
(1983) 10 BOM CK 0005

In the Bombay High Court

Case No : Civil Revision Application No. 809 of 1983

R.P. Naidu

APPELLANT

Vs

Kashibhotla Venkata Sivudi

RESPONDENT

Date of Decision : 03-10-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1984) 86 BOMLR 57 : (1983) MhLj 1005

Hon'ble Judges : Paunikar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Paunikar, J.—The petitioners, R.P. Naidu and two others have challenged in this revision application, the order dated July 16, 1983 passed by the Joint Judge Nagpur in Misc. C.A. No. 219 of 1983 (K. V. Sivude and others v. R.P. Naidu and others) staying the effect and operation of the order dated May 16, 83 in appeal No. 15 of 1983 (N) passed by the Charity Commissioner Nagpur till the disposal of the application u/s 72(7) of the Bombay Public Trusts Act, 1950 on merits pending before him.

2. The revision-petitioner No. 1 was elected as the president of the trust styled as Andhra Association Nagpur, P.T.R. No. F-449-(N) in the election held on June 27, 83 for the year 1982-83. The managing committee took over charge and was managing the affairs of said association. One Shri Gandhi was the secretary of the managing committee and he had filed an application for recording the change to the Deputy Charity Commissioner and his application was registered as C.R. No. 1308 of 1982. This change report was rejected by the Deputy Charity Commissioner Nagpur on January 31, 83 on the ground that the names of the previous managing committee were not recorded in the Charity Commissioner's office and as such no change has taken place. The said N. Gandhi preferred appeal against the said order, registered as appeal No. 12/1983 before the Joint Charity Commissioner, Bombay. It is stated that Shri N. Gandhi was won over by

the respondents and hence the petitioner No. 1 applied for joining as a party in this appeal. He also filed separate appeal registered as appeal No. 15/1983. This appeal was heard and decided by the Joint Charity Commissioner who allowed it and remanded the case to the Deputy Charity Commissioner for fresh trial and decision vide his order dated May 16, 1983. The order is reproduced below :

1, The appeal No. 15 of 1983 is allowed.

2. The order passed by the learned Deputy Charity Commissioner of rejecting the said change report is set aside and the matter is remanded back for fresh hearing and trial according to law by giving opportunity to both sides to lead such evidence as they deem fit. While making this inquiry attention is drawn of the Deputy Charity Commissioner to the provisions of Section 22(2) and (3) and he is directed to first verify whether the entries made on his record are correct or there had been subsequent changes in that behalf by way of election of General Body electing a managing committee for the year 1981-82. So far as this aspect is concerned, there is a separate change report being change Report No. 279 of 1983. The learned Deputy Charity Commissioner is first directed to decide the said change report and thereafter hold denovo trial so far as change Report No, 1308 of 1982 which is in respect of election for the year 1982-83.

3. So far as the stay order is concerned I pass no order as the matter is subjudice in High Court in writ petition.

4. Similarly, so far as the first order in Change Report in paras 2 and 3 are concerned, I pass no orders for reasons already mentioned except mentioning submissions made by Shri Pradhan in this behalf.

5. No order as to costs.

3. It is seen that the learned Deputy Charity Commissioner while rejecting the change report directed that the managing; committee which was on record of the Deputy Charity Commissioner should conduct fresh election as per constitution. It was further directed that those persons who are actually in charge and had filed a change report which was rejected, should hand over the entire charge of the property and accounts to the managing committee which previously stood on the record of the Deputy Charity Commissioner.

4. It appears that elections were held for 80-81 and Shri K. V. Sivudi and his other colleagues were elected and the said change report was brought on record on October 27, 1980- vide Change Report No. 849/80. It further appears that in 1981, there was election for 81-82 and charge was handed over by Shri Sivudi to the new body that was elected on July 13, 1981 but no change report has been filed for 81-82. It further appears that fresh elections were held on, June 27, 1982 for 82-83 and change report was filed vide C.R. No. 1308 of 1982 on December 10, 1983. After the disposal of this change report, change report No. 279 of 1983 appears to have been filed and it is still pending, As observed by the Joint Charity Commissioner in para 14 of his appellate order if this change report

has been first disposed of perhaps the series of litigation that have arisen would not have arisen at all.

5. It appears that taking advantage of the directions of Deputy Charity Commissioner, the respondents tried to take possession of the building of the association from the petitioners. There was police report and proceedings u/s 145 Cr. P.C. However, it is found that the respondent No. 1 Sivudi is in possession of the building of the trust. As regards bank accounts, it is rivalry contended that both parties do have account. These facts are observed from order dated September 20, 1983 in Application No. 9 of 1983 u/s 41.A of the Bombay Public Trusts Act, 1950, a copy whereof was produced before me at the time of hearing. Vide this order, the applicants therein Dr. S.P. Naidu, K. V. Sivudi and P.S.R. I. Prasad are permitted to operate the bank accounts as per para 15 of the order. The present appellant No. 1 is non-applicant No. 2 in these proceedings. This order was passed on the basis that the recorded trustees of the trust are of 80-81 only and the change reports submitted thereafter are matter of inquiry and it is the conclusion in the inquiries that alone can clothe them with any right as trustees and till then things can not be conclusively pronounced in either way. I am told that this order is not challenged by the appellants.

6. It is to be noted herein that in the appellate order reproduced by me in para 2 above it was observed in para 4 that so far as the directions contained in paras 2 and 3 of the operative order passed by the Deputy Charity Commissioner and mentioned by me in para 3 above, they are not at all interfered with.

7. In view of the aforesaid facts and circumstances of this case, it is to be seen whether stay granted by the Joint Judge in the appeal in question is justified. The learned Counsel for the applicants, Shri Manohar contended that the Joint Judge has no jurisdiction to grant stay u/s 72 of the Bombay Public Trusts Act 1950. Stay only in respect of surcharge proceedings can be granted by the Court as contemplated within the meaning of Section 72(3). It is not possible to accept his submissions. Section 72 confers a right upon a person aggrieved by the decision of the Charity Commissioner to apply to the Court. This right is in substance, if not in form in the nature of an appeal as held in Chandrakant Hartnandas v. Charity Commissioner ILR [1965] Guj. 774. There can, therefore, be no doubt that though the word "appeal" is not used by the Legislature and the proceedings u/s 72 are designated as an application, the jurisdiction conferred on the District Court while dealing with such proceeding is appellate jurisdiction as held in Hiragar Dayagar v. Ratanlal Chunilal AIR [1972] Guj. 15. The District Court in an application u/s 72 is given power to confirm, revoke or modify the decision of the Charity Commissioner and there are no limits or fetters upon his powers. The Court is defined in Section 2(4) of the Act as City Civil Court in Greater Bombay and District Court elsewhere. Section 76 of the Act lays down that CPC will apply to proceedings before Court under this Act. It expressly lays down that save in so far as they may be inconsistent with anything contained in this Act, the provisions of C.P.C. 1908 shall apply to all proceedings before the

Court under this Act. Consequently the Court has powers to grant or refuse stay. The provisions contained in 72(3) of the Act are obviously supplemental provisions, not intended to restrict the powers of the Court. In this view I hold that the stay granted by the Joint Judge is perfectly within his jurisdiction and in granting stay discretion has been rightly exercised in view of the facts and circumstances of this case and needs no interference. There is, therefore, no merit in this revision application and hence it is dismissed. However, in view of peculiar facts and circumstances of this case, I direct that the Joint Judge shall dispose of the application expeditiously within two months from the date of the intimation of this order. The parties shall appear before the Joint Judge on October 7, 1983 for getting the case fixed for final hearing. There will be no order as to costs.