
(2015) 02 BOM CK 0170

In the Bombay High Court

Case No : Writ Petition No. 6302 of 2014

Nilkanth Vitthalrao Kodhe

APPELLANT

Vs

The Civil Judge and Others

RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 50A, 50A(3), 72(1)

Citation : (2016) 1 ALLMR 699

Hon'ble Judges : R.K. Deshpande, J.

Bench : Single Bench

Advocate : Akshay Naik, for the Appellant

Final Decision : Allowed

Judgement

R.K. Deshpande, J.—Rule, made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.

2. In Civil Suit No. 4/1969, a Scheme was framed for management and administration of "Shree Ganpati Mandir, Adasa", a Public Trust bearing PTR No. A/219(Nag). As per Clause-7 of the said Scheme, the number of trustees shall not be less than seven and not more than nine. At least two trustees have to be salaried officers of the Government, who shall be the Civil Judge, Junior Division, Saoner, and the Tahsildar, Saoner, to be the ex officio trustees. Clause-9 of the said Scheme provides for tenure of three years for such trustees, excluding the salaried officers of the Government. Power to appoint new trustees is conferred upon the District Judge, who has to act on the basis of the recommendations of the Civil Judge, Junior Division, Saoner, and the Tahsildar, Saoner.

3. Application No. 1839/2010 under Section 50A(3) of the Bombay Public Trusts Act, 1950 for framing a fresh Scheme was submitted before the Deputy Charity Commissioner, Nagpur, on 16.10.2010, and the same was partly allowed by the Deputy Charity Commissioner by his order dated 08.05.2013. This order was the subject-matter of challenge in Regular Civil Application No. 7/2013 before the

learned District Judge-7, Nagpur, who allowed the said appeal by his judgment and order dated 28.10.2013 and set aside the order framing a fresh Scheme. As a result of this judgment and order, the earlier Scheme, which was framed in Civil Suit No. 4/1960 on 30.04.1971, continued to operate. This was the subject-matter of challenge in Second Appeal No. 467/2013 before this Court. During the pendency of the second appeal, the learned Principal District Judge, Nagpur, passed an order on 31.10.2013 appointing nine trustees for the period of three years from 01.11.2013 to 01.10.2016. Out of these nine trustees, seven trustees were appointed on the basis of the recommendations received from the Civil Judge, Junior Division, Saoner, and the Tahsildar, Saoner, in terms of Clause-9 of the said Scheme.

4. This Court decided Second Appeal No. 467/2013 on 23.07.2014, and the operative part of the judgment is reproduced below:

"(a) Second Appeal No. 467 of 2013 is allowed.

(b) The Judgment and order dated 28th October, 2013 passed by the District Judge-7, Nagpur, in Regular Civil Application No. 7 of 2013, except for the following modification, is maintained:-

Modification:-

Replace the words Civil Judge (Junior Division), Saoner by the words Civil Judge (Junior Division), Kalmeshwar, so also the words Tahsildar, Saoner by the words Tahsildar Kalmeshwar in clauses 7, 9 and 17 of the scheme framed in Civil Suit No. 4 of 1969, decided on 30th April, 1971.

(c) Since the District Judge, Nagpur, is the authority to constitute a new Board of Trustees, District Judge is expected to constitute the new Board in accordance with law and as per the modification made in (b) above."

5. In terms of the aforesaid decision of this Court, the learned Principal District Judge, Nagpur, proceeded to constitute a new Board of Trustees and passed an order on 04.09.2014 by substituting two Government salaried officers. In place of Civil Judge, Junior Division, Saoner, the name of Civil Judge, Junior Division, Kalmeshwar, and in place of Tahsildar, Saoner, the name of Tahsildar, Kalmeshwar, were substituted. Rest of the body appointed on 31.10.2013 has been continued. Thus, the order dated 31.10.2013 was modified by the learned Principal District Judge, Nagpur, on 04.09.2014, which is the subject-matter of challenge in this petition.

6. Shri Khapre, the learned counsel appearing for the respondents, has raised a preliminary objection that the order impugned has been passed in exercise of the administrative power conferred by Clause-9 of the Scheme framed in Civil Suit No. 4/1969 and hence the jurisdiction to deal with this petition lies with the Division Bench. He submits that it is not an order passed under Section 50A of the Bombay Public Trusts Act, and hence the matter cannot be dealt with by the Single Judge in view of the provision of Rule 17 of Chapter XVIII of the Bombay

High Court Appellate Side Rules, 1960. Shri Akshay Naik, the learned counsel appearing for the petitioner submits that the order impugned is outcome of the exercise of jurisdiction by the learned District Judge arising out of the proceedings under Section 50A of the Bombay Public Trusts Act.

7. On merits of the matter, the contention of Shri Akshay Naik, for the petitioner is that the learned District Judge has misinterpreted the judgment delivered by this Court in Second Appeal No. 467/2003. He submits that in Clause (c) of the operative part of the order reproduced above, this Court has directed the learned District Judge to constitute a new Board of Trustees in accordance with law and as per the modification made in Clause (b) of the said order. He has invited my attention to Clause-9 of Scheme and has urged that the seven members trustees are required to be appointed on the basis of the recommendation of the Civil Judge, Junior Division, Kalmeshwar and the Tahsildar at Kalmeshwar and mere change in the positions of Government salaried employees is not the compliance of the order passed by this Court in Second Appeal. Shri Khapre, the learned counsel for the respondent Nos.3 and 4 submits that the order passed by the learned District Judge is in accordance with the decision given by this Court in Second Appeal and the change if at all is required to be made in appointing seven trustees out of nine, that has to be done after the expiry of the tenure of the body on 01.10.2016.

8. In Second Appeal No. 467/2013 decided by this Court, the order dated 28.10.2013 passed by the learned District Judge, Nagpur in Regular Civil Application No. 7/2013 has been maintained subject to certain modifications. As a result of the decision in the Second Appeal, the scheme framed in Civil Suit No. 4/1969, continued to operate and in Clause-9 of the Scheme, the recommendations have to be from the Civil Judge, Junior Division, Kalmeshwar and Tahsildar, Kalmeshwar. This is the exact intent which clearly appears from Clause (c) of the operative portion of the order passed in Second Appeal, which is reproduced earlier. Once the order of the learned District Judge passed on 28.10.2013 stands modified in Second Appeal, the learned District Judge was required to reconstitute the trustees in terms of Clause-9 of the said Scheme as was modified in Second Appeal. This exercise has not been carried out in the order impugned. The learned District Judge has misinterpreted the directions given by this Court in Second Appeal, more particularly, while dealing with the matters on merits in Second Appeal, this Court has rejected the finding of the learned District Judge treating it as merely a technical aspect.

9. The order impugned has been passed on 04.09.2014, in exercise of the appellate jurisdiction under Section 72(1) of the Bombay Public Trusts Act in Regular Civil Application No. 7/2013, upon the directions issued by this Court in Second Appeal. The learned District Judge constituted new Board of Trustees initially on 31.10.2013, after he allowed the Regular Civil Application No. 7/2013. Thus, it was the fall out of the order dated 28.10.2013 deciding Regular Civil Application No. 7/2013. Once the order dated 28.10.2013 is modified, the order

impugned becomes an exercise of jurisdiction under Section 72(1) of the said Act. It cannot, therefore, be said that the order impugned is purely of an administrative in nature and hence, the Single Judge has jurisdiction to entertain this writ petition. Objection is therefore, overruled.

10. In view of above, the writ petition is allowed. The order dated 04.09.2014 passed by the learned Principal District Judge, Nagpur is hereby quashed and set aside. The learned Principal District Judge, Nagpur is directed to call the recommendation of the Civil Judge, Junior Division, Kalmeshwar and the Tahsildar, Kalmeshwar have not been already called for and then to proceed to reconstitute the new Board of Trustees for the period from 01.11.2013 to 01.10.2016.