(2024) 01 BOM CK 0067

In the Bombay High Court

Case No : First Appeal No. 1047 Of 2013

Satyawan Namdeo Ajabale — APPELLANT

Vs

Hemraj Dhonduji Marbate — RESPONDENT

Date of Decision : 22-01-2024

Acts Referred:

Maharashtra Public Trusts Act, 1950 — Section 41D, 41D(1)(a)

Citation : (2024) 01 BOM CK 0067

Hon'ble Judges : Anil L. Pansare, J

Bench : Single Bench

Advocate : P. A. Gode, M. B. Turankar

Final Decision : Allowed

Judgement

Anil L. Pansare, J

1. Heard.

2. Admit. Heard finally with consent of learned counsel appearing for the parties.

3. This is second round of litigation. The respondent and four others had before the Joint Charity Commissioner, Nagpur, filed Application No. 30/2004 under Section 41D of the Maharashtra Public Trusts Act, 1950 (for short ‘the Act of 1950’) seeking dismissal and removal of the appellant and five others from the trust, namely, Vivekanand Shikshan Sanstha, Adyal, Tah. Paoni, District Bhandara. Learned Joint Charity Commissioner, Nagpur, after scrutinizing the oral as well as documentary evidence, vide judgment and order dated 29-3-2012, removed the appellant from the post of President as also trustee with immediate effect. The said judgment was challenged before the District Judge-2, Bhandara in MJC No. 95/2015. The learned Judge allowed the application partly and set aside the judgment passed by learned Joint Charity Commissioner, Nagpur and remanded the matter back to consider the aspect of proportionality of punishment. This order of remand was challenged by the appellant herein before this Court in Writ Petition No. 3521/2018 which came to be dismissed vide order

dated 6-1-2023.

4. The matter was accordingly considered by the Joint Charity Commissioner afresh. The Joint Charity Commissioner has, by judgment and order dated 14-8-2023, found that appellant, who acted in the capacity of President and Secretary, has failed to continuously submit account details and considering the same, suspended him for three years. Other persons who were prosecuted have been exonerated.

5. The appellant is aggrieved by the judgment and, therefore, has filed the present appeal.

6. Learned counsel for the appellant submits that the matter was remanded back to the Joint Charity Commissioner for a limited purpose of determining proportionality of punishment. In the earlier round of litigation, the appellant was removed and in the later round of litigation, he has been suspended.

7. Learned counsel for the appellant has invited my attention to the judgment passed by the Joint Charity Commissioner. Admittedly, the appellant has during the period from 1996 to 2004, while holding the post of President and the Secretary of the trust, made persistent default in the submission of accounts report viz. audited statements. The Joint Charity Commissioner in paragraph no. 16 observed that though there is persistent default, there is no material or evidence about the dishonest intention of appellant in not submitting audited statements of accounts and in the absence of dishonest intention, the default can be said to be mere irregularity and nothing else. The Joint Charity Commissioner has further observed that the appellant had filed audited statements of accounts within three months from the date of filing of the application and opined that he has realized his mistake and corrected the same. Accordingly, the Joint Charity Commissioner held that the punishment of removal or dismissal from the post of trustee would be a very drastic action and thus suspended him for a period of three years.

8. Learned counsel for the appellant has relied upon the judgment passed by the coordinate Bench of this Court in the case of Mukund Waman Thatte Vs. Sudhir Parshuram Chitale and ors. [2012(3) Mh.L.J. 322]. This Court while dealing with scope of enquiry under Section 41D has held that unless and until the lapse on the part of the trustee is proved to be actuated by dishonesty, a drastic action under Section 41D is not warranted. The Court further held that for taking drastic action of removal, suspension and dismissal from the posts of trustees, a very high degree of proof is required.

9. Accordingly, learned counsel for the appellant submits that the action of suspension, being a drastic action, is uncalled for, once the Joint Charity Commissioner has held that the act was not actuated by dishonest intention and further that the corrective measures have been taken by the appellant.

10. As against, learned counsel for the respondent submits that bare perusal of

clause (a) of sub-section (1) of Section 41D indicates that persistent default in the submission of accounts report or return would attract punishment of suspension, removal or dismissal of the trustee, as the case may be, of the trust. He submits that the Joint Charity Commissioner has considered the evidence and found that though there is no dishonest intention, the appellant has made persistent default and hence, is liable to be suspended. Learned counsel submits that this order being in consonance with the provisions of the Act of 1950, no interference is called for.

11. Having given thoughtful consideration to rival submissions and having gone through the record, it appears that in the cross-examination, the appellant has admitted that he did not submit audited statements of the trust to the Assistant Charity Commissioner for the period from 1996 to 2004, while holding post of President and Secretary of the trust, however, there is no evidence as regards malfeasance or misfeasance against the appellant. This is why the Joint Charity Commissioner has held that there is no evidence about dishonest intention of the appellant in not submitting audited statements of accounts for nine years. It is further evident that the appellant has filed the audited statements of accounts within three months of filing application. It is nobody's case that the audited statements so submitted suffers from any irregularity.

12. In the circumstances, the drastic action of suspension of the appellant was not warranted because there is no evidence that the lapse alleged was actuated by dishonest intention. Learned Joint Charity Commissioner ought to have been mindful of the fact that the matter was remanded for consideration of proportionality of the punishment. This Court in Mukund Waman Thatte's case has held that for taking drastic action of removal, suspension and dismissal from the post of trustee, the imputation reflecting on the integrity of the trustees have to be fortified by proof of high degree and unless and until the lapse on the part of trustee is proved to be actuated by dishonesty, a drastic action under Section 41D is not warranted. Despite such position of law, the Joint Charity Commissioner has suspended the appellant, which order is unsustainable for the reasons stated hereinabove. Hence, following order.

ORDER

(i) The appeal is allowed.

(ii) The judgment and order dated 14-8-2023 passed by the Joint Charity Commissioner, Nagpur Region, Nagpur in Application No. 30/2004 is quashed and set aside.

