Khobragade and Ors. The learned Single Judge in the said case has held that the proceedings u/s 22 requires a judicial decision before ordering that the change be recorded. In the case before the learned Single Judge, a Change Report was filed and the Change Report was based on proceedings of the Governing Body of a Trust. The learned Single Judge held that when the proceedings book which was produced before the learned Assistant Charity Commissioner showed that some members had objected to the holding of the meeting, the Assistant Charity Commissioner ought to have issued notice to the members objecting to the meeting. In this behalf it is necessary to refer to the

relevant provisions of the said Act of 1950. The Section 22 provides that where any change occurs in any of the entries recorded in the Register maintained u/s 17, the Trustees shall within 90 days from the date of occurrence of such change, report the change to the Deputy or Assistant Charity Commissioner. Along with the report, the Trustees are required to file a memorandum in a prescribed form. Sub-section (3) of Section 22 contemplates that the Deputy or Assistant charity Commissioner after receipt of the report are required to hold an inquiry and after holding such enquiry, if he satisfied is that the change has occurred, a finding with reasons is required to be recorded to that effect. An appeal is provided against the decision given u/s 22 to the Charity Commissioner. Section 73 provides that the officers holding inquiry under the said Act of 1950 shall have the same powers as are vested in the Courts in respect of the following matters under the Code of Civil Procedure, 1908, in trying a suit; (i) proof of facts by affidavits, (ii) summoning and enforcing the attendance of any person and examining him on oath, (iii) ordering discovery and inspection, and compelling the production of documents and (iv) issuing of commissions.

As stated earlier, Section 74 provides that an inquiry under the said Act of 1950 shall be a judicial proceedings. Rule 7 of the Bombay Public Trust Rules, 1951 (hereinafter referred to as "the said Rules of 1951") provides that the enquiries u/s 22 shall be held as far as possible in accordance with the procedure prescribed for the trial of suits under the Presidency Small Cause Court Act, 1887. Rule 7-A provides that if inquiry u/s 22 is as to whether a public trust exists or whether any property belongs to a Trust, the Deputy or Assistant Charity Commissioner is required to give public notice of such inquiry calling upon all persons concerned to submit their objections, if any. Rule 9 provides for mode of service of summons or notice on any person in the inquiry under the said Act of 1950.

9. Section 22 does not lay down that the inquiry which is contemplated must be made in every case only after issuing notice to the affected parties. The inquiry contemplated u/s 22 is as regards the change which has occurred in the entries recorded in the Register maintained u/s 17. The format of the register to be maintained is provided in Schedule I to the said Rules 1951. The said format of the register shows that many particulars such as names of the Trustees and Managers of the Trust, mode of succession, object of the trust, immovable property of the trust are required to be incorporated. It is obvious that it is not in case of every change that the notice is required to be issued by the Assistant charity Commissioner before passing an order on the Change Report.

10. When the change report is as regards election of new Trustees held in a meeting, it is not necessary in every case that the notice must be served of the change report on the outgoing trustees. In a given case the change report may be accompanied with consent letters of the outgoing trustees and/or their affidavits recording their non objection for the change. In such a case if the learned Assistant Charity Commissioner after examining the consent letters and other material produced alongwith the Change Report is satisfied that the

documents are genuine and change is legal, after recording reasons for his decision he can allow the Change Report without issuing notice to the outgoing Trustees. In such cases the Assistant/Deputy Charity Commissioner is expected to record brief reasons for not issuing notice. However, in a case in which consent letters of outgoing trustees are not produced or there is a doubt regarding genuineness of any such consent letters which are produced or after examining the Change Report and its accompaniments, the learned Charity Commissioner comes to the conclusion that an elaborate inquiry is required, notice to the affected parties will have to be issued before final decision is taken. In the present case no objection letters/affidavits of the members of the outgoing Managing Committee were not produced along with the Change Report. When the Change Report purports to state that the earlier Managing Committee has been removed and new Managing Committee has been elected and when consent letters of the members of the outgoing Managing Committee were not on record, the Assistant Charity Commissioner ought to have issued notice to the members of the outgoing Managing Committee.

11. When the learned Assistant Charity Commissioner applies his mind to a Change Report there is one more factor which ought to be considered by him. The section provides for time limit of 90 days for submitting the Change Report. In the present case the order of the Assistant Charity Commissioner records that there was delay in filing the Change report. In the present case the delay was of about four years. When there is a long delay in submitting the Change Report, the learned Assistant Charity Commissioner ought to have issued notice to the affected persons before condoning the delay. The case made out in the Change Report was that the change had taken place on 22nd April 1996 and the Change Report was filed four years after the alleged change. There were no affidavits filed on record of the members of the outgoing Managing Committee recording their no objection to the change. There was nothing on record to show that the affected parties had consented for condonation of delay. When the Change Report was filed belatedly, in the absence of the affidavits or no objection in writing of the affected persons, the delay could not have been condoned.

12. The learned Assistant Charity Commissioner has referred to the application for condonation of delay. However, he has not recorded any reason why delay of about four years is condoned. The Assistant Charity Commissioner has recorded that none of the outgoing Trustees have submitted any objection on record since the year 1996. There was no occasion for any outgoing trustee to file any objection on record any time prior to July 2000 as the Change Report itself was filed in July 2000. In view of the discussion made in the earlier paragraphs, when consent in writing in any form of the outgoing members of the Managing Committee was not on record and when there was a gross delay in filing the Change report, the learned Assistant Charity Commissioner ought to have issued notice to the members of the outgoing Managing Committee.

13. The learned Adhoc Additional District Judge has held that the Assistant

Charity Commissioner exercised discretion by condoning delay. However, such discretion could have been exercised only after hearing the Appellants. Only on this ground, the Appeal deserves to be allowed. As stated earlier, the Adhoc Additional District Judge has recorded that no criminal case has been filed by the Appellants from the year 1996. If according to the Appellants fraud was committed in 2000 when fabricated documents were filed along with the Change Report, there was no occasion for the Appellants to file any criminal complaint any time prior to the filing of the Change Report.

14. In many matters it is noticed that the Change Report proceedings are decided without issuing any notice to the affected parties when facts of the case warrant that such notice should be issued. In many cases notice is ordered to be issued when there is no dispute as regards the Change. Therefore, it is necessary that the Respondent No. 10-Charity Commissioner should bring to the notice of the Assistant Charity Commissioners and the Deputy Charity Commissioners in the State the law laid down by this Court. The Charity Commissioner must also ensure that Change Report proceedings are given priority by the Assistant/Deputy Charity Commissioners and expeditious disposal of such proceedings is ensured.

14. Hence the following order:

(i) The Appeal is partly allowed. The impugned Judgments and Orders are quashed and set aside.

(ii) The Change Report proceedings bearing No. 2223 of 2000 is remanded to the Assistant Charity Commissioner at Solapur. The Appellants and Respondents Nos. 1 to 9 are directed to appear before the learned Assistant Charity Commissioner, Solapur on 23rd August 2004. The Assistant Charity Commissioner will issue notice to the other members, if any, of the Managing Committee which was allegedly removed on 22nd April 1996.

(iii) The Assistant Charity Commissioner will allow the Appellants to file reply to the Application for condonation of delay. If delay is condoned, the Assistant Charity Commissioner shall allow the Appellants to file a reply to the Change Report and will thereafter allow the parties to lead evidence, if any. The learned Assistant charity Commissioner will decide the Change Report proceedings as expeditiously as possible and preferably before 30th April 2005.

(iv) All contentions on merits of the Change Report are kept open.

(v) Parties and the authorities to act on ordinary copy of the order authenticated by the Court Sherestadar/Personal Secretary.