
(2012) 10 BOM CK 0113
In the Bombay High Court
Case No : Second Appeal No. 360 of 2012

Santosh Kumar Pande and Others

APPELLANT

Vs

Vinay Kumar Mishra

RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22, 41D, 41D(1)

Citation : (2013) 2 ALLMR 784 : (2013) 1 BomCR 53 : (2013) 1 MhLj 145

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

Bench : Single Bench

Advocate : Sunil Manohar, Assisted by Mr. S.D. Abhyankar, for the Appellant;
R.S. Parsodkar, for the Respondent

Judgement

R.K. Deshpande, J.—This second appeal challenges the judgment and order dated 6-3-2012 passed by the learned Joint Charity Commissioner, Nagpur, thereby partly allowing Application No. 42 of 2005 filed by the respondent No. 1 and his deceased-father u/s 41D of the Bombay Public Trusts Act, 1950 for removal of the appellants as Trustees of Om Shri Sainath Baba Sewa Sanstha, Civil Lines, Gondia, a Public Trust bearing P.T.R. No. F-2689(B). On 19-3-2009, seven charges were framed against the appellants in the proceedings u/s 41D of the Bombay Public Trusts Act as under :

1. That you the non-applicants made persistent default in the submission of accounts/report on return.
2. That you the non-applicants continuously neglecting your duties thereby committed breach of trust.
3. That you the non-applicants committed malfeasance and misfeasance.
4. That you the non-applicants have misappropriated the trust fund.
5. That you the non-applicants dealt improperly with the properties of the trust.
6. That you the non-applicants violated the provisions of Rules and Regulations

of trust thereby committed breach of trust.

7. That you the non-applicants failed to submit change reports u/s 22 of the B.P.T. Act from time to time thereby violated the provisions of Section 22 of the B.P.T. Act.

By the impugned judgment and order, the learned Joint Charity Commissioner has held that the charges at serial Nos. 1, 2 and 5 have been proved. The finding is also recorded that the charges at serial Nos. 3, 4, 6 and 7 have not been established. On the basis of the aforesaid charges, an order of dismissal has been passed. The relevant consideration by the learned Joint Charity Commissioner is contained in para 15 of the said judgment and order, which is reproduced below :

15. In view my evidence on point No. 1, 2 and 5 the non-applicants have committed persistent default in submission of audit reports neglected their duties and not properly dealt with the property of trust the punishment of dismissal of non-applicants. Accordingly, I record my findings....

2. Shri Sunil Manohar, the learned Senior Advocate, assisted by Shri S.D. Abhyankar, Advocate, for the appellants, has urged that the learned Joint Charity Commissioner has failed to apply his mind to the aspect of proportionality of punishment. He submits that the provision of Section 41D(1) of the Bombay Public Trusts Act deals with suspension, removal and dismissal of the Trustee/ Trustees. However, while imposing any one of the three punishments, the Charity Commissioner has to see that the punishment proposed to be imposed is proportional to the gravity of charges held to be proved.

3. The matter was heard on several occasions and it was adjourned for exploring the possibility of settlement. The order impugned dated 26-6-2012 passed in Misc. Judicial Case No. 20 of 2012 by the Principal District Judge, Gondia, was stayed by this Court on 26-7-2012. Since the settlement was not possible, the Learned Counsels for the parties have argued the matter.

4. Hence, the second appeal is Admitted and heard on the substantial question of law framed as under :

Whether the learned Joint Charity Commissioner was under obligation to apply his mind to the aspect of proportionality of punishment on the basis of the charges held to be proved ?

5. Section 41D(1) of the Bombay Public Trusts Act confers a power upon the Charity Commissioner to suspend, remove or dismiss any Trustee/ Trustees of the Public Trust if he/they are found guilty of the act/acts, which is/are mentioned in any of the Clauses (a) to (f) therein. In order to consider the question as to whether the Trustee or the Trustees, who is or are found guilty of any of the charges mentioned in Clauses (a) to (f) to sub-section (1) of Section 41D of the said Act, should be suspended, removed or dismissed, there has to be an application of mind to the aspect of proportionality of punishment on the basis of

the charges held to be proved. The punishment of either suspension, removal or dismissal, as the case may be, has to be proportionate to the gravity of the charge/charges held to be proved. It is not the every lapse or every act of misconduct, which invites the punishment of dismissal. The Charity Commissioner is, therefore, bound to record reasons for imposing a particular punishment. The substantial question of law is, therefore, answered accordingly.

6. Perusal of the judgment and order impugned in this second appeal shows that except the discussion in para 15 thereof, reproduced above, there is neither any consideration of the aspect of proportionality of punishment proposed to be imposed nor there are reasons recorded to impose the punishment of dismissal. The judgment and order passed by the learned Joint Charity Commissioner to the extent it imposes the punishment of dismissal of the appellants as Trustees cannot, therefore, be sustained and the same will have to be quashed and set aside. In the result, the second appeal is allowed. The judgment and order dated 6-3-2012 passed by the learned Joint Charity Commissioner, Nagpur, in Application No. 42 of 2005 is hereby quashed and set aside only to the extent of imposing punishment of dismissal of the appellants from the posts of Trustees, without touching to the other findings recorded by the learned Joint Charity Commissioner. The matter is remanded back to the learned Joint Charity Commissioner to consider only the aspect of proportionality of punishment on the basis of the charges held to be proved, after hearing all the parties concerned, and the other points concluded shall not be re-opened. The learned Joint Charity Commissioner shall decide the said aspect and pass appropriate order within a period of six months from the date of first appearance of the parties before him. The parties to appear before the learned Joint Charity Commissioner, Nagpur, on 20-11-2012. No order as to costs.