

(2015) 09 KAR CK 0152
In the Karnataka High Court
Case No : M.F.A. No. 24362/2012(BPT)

Sadanand

APPELLANT

Vs

Y.V. Doddamani

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22(1), 72(4)

Citation : (2015) 09 KAR CK 0152

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Ravi S. Balikai, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

B. Manohar, J.—Appellant is the 4th respondent in Misc. Petition No. 109/2006. Being aggrieved by the order dated 26th March 2011 passed by the Principal District Judge, Dharwad, partly allowing the Misc. Petition filed by the respondent herein, the appellant has filed this appeal.

2. The respondent herein and other four persons filed Misc. Petition No. 109/2006 seeking for declaration, declaring that Sree Y.V. Doddamani as the Secretary and G.B. Sunagar and one B.R. Patil as the Managing Committee members of Sri. Channabasaveswar Education and Charitable Society (hereinafter referred to as "the Society" for short), Aralikatti Taluk and to set aside all the resolutions passed by the 4th respondent S.B. Baligar in the capacity of Secretary of the Society. Further, they also sought for a direction to convene the General Body Meeting for holding fresh elections to the Managing Committee of Sri. Channabasaveswar Education and Charitable Society and to constitute managing committee.

3. The case of the petitioners in Misc. Petition is that Sri. Channabasaveswar Education and Charitable Society, B. Aralikatti, Taluk Hubli, Dharwad District is a society registered under the Bombay Public Trust Act (hereinafter referred to as

"the BPT Act" for short). Initially, the Society was consisting of 48 members. As per the Bye-law of the Society, the term of Managing Committee is for a period of three years. In view of the dispute between the members of the managing committee, there were fractions among the members and fighting litigations from the year 1982. In pursuance of the direction issued by the Division Bench of this Court in W.P. No. 27463/1992 and also the order made in MFA No. 1322/1989 directing the Charity Commissioner to hold elections to the Management, after approving the list of voters, in the General Body Meeting, elections to the Managing Committee was held on 08-07-1994, and elected the members to the Managing committee of Sri. Channabasaveswar Education and Charitable Society. The newly elected committee of management conducted the first meeting on 09-07-1994 and passed a resolution to submit a change report to the Assistant Charity Commissioner as contemplated under Section 22(1) of the BPT Act, to make necessary entries in PTR Extract. The persons who have lost in the election filed objections to the change report and the same was numbered as Enquiry No. 520/1994. The Assistant Charity Commissioner by his order dated 28-08-1996, after examining the objections and relevant records held that the election to the Managing Committee was not held in accordance with the bye-law of the Society and refused to implement the change report and rejected the said application. Being aggrieved by the order passed by the Assistant Charity Commissioner, an appeal was filed before the Charity Commissioner, Belgaum in Appeal No. 9/1996. The Charity Commissioner, after examining the matter dismissed the appeal upholding the order passed by the Assistant Charity Commissioner by its order dated 10-07-1998. Being aggrieved by the said order, Misc. Petition No. 57/1997 was filed before the Additional District Judge, Dharwad, wherein the said Misc. Petition also came to be dismissed. Being aggrieved by the same, MFA No. 4651/1998 was filed before this Court by the appellant herein. This Court, by its order dated 30th July 1999 disposed of the said appeal with a direction to the Charity Commissioner to consider the voter's list furnished by both the parties, after giving opportunity to both sides to file their objections and pass orders in compliance with the directions issued by the Division Bench of this Court in Civil Petition No. 523/1990 and also the order made in MFA No. 1322/1989 and to hold elections in accordance with law. In the meantime, the respondent herein and other four persons filed Misc. Petition No. 109/2006 before the Principal District Judge with the prayers referred to above.

4. The appellant and other contesting respondents in Misc. Petition filed objections to the said Misc. petition. The learned District Judge, after considering the matter in detail and taking into consideration the earlier litigations between the parties, and earlier directions issued by this Court held that the elections to the Managing Committee of Sri. Channabasaveswar Education and Charitable Society held on 08-07-1994 is already set aside by the Assistant Charity Commissioner and it was confirmed by the Charity Commissioner and the District Court. Hence, the appellant herein cannot function as Secretary of the Society.

Further, from the year 1987-88, no election has been conducted to the committee of management. Sri. Y.V. Doddamani had been declared as a Pro-term Secretary empowering him to convene the General Body Meeting and to hold fresh elections as per the bye-law of the Society, since the power of calling General Body Meeting is given to the Secretary as well as the Chairman of the Society and also hold fresh election to the committee. Till the elections are held, Y.V. Doddamani was directed to work as Pro-term Secretary till the completion of elections by its order dated 25th March 2011.

5. Being aggrieved by the said order, the 4th respondent i.e. the appellant herein filed W.P. No. 62794/2012 before this Court challenging the said order on various grounds. This Court by its order dated 17th September 2012 dismissed the writ petition reserving liberty to the petitioner to avail the statutory remedy available under Section 72(4) of the BPT Act. Being aggrieved by the same, the appellant herein filed W.A. No. 31116/2012 before this Court. The Division Bench of this Court concurring with the view taken by the learned Single Judge declined to interfere with the order passed by the learned Single Judge. The Division Bench noticed that elections held in the year 1994 was for a period of five years and the period of five years got over long back. In view of the pendency of the above proceedings, elections have not been held. Hence, it is open to the appellant either to seek for fresh election or to approach the concerned authority seeking direction to the Trust to hold elections immediately and observed that if the appellant approaches the concerned authority with an application seeking direction as aforementioned, it may be considered expeditiously. After dismissal of the said writ appeal, the appellant once again approached this Court, in this appeal.

6. Sri. Ravi S. Balikai, learned counsel appearing for the appellant contended that the order passed by the District Judge declaring the respondent herein as a Managing Committee member of the Society and appointing him as a Pro-term Secretary empowering him to convene the General Body meeting to hold fresh elections is contrary to law. In view of repealing of the Bombay Public Trust Act, and in view of coming into force of Hindu Religious and Charitable Endowment Act, the respondent cannot be declared as Pro-term Secretary. Sri. Channabasaveshwar Education and Charitable Society had, in all 48 members originally. Their names are mentioned in the order dated 28.11.1990 passed in Misc. No. 51/1990 by the Charity Commissioner, Belgaum. Out of these members, at present only 19 members are alive and others died from time to time. The enrolment of new members was rejected by the Charity Commissioner. The order passed by the District Judge is contrary to law and sought for setting aside the said order by allowing this appeal.

7. On the other hand, Sri. Y.V. Doddamani, the party-in-person defended the order passed by the District Judge and contended that the appeal filed by the appellant is not maintainable. Against the order passed by the District Judge in Misc. Petition 109/2006 the writ petition has been filed, thereafter a writ appeal

has been filed. In the writ appeal, liberty was reserved to the appellant to approach the appropriate authority for holding the elections to the Managing committee of the Society. Hence, it is not open to the appellant to file this appeal. Further, the District Judge, taking into consideration the earlier litigations between the parties and also direction issued by this Court in MFA No. 1322/1989 and also Civil Petition No. 523/1990 disposed of on 19-08-1991, this respondent was replaced in the place of the earlier Secretary D.J. Hireholi. The Assistant Charity Commissioner set aside the election held on 08-07-1994, the said order was confirmed by the Charity Commissioner and the District Judge. Hence, the appellant has no power to claim himself to be the Secretary of the Society. Hence, sought for dismissal of the appeal.

8. I have carefully considered the arguments addressed by the learned counsel for the appellant and also party-in-person and perused the order impugned and other relevant records.

9. Sri. Channabasaveswara Education and Charitable Society is a Society registered under the Bombay Public Trust Act. It was running educational institutions. The trust has got its own bye-law. As per the bye-law, elections to the managing committee has to be held once in three years, and among the managing committee members, the office bearers of the Trust has to be elected for smooth functioning of the administrative activities. There has been a dispute in the administration of the society with regard to enrollment of the members in the year 1982. In view of the dispute between the parties, a large number of cases have been filed either before the Charity Commissioner, District Court as well as this Court. In W.P. No. 27463/1992, the Division Bench of this Court, taking into consideration the order made in MFA No. 1322/1989 and C.P. No. 523/1990 held that only those members who are the members of General Body up to 1980 should be eligible for taking part in the election and directed the Charity Commissioner to hold elections in accordance with law. Pursuant to the said direction, election to the managing committee was held on 08-07-1994 and change report was submitted to the Assistant Charity Commissioner under Section 22(1) of the BPT Act to make necessary entries in the PTR extract. Objections were filed to the said change report. The Assistant Charity Commissioner after examining the matter in detail held that the election was not held in accordance with the bye-law of the Society and dismissed the change report. The said order was confirmed by the Charity Commissioner in Appeal No. 9/1996, which was in turn confirmed in MFA No. 4651/1998 by this Court. In view of the order passed by the Charity Commissioner, the appellant cannot function as Secretary of the Society. In view of the abolition of the BPT Act, and coming into force of Hindu Religious Institution and Charitable Endowment Act w.e.f. 2003, the respondent herein and other four persons filed Misc. Petition No. 109/2006 seeking for declaration, declaring that he is the Secretary of the Society and B.G. Sunagar and B.R. Patil are the members of the managing committee of Sri. Channabasaveswara Education and Charitable Society. The District Judge, after considering the matter and taking into consideration the

earlier orders passed by this Court in MFA No. 1322/1989 and C.P. No. 523/1990, declared the respondent herein as Pro-term Secretary of the Society empowering him to convene the General Body meeting and to hold elections to the Society. Against the said order, the writ petition filed by the appellant herein was dismissed by this Court in the writ appeal. The Division Bench of this Court dismissed the appeal while confirming the order passed by the learned Single Judge in the writ petition and directed the appellant to approach the appropriate authorities. Hence, the appellant cannot file this appeal. From the year 1988, validly constituted managing committee was not elected to manage the affairs of the managing committee. Hence, it is open to the parties to approach the competitive authority to hold elections as per the directions issued by the Division Bench of this Court in W.A. No. 31116/2012. I find that there is no infirmity or irregularity in the order passed by the District Judge. Accordingly, the appeal is dismissed.

In view of dismissal of the appeal, all the pending applications are rejected.