
(2013) 10 BOM CK 0234

In the Bombay High Court

Case No : Appeal From Order (ST) No. 24312 of 2013 and Civil Application (ST) No. 24736 of 2013

Mr. Tasadduq Husain Qureshi and Another APPELLANT
Vs

Mr. Asif Abdul Bashar Qureshi and Others RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2014) 1 ALLMR 38 : (2014) 2 MhLj 132

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Sandeep Sharma, for the Appellant; Amardev J. Uniyal and Sweedal S. Karkada for Respondent Nos. 1 and 3, for the Respondent

Judgement

Anoop V. Mohta, J.—The present Appeal from Order filed by the original Plaintiffs as the learned Judge, of City Civil Court, Mumbai by order dated 21 August 2013 on the ground of jurisdiction, returned the plaint under Order VII Rule 10 of the CPC (CPC) by holding that the Court has no jurisdiction to entertain the suit in view of specific provisions u/s 80 read with Section 50 of the Bombay Public Trust Act, 1950 (BPT Act). The Plaintiffs-Appellants, persons interested, have filed the Suits for various reliefs stating it to be against the members/elected trustees of Respondent No. 3-Trust. There is no averment in the plaint that they are holding any post and/or they are the office bearer of the Trust on the date of filing of the suit.

2. The learned Judge has considered the averments as made in the plaint and after analyzing it, discussed in paras 9 and 10 as under:

9. Plaintiffs in their suit came with the statements that subject matter of the suit lies within the domain of the charity commissioner but they have come before the court as the charity commissioner is not taking any action. In prayer clause (a) of the plaint itself plaintiffs seek declaration that the activities of defendant No. 1 in connivance with his associates which he is carrying out because of the inaction on the part of the charity commissioner be declared illegal. In para 9 of

the plaintiff made a statement that the charity commissioner is not at all interested though the charity commissioner is the authority to remove illegality or defects but the charity commissioner is reluctant to look into the affairs of the trust. It is further mentioned that defendant No. 1 is acting contrary to the constitution of the trust and charity commissioner is not interested in solving the problems of the trusts, Plaintiffs further mentioned that as they did not get relief from the charity commissioner hence they are forced to approach civil court to protect the interest of the trust and its members. This, whole statement in the plaint, thus, reveals that plaintiffs themselves are aware that it is a charity commissioner who is the authority to give directions in respect of the activities of the trust and make orders regarding protection of the property of the trust. These statements also show that as per plaintiffs suit is for regulating activities of the trust and for protection of properties of the trust.

10. Section 41A of the Act defines Power of Commissioner to issue directions regarding proper administration of the trust. As per this provision the charity commissioner may from time to time issue directions to any trustee of a public trust or any person connected therewith, to ensure that the trust is properly administered. The charity commissioner may also give directions to the trustees or such person, if he finds that any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of. The suit of plaintiffs is to prohibit the so-called illegal activities of defendant No. 1 which are detrimental to the proper administration of the trust. Plaintiffs are seeking reliefs to restrain defendant No. 1 from putting in danger the property of the trust or damaging the property of the trust details of which are mentioned by him in the foregoing paragraphs. The reliefs claimed by plaintiffs in different notices of motion are also to seek directions regarding restraint of defendant No. 1 from holding meetings or interfering in the meeting are the reliefs in respect of administration of the trust. The suit is, thus, squarely in respect of power of charity commissioner u/s 41A of the act. Once this conclusion is drawn then the suit becomes a suit in respect of question which is by or under the Act is to be decided or dealt with by the charity commissioner u/s 41A of the Act. Thus, bar u/s 80 of the Act is attracted.

3. The order therefore, in my view, in view of above position based upon the averments made in the plaint just cannot be stated to be perverse, bad and/or contradictory to record. The judgment cited by the learned counsel appearing for the Appellants in support of his submission that their grievance is against Defendant No. 2-Society revolving around the proper administration of the Trust. Various allegations/averments are made against them and therefore the Civil Court has jurisdiction to entertain the present Suit. The judgment so cited by the learned counsel appearing for the Appellants in case of *Namgonda Jingonda Patil Vs. Appasaheb Bapurao Walwekar and Others*, , where a declaration was sought against other members by the members of the Society/Trust. No reliefs sought against the Trust. In the present case the relief is definitely revolving around and for the administration of the Trust and the trustees and the Trust.

4. In case of Mahomed Hassan Samru Vs. Peer Hazarath Diwanshah Dargah Trust and Others, a declaration was sought that the sale deed executed is void and bad in law and therefore there was no question of granting agricultural permission revolving around the same. The Charity Commissioner and/or such Authority even otherwise cannot grant such declaration. Suit therefore so filed stated to be maintainable. No permission, as contemplated under the provisions of BPT Act, is required. The judgment in case of Kedar Shivkumar Kale Vs. Digamber Shridhar Mhapsekar and Others, is also of no assistance for simple reason, that was case filed by one of the members for removable resolution passed against him, including a no confidence motion. Therefore the civil rights of the individual member were in question. In the present case as noted for want of specific relief there are no such rights and/or averments are made to invoke the Civil Court's jurisdiction, at least without leave as contemplated u/s 50 of BPT Act.

5. The Supreme Court in case of Church of North India Vs. Lavajibhai Ratanjibhai and Others, , specifically dealt with the scheme of BPT Act including Section 79 and 80. In the present case also ultimately, the whole averments are revolving around for a proper administration of the Trust. The persons interested are entitled to agitate the same but before appropriate forum. Considering Section 41 read with Section 50 and the averments so made including the prayers, I am of the view that the case fall within the ambit of scheme of BPT Act. The Civil Court's jurisdiction rightly stated to be barred.

6. The other judgment cited by the learned counsel appearing for the Respondents in case of Mr. Maulana Mohamed Yusuf Ismail v. Madarsa Veajulu Uloom Kuran & Ors., 2001 (4) ALL MR 211 deals with a similar case of administration and management of the Trust. There this Court held that such Suit is barred in view of specific provisions of the Act, so also in Prof H.C. Patel and Others Vs. Kaushik Desai and Another, . The learned counsel appearing for Appellant strongly relied upon a judgment, Mumbai Cricket Association v. Mr. Ratnakar Shivram Shetty & Ors. (AOST No. 25497 of 2013) dated 20/21 September 2013, wherein this Court granted interim relief as the issue was about the civil right of a member who was debarred for five years and therefore a suit was filed to challenge the resolution passed by the Managing Committee of the Club. There was no question about the Trust and/or permission and/or jurisdictional issue. I am inclined to observe that all these judgments in no way support the case of the appellants to interfere with the reasoned order passed by the Court below. Resultantly, appeal from order as well as Civil Application are disposed of. No costs. Interim order so granted also stand vacated.