
(2016) 03 BOM CK 0052
In the Bombay High Court
Case No : Writ Petition (L) No. 352 of 2016

Shailesh J. Padh	Vs	APPELLANT
Assistant Charity Commissioner, Gr. Mumbai and others		RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Maharashtra Public Trusts Act, 1950 — Section 2(10)(e), 22, 50-A

Citation : (2016) 3 MhLJ 427

Hon'ble Judges : R.D. Dhanuka, J.

Bench : Single Bench

Advocate : Ravi Kadam, Senior Advocate a/w Nitin S.Dhumal a/w V.P. Sawant a/w P. Jadhav, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J. - By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has impugned the order dated 10th December 2015 passed by the respondent no.1-Assistant Charity Commissioner below Exhibit-34 filed by the petitioner herein requesting the Assistant Charity Commissioner to keep present scheme application proceeding in abeyance till disposal of change report No.450 of 2008.

2. The petitioner claims to be one of the trustees of Shreeji Education Trust, a Public Charitable Trust which was registered on 8th September 1971 and was established for various charitable purposes. On 3rd June 2008, the respondent no.6 had filed a Change Report No.2450 of 2008. It is the case of the petitioner that the petitioner had not attended any purported meeting of the purported Board of Trustees on 2nd April 2008. The respondent no.6 subsequently withdrew certain change reports on 5th May 2008 by which the names of Vasant Chavan, Rajani Bhavke and Sachin Yadav had been added as Trustees of the Trust which were pending before the Deputy Charity Commissioner. The Deputy Charity Commissioner passed an order on 25th June 2008 accepting the Change Report No.2450 of 2008. The petitioner filed an appeal under Section 70 of the

Maharashtra Public Trusts Act, 1950 (for short "the said Act") before the Charity Commissioner inter alia praying for setting aside the order dated 25th June 2008 and for rejection of Change Report No.2450 of 2008.

3. The Charity Commissioner passed an order dated 26th February 2009 staying the order passed by the Deputy Charity Commissioner on 25th June 2008 till further orders thereby staying the alleged appointment of respondent nos.2 to 5 as Trustees of the Trust. On 16th July 2009, the respondent nos.2 to 7 filed a Scheme Application before the Assistant Charity Commissioner under Section 50A of the said Act inter alia praying for framing a scheme for the management and administration of the Trust in terms of the Draft Scheme submitted by the respondent nos.2 to 7 along with the said application. The petitioner also filed an application for impleadment in the scheme application as a necessary party to the said Scheme application and also filed various objections including the maintainability of the said scheme application at the instance of the respondent nos.2 to 7. The petitioner applied for keeping the said scheme application in abeyance.

4. On 21st October 2015, the respondent nos. 2 to 7 filed a common reply to the abeyance application filed by the petitioner.

5. On 10th December 2015, the respondent no.1 rejected the said application for keeping the proceedings in abeyance filed by the respondent nos.2 to 7 for settling the scheme under Section 50A of the said Act. This order passed by the respondent no.1 has been impugned in the present writ petition.

6. Mr.Dani, learned senior counsel appearing for the petitioner submits that since the change report no.2450 of 2008 by which the appointment of the respondent nos.2 to 5 was reported as Trustees of the Trust, was remanded back by the Deputy Charity Commissioner, the respondent nos.2 to 7 could not pursue the application for settling the scheme under Section 50A of the said Act.

7. My attention is also invited to the said application and it is submitted that in the application made under Section 50A of the said Act, the respondent nos. 2 to 7 had represented themselves as the then Trustees of the Trust. My attention is also invited to the impugned order passed by the learned Assistant Charity Commissioner and it is submitted that the respondent nos. 2 to 7 could not have at all pursued the said application made under Section 50A of the Act in view of the fact that the change report reporting the appointment of respondent nos. 2 to 5 is pending for adjudication. It is submitted that the respondent nos. 2 to 7 do not have locus to file the said Scheme Application. He submits that until the change report in respect of the appointment of the respondent nos. 2 to 5 was first decided, the application under Section 50A of the said Act cannot be proceeded with by the Assistant Charity Commissioner and thus the order dated 10th December 2015 rejecting the abeyance application shall be set aside.

8. Mr. Kadam, learned senior counsel appearing for the respondent nos.2 to 7 would submit that merely because the change report reporting the change of

their appointments as Trustees is pending before the concerned authority under the provisions of the said Act, that would not debar the respondent nos. 2 to 7 to pursue the application under Section 50A of the said Act. In support of this submission, he placed reliance on the judgment of this Court in the case of *Chembur Trombay Education Society and Ors. v. D.K. Marathe and Ors.*, reported in 2002 (3) Bom.C.R. 161 and in particular paragraph 11 thereof. He submits that if the Charity Commissioner ultimately comes to a conclusion that the appointment of the respondent nos. 2 to 5 as Trustees was illegal, the effect of such order can be subsequently given in the records of the Trust.

9. It is submitted by the learned senior counsel that under Section 50A of the said Act, the Charity Commissioner himself, in the interest of the proper management or administration of public trust, shall settle a scheme for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, the Charity Commissioner may, if, after giving notice to such trustees of the trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust.

10. My attention is also invited to the definition of "person having interest" in Section 2(10)(e) of the said Act. He submits that in the case of any other public trust not referred in the earlier provisions of Section 2(10) of the said Act, any trustee or beneficiary would be a "person having interest". He submits that the said definition is inclusive definition.

11. The last submission of the learned senior counsel is that in any event, the objection raised by the petitioner to the application for settling the scheme made by the respondent nos. 2 to 7 under Section 50A of the said Act before the authority on the ground of locus can be decided by the authority while deciding the said scheme application. If the authority comes to a conclusion that the said application cannot be entertained at the instance of the respondent nos.2 to 5, the Charity Commissioner can reject the same.

12. A perusal of the record clearly indicates that there is no dispute that the change report reporting the appointment of the respondent nos.2 to 5 as trustees is pending before the Assistant Charity Commissioner for disposal. There is no dispute that the application filed by the respondent nos.2 to 7 for framing a scheme under Section 50A of the said Act is pending since 2009 before the Assistant Charity Commissioner. There is also no dispute that the petitioner herein has also raised an objection and has applied for impleadment as a party to the said scheme application. The said objection raised by the petitioner about the maintainability of such application under Section 50A of the said Act including the locus of the respondent nos.2 to 7 to file such application is pending before the authority.

13. A perusal of Section 50A of said the Act makes it clear that if the Charity Commissioner has reason to believe that, in the interest of the proper management or administration of public trust, a scheme should be settled for it, the Charity Commissioner himself can settle the scheme without any application made by the trustee or beneficiary or any person having interest as defined under Section 2(10)(e) of the said Act.

14. Section 50A of the said Act also provides that two or more persons having interest in a public trust can make an application for settlement of the scheme to the Charity Commissioner. The Charity Commissioner if satisfies upon receipt of such application by two or more "persons having interest" as defined under Section 2(10)(e) of the said Act, before passing any final order thereon, the Charity Commissioner has to give a notice to the trustees of such trust of due opportunity to be heard and only after he is satisfied that it is necessary or expedient to do so, he shall frame a scheme for the management or administration of such public trust.

15. In my view, even if there was no such application made by the respondent nos.2 to 7 for settling the scheme under Section 50A of the said Act, the Charity Commissioner himself can settle the scheme in the interest of proper management and administration of a public trust. Be that as it may, in this case, the application under Section 50A of the said Act has been already made by the respondent nos.2 to 7.

16. A perusal of Section 2(10)(e) of the said Act clearly indicates that any trustee or beneficiary in the case of any other public trust other than described in the earlier provisions of the Act would be a "person having interest" including a beneficiary. The definition of "person having interest" is an inclusive definition.

17. In my prima facie view, even if the respondent nos. 2 to 5 would not be considered as trustees for the purpose of making an application under Section 50A of the said Act, the petitioner would not be in a position to dispute that the respondent nos.2 to 5 would be falling under the category of beneficiaries within the meaning of "person having interest" under Section 2(10)(e) of the said Act. Be that as it may, since the petitioner has already raised an objection about the locus of the respondent nos.2 to 7 for making an application under Section 50A of the said Act before the Assistant Charity Commissioner and since the petitioner has already been impleaded as party to the said application, in my view, the concerned authority can consider the issue of locus before passing any final order on the application for settling the scheme.

18. I am thus not inclined to accept the submission of Mr.Dani, learned senior counsel for the petitioner that the respondent no.1 cannot decide the scheme application till change report is first decided. In my view, the application filed by the respondent nos. 2 to 7 for settling the scheme cannot be kept in abeyance though the change report reporting the appointment of the respondent nos. 2 to 5 is pending. The change report filed under Section 22 as well as the application

filed by the respondent nos. 2 to 7 for settling the scheme under Section 50A of the said Act are different from each other and hearing of the one of such proceeding cannot be stayed during pendency of another proceeding. Judgment of this Court relied upon by the respondent applies to the facts of this case.

19. There is thus no merit in the submission of the learned senior counsel for the petitioner. It is made clear that whether the respondent nos.2 to 7 have locus under Section 50A of the said Act or not, the said issue shall be decided by the Assistant Charity Commissioner while considering the hearing of scheme application made by the respondent nos.2 to 7 under Section 50A of the said Act.

20. Petition is accordingly dismissed. No order as to costs. The petitioner is directed to remove office objections within two weeks from today.