(2019) 07 BOM CK 0105

In the Bombay High Court

Case No : First Appeal (Fa) No. 971 Of 2018

Totaram Dasuji Rathod And Ors — APPELLANT

Vs

Atmaram Kisansing Rathod And Ors — RESPONDENT

Date of Decision : 17-07-2019

Acts Referred:
Maharashtra Public Trusts Act, 1950 — Section 41D(1)(A), 41D(1)(c), 41D(1)(d)

Citation : (2019) 07 BOM CK 0105

Hon'ble Judges : M.G. Giratkar, J

Bench : Single Bench

Advocate : R.L. Khapre, R.G. Kavimandan, A. Shelat, N.H. Joshi

Final Decision : Allowed

Judgement

M.G. Giratkar, J

1. Heard finally with the consent of the learned Counsel appearing on behalf of the respective parties.

2. This is an appeal against the judgment and order dated 17th July, 2018 passed by the learned Joint Charity Commissioner, Amravati in Application

No. 10 of 2004 by which the application is partly allowed. NonÂapplicant (appellants) Nos.1, 6, 12 and 13 are removed from the Trust permanently

for committing default under Section 41Â?D (1)(a), (c) and (d) of Maharashtra Public Trusts Act.

3. Respondent No.1 was elected as a Treasurer in the year 2004. Thereafter, respondent No.1 found some illegalities committed by the nonÂ?

applicants by misusing their powers. He also found some misappropriation of the funds and wrongfully removed/disposed of the property of the Trust.

The appellant (nonÂapplicant No.1) being the Secretary of the Trust failed to call meeting for 13 years in spite of valid election dated 06.02.2004.

Being the Secretary, it was his duty to submit audit report etc. to the Charity Commissioner but he did not submit any audit report for a long period.

Respondent No.1 filed an application under Section 41ÂD for removal of the appellants and others from the Trust namely Vasantrao Naik Shikshan

Sanstha, Palasgaon Nago (Naik), District Buldana.

4. The appellants and others appeared and filed their written statements. The charge was framed by the Joint Charity Commissioner vide Exh.106.

The applicant (respondent No.1) adduced his evidence. Thereafter, case was posted for the evidence of appellants but failed to adduce the evidence.

After hearing submission of both sides, learned Joint Charity Commissioner, Amravati passed the impugned judgment.

5. Heard Shri R.L. Khapre with Shri R.G. Kavimandan, learned Counsel appearing on behalf of the appellants, Shri A. Shelat, learned Counsel

appearing on behalf of respondent No.1 and Shri N.H. Joshi, learned Assistant Government Pleader appearing on behalf of respondent No.3.

6. Shri Khapre, learned Counsel for the appellants has pointed out the impugned judgment and submitted that nowhere in the judgment or in the

evidence of respondent No.1 it shows that the respondent No.1 has committed any misappropriation of the property. The immovable property is

registered in the name of Trust. The entries of the immovable property are taken in the PTR. Learned Counsel has submitted that there was no

opportunity to the appellant to adduce the evidence. Application was moved to adduce the evidence, but it was rejected.

7. Shri Kavimandan, learned Counsel has further submitted that the removal of trustees as per the provisions of Section 41ÂD of the BPT Act is very

harsh action. Therefore, the strict proof is necessary. He has pointed out the decisions in the cases of Vajubhai Patel and another .v. Charity

Commissioner, Maharashtra State and others (reported in 1990 (2) Bom CR, 702); Shri Mukund Waman Thatte .v. Shri Sudhir Parshuram Chitale and

others (reported in 2012 (3) All MR, 604); and Shri Dhanraj Natthuji Kale and others .v. Shri Govindrao Laxmanrao Choudhary and others (reported

in 2012(7) All MR, 294).

8. Shri Khapre, learned Counsel has submitted that the proceedings under Section 41ÂD of BPT Act is a quasi criminal in nature and, therefore, strict

proof is necessary. He has submitted that in view of the cited judgments, strict proof is required to prove the charges as contemplated under Section

41Â?D of the BPT Act. At last, he has submitted that the charges are not proved beyond reasonable doubt.

Therefore, impugned judgment is liable to be quashed and set aside.

9. Shri Shelat, learned Counsel for the respondents has pointed out the judgment of Assistant Charity Commissioner and submitted that in those

proceedings, the respondent No.1 objected for the registration of property in PTR. Therefore, intention of respondent No.1 is to be seen. Being the

Secretary, it was his duty to include immovable property in the PTR. Till filing of application by respondent No.1, the immovable property was not

included in the PTR. Learned Counsel has submitted that the relatives of respondent No.1 are using the immovable property. They have not

accounted the income of property. They have misappropriated the income of the property. In such a situation, they are not liable to continue as

trustees of the Trust. Learned Counsel for the respondents has pointed out the following judgments.

Shree Tukai Devi Trust and others .v. Shri Nivrutti P. Mujumle and others (reported in 2015(2) All MR, 377);

Mallikarjuanappa Sidramappa Bidve and others .v. Joint Charity Commissioner and others (reported in 2008(1) Bom CR, 172).

10. Shri Shelat, learned Counsel has submitted that the proceedings under Section 41ÂD is not like criminal proceedings. Though charges are framed,

yet civil procedure is applicable. Therefore, it is not the criminal proceedings. Hence, the grounds raised by the appellants are without any substance.

He has further submitted that the respondent No.1 has neither submitted the account of the Trust nor audit report. They are misusing the property of

the Trust and, therefore, the Joint Charity Commissioner has rightly recorded his findings and removed them from the Trust. At last, learned Counsel

has submitted that the appeal is devoid of merit and liable to be dismissed.

11. There is no dispute that the property of the Trust is recorded in the PTR. The copies of judgments filed on record show that the respondent No.1

has raised some objections for inclusion of the said property in the PTR. Now it is clear that the Plot No.8 and agricultural land of Trust are recorded

in the name of the Trust as per the judgments of Assistant Charity Commissioner. Learned Joint Charity Commissioner has nowhere mentioned in the judgment about the misappropriation of any particular amount of the Trust by respondent No.1 or others. On the other hand, findings recorded by the

Joint Charity Commissioner in para 23 show that though the audit report etc., were submitted at very late stage, but there is no evidence of

misappropriation etc. Merely because there is persistent default in submission of audit reports, it cannot be presumed that the accounts are not

properly maintained by nonÂapplicants. Therefore, in para 23 of the impugned judgment itself, it is recorded that though the audit report was submitted

at very later stage, there is no evidence to show that any defalcation is made by the appellants.

12. From the perusal of impugned judgment, nowhere it shows that the appellants have misappropriated any property of the Trust. Late submission of

record by the appellants has not caused any loss to the Trust. Therefore, removal of trustees from the Trust is to be seen as to whether the charges

are proved against them. As per the judgments cited by the side of appellants, the action under Section 41Â D by the Joint Charity Commissioner is a

very harsh action and, therefore, strict proof is necessary. It is held by this Court in the cited judgment by the side of appellants that strict proof is

necessary while removing the trustees as per provisions of Section 41ÂD. In the case of Shri Dhanraj Natthuji Kale and others .v. Shri Govindrao

Laxmanrao Choudhary and others (cited supra), this Court has observed as under Â?

â??(A) Bombay Public Trusts Act (1950), S.41ÂD â?" Removal of trustees â?" Alleged nonÂsubmission of audited accounts, unauthorised sale of

trust property, unaccounted receipt of donations and nonÂfiling of vacant seats â?" No seizure of records of trust made to find out effect of nonÂ?

submission of audited accounts â?" No investigation carried out in respect of alleged sale of land â?" Even no statement of donors recorded to find out

amount of alleged donations â?" That apart, appellants had no chance to defend as they were relying upon their counsel and did not participate in

proceedings â?" Held, Authority failed to exercise power of collecting evidenceÂ Removal of trustees, not sustainable â?" Appellants however liable

to pay heavy cost for nonÂ?participation in proceedings.

(B) Bombay Public Trusts Act (1950), S.41D â?" Removal of trustees â?" NonÂappearance of accused trustees in proceedings â?" Even though accused did not appear before the authority, authority under incumbent to find out material in support of charges â?" Authority neither performed its

duty nor understood seriousness of proceedings u/s. 41Â?D â?" Removal of trustees, not sustainable.

(C) Bombay Public Trusts Act (1950), S.41D â?" Removal of trustees â?" Alleged nonÂsubmission of audited accounts for past 28 years â?" No

investigation carried out by seizing record of trust to find out effect of said nonÂsubmission â?" Held, even if such charge is proved, the same should

not automatically result in to removal of trustees â?" It would depend upon gravity of situation.â??

13. In this judgment, the judgment in the case of Vijubhai Patel and another .v. Joint Charity Commissioner, Maharashtra State, Mumbai and others

(cited supra) is referred. This Court has come to the conclusion that the removal of trustees under Section 41ÂD is harsh action and, therefore, strict

proof is necessary. Shri Shelat, learned Counsel for the respondents has submitted that it is not a criminal proceeding. Though the charges are framed,

Civil Procedure Code is applicable. Therefore, strict proof is not necessary. In support of his submission, he has pointed out the decision in the case of

Mallikarjuanappa Sidramappa Bidve and others .v. Joint Charity Commissioner and others (cited supra), particularly paras 18 and 21. In the cited

judgment, in para 18 itself, this Court has observed that, â??it is a quasi civil and quasi criminal proceedings under Section 41ÂD in nature. Though

the proceedings under Section 41ÂD is not criminal proceeding as such, yet, proof required to sustain the charges is of high standard. The standard of

proof in such proceedings is some what more than normally required in cases governed by preponderance of probabilities and somewhat less than

required in trials of criminal cases...â??

14. In the case of A.A. Gopalakrishnan .v. Cochin Devaswom Board and others), the Hon'ble Apex Court, in para 10, has observed as under Â?

â??10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/

shebaits/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and

Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of â??fences eating the cropsâ? should be dealt with

sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is

also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.â??

15. Judgment cited by the side of respondent is on different footings. It is not in respect of Section 41ÂD of BPT Act. Learned Counsel Shri Shelat

has pointed out the judgment in the case of Shree Tukai Devi Trust and others .v. Shri Nivrutti P. Mujumle and others (cited supra). In the said

judgment, it is observed by this Court that though the charges are framed, procedure is not like as criminal trial and, therefore, strict proof is not

required. But, in para 12 of the said judgment, it is observed as under Â?

â??High standard of proof is required in a quasi civil, criminal enquiry under section 41D of the Mumbai Public Trust Act and therefore, the Court

cannot infer and conclude on the basis of preponderance of probabilities but specific instances of the breach of the scheme or misfeasance or

malfeasance are to be brought on record...â??

16. From all the aforesaid judgments, it is very clear that action under Section 41D of BPT Act is a very harsh action. The trustees are removed from

the Trust and, therefore, charges against the trustees are to be proved very strictly (beyond reasonable doubt). Keeping in mind the ratio laid down in

the aforesaid authority, I have to see as to whether the charges levelled against the appellants are proved beyond reasonable doubt. In para 23 of the

impugned order itself, it is observed that though the accounts and audit report were submitted at belated stage, nothing is on record to show that there

was any misappropriation by the appellants. The other charges are in respect of misappropriation of the property of Trust i.e. in respect of plot No.8

and agricultural land of the Trust. It is pertinent to note that the respondent No.1 was elected in the year 2004 as a Treasurer. He has made general

allegations. He was well aware about the transaction or income of the property etc. But, he has not adduced any evidence to show that particular

amount was misappropriated by the appellants. He has made allegations that the properties are in the name of wife of appellant No.1, but the property

register i.e. PTR shows that those properties are included in the name of Trust.

Now it is very clear that plot No.8 and agricultural land are the

properties of the Trust shown in the PTR. Therefore, there is no misappropriation of those properties. Respondent No.1 has not stated a single word

about any particular amount misappropriated by the appellants.

17. It is pertinent to note that in the impugned order itself, in paras 12, 13 and 23, learned Joint Charity Commissioner has observed that appellant No.1

has not committed any misappropriation. Though he has not submitted the record/audit etc. in time, nothing is on record to show that he has committed

any fraud/misappropriation etc. Therefore, at this stage, it is very clear that the charges framed against the appellants are not proved beyond

reasonable doubt and, therefore, they cannot be removed from the Trust. Hence, the following order.

In the result, Appeal is allowed. Impugned judgment and order, dated 17th July, 2018 passed by the learned Joint Charity Commissioner, Amravati

Region, Amravati in Application No. 10 of 2004 is hereby quashed and set aside.