

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 938 OF 2013

Dinshaw Rusi Mehta & ors. ... Petitioners.

Versus

The State of Maharashtra & ors. ... Respondents.

Mr. Chirag Balsara i/b. Negandhi Shah & Himaytullah, advocate for petitioner Nos. 1 and 2.

Mr. V.R. Dhond, Sr. Counsel a/w. Mr. Snehal Shah a/w. Mr. Samsheer Garud i/b. Jaykar & Partners, advocate for Petitioner Nos. 3 to 6.

Mr. I.M. Chagla and Mr. F.E. Devitre, Sr. Counsel, Ms. Naira Jeejeebhoy, a/w. Mr. Shrikant Doijode, Ms. Rashne Mulla-Feroze and Ms. Geetanjali Joshi, advocate i/b. Doijode Associates for respondent Nos. 4 to 16.

Mr. Kapil Moye with Ms. Manisha Virkhare i/b. Vigil Juris, advocate for respondent No. 17.

Mr. Navroz Seervai, Sr. Counsel a/w. Ms. Anuja Jhunjhunwala, Mr. Rohit Mangsule i/b. Naik Naik & Co., advocate for respondent No. 18.

CORAM : B.R. GAVAI & A.S. GADKARI, JJ

DATE : APRIL 30, 2015

P.C.:

1 The Petitioners who claim to be the trustees of the Parsi Panchayat Funds and Properties have approached this Court praying for quashing and setting aside the order passed by the respondent No. 2 Charity Commissioner, vide which the learned Charity Commissioner has granted permission under Section 36 of the Bombay Public Trust Act on the conditions stipulated therein.

2 The facts of the case which are gathered from the memo of the Petition are as under :

 That the Parsi Lying In Hospital (hereinafter referred to as “PLIH”) is situated on a property which was initially leased by the then State Government to the PLIH Trust which was set up in the year 1892. By an order dated 1st February, 1924, this Court in Original Suit No. 126 of 1924 approved the transfer of the lease and all assets and properties and assets of the PLIH Trust to the Bombay Parsi Panchayat (hereinafter referred to as “BPP”) Trust. The then State Government passed a resolution dated 1/4/1924 approving transfer

of the lease in favour of the BPP. On 26/11/1924 two Deeds of indenture are executed whereby the transfer of all properties of PLIH to the BPP was completed. As such, according to the petitioners, it is only the BPP alone is thereafter the owner of the leasehold rights in respect of the PLIH. The Respondent Nos. 4 to 16 claim to be the members of the Managing Committee of the PLIH, vide change report dated 16/5/2011 which is approved on 8/7/2011. It is the contention of the petitioners that the PLIH Managing Committee, which now consists of Respondent Nos. 4 to 16 was concerned only with the running of day to day affairs of PLIH. It is not in dispute that the said hospital was closed for 19 years. In this background, PLIH of which the respondent Nos. 4 to 16 are members, made an application to the Charity Commissioner for permission under Section 36 of the said Act seeking implementation of agreement dated 22nd March, 2011 executed between the PLIH Trust and respondent No. 18 herein. The respondent Charity Commissioner vide order dated 6th August, 2011 has granted permission subject to certain conditions.

3 In this background, the Petitioners who are six of seven trustees of the Parsi Panchayat Funds and Properties Trust (hereinafter referred to as said trust) have approached this Court contending therein that the said PLIH of which respondent Nos. 4 to 16 are member has no authority in law to either apply for permission before the Charity Commissioner and as such the permission granted by the Charity Commissioner is not in accordance with law.

4 However, it appears that during the pendency of the Petition, there were disputes between the various trustees of the said Trust.

5 It further appears that taking into consideration that the permission which was granted by the Charity Commissioner was for the purpose of construction of a new hospital and as per the arrangement arrived at with the respondent No. 18, the members belonging to Parsi community would also be entitled to get certain benefits, an attempt was made to arrive at the settlement between

the parties. However, it appears that on earlier occasions the Petitioner Nos. 2 to 6 and respondent No. 17 who are the trustees of the said trust were parties to the Consent Terms, on one hand and respondent Nos. 4 to 16 and 18 on the other. Subsequently the Petitioner No. 2 has now after signing the Consent Terms, decided to withdraw from the said Consent Terms, arrived at between the parties.

6 Now situation that emerges is that out of six petitioners, four petitioners and another trustees i.e. respondent No. 17 are in favour of the Consent Terms dated 20/2/2015 as amended by letter dated 31/3/2015, whereas the Petitioner No. 1 alone is a strongly opposing the said term. Insofar as the Petitioner No. 2 is concerned, she has been changing sides. At one point of time she was in support of the majority of the trustees. However, from perusal of the affidavit filed by her today, it appears that she wants to support the Petitioner No. 1.

7 Shri Dhond, learned Senior Counsel appearing on behalf
of the Petitioner Nos. 3 to 6 submits that the said petitioners desires
that the Petition be disposed of in terms of the Consent Terms arrived
at between the five trustees on one hand and the respondent Nos. 4 to
14 and 18 on the other hand. However, Shri Balsara, learned
Counsel appearing on behalf of the Petitioner No. 1 submits that the
deal arrived at between the aforesaid parties is not in the interest of
the trust and the trust would get much better offer, if attempts are
made in that regard.

8 It would appear from the orders passed by this Court
dated 3rd March, 2015 that Mr. Balsara had stated before the Court
that there are better offers other than given by respondent No. 18.
Even when the matter listed before us, we had asked Mr. Balsara to
point out any concrete offer of any party, which can be said to be a
concrete offer and which is better than the offer i.e. given by
respondent No. 18. Shri Balsara has stated that though better offers

are available, however, in view of the pendency of litigations the same cannot be placed on record.

9 It appears that the said hospital is defunct for a period of 19 years. It further appears that after permission was granted by the Charity Commissioner on 6th August, 2011, much progress has not been made in the matter of redevelopment of the said hospital. We make it clear that we do not propose to go into the various disputed issues raised by the parties, regarding as to which of the trusts is owner of the properties or as to which of the trusts has right to execute an agreement of the nature which is executed. It is pertinent to note that from the perusal of the scheme of the said trust which is sanctioned by the Division Bench of this Court in Appeal No. 1137 of 1987, it would reveal that the decision of the said trust is to be taken as per the opinion of the majority. It will be relevant to refer to clause 32 of the said scheme which reads thus :

“32. Whenever any difference of opinion shall arise amongst or any decision is required to be taken by the Trustees upon any question, matter or subject, the same shall be decided according

to the opinion of the majority of the Trustees and in the case of an equality of votes, by casting vote or second vote of Chairman of the meeting at which the vote is taken. Such decision shall bind the rest and shall be adopted and acted upon.”

It can thus be seen that the aforesaid clause provides that if any difference of opinion arises amongst or any decision is required to be taken by the Trustees upon any question, matter or subject, the same shall be decided according to the opinion of the majority of the trustees and in case of an equality of note, by casting vote or second vote of Chairman of the meeting at which the vote is taken. The clause also provides that such decision shall bind the rest and and shall be adopted and acted upon.

10 As already discussed hereinabove, out of 7 trustees of said trust, five are supporting the Consent Terms. One trustee i.e. Petitioner No. 2 though had initially consented to consent terms, now wants to resile therefrom. Thus only the Petitioner No. 1 is firm and

constant opponent of the said arrangement. However, in view of clause 32 which we have reproduced above, the will of the majority will have to prevail. As such we find that when five of the seven trustees of the said trust and all the members of the PLIH Managing Committee are in support of the Consent Terms, in the interest of both the trusts, the Petition deserves to be disposed of in terms of the Consent Terms. We make it clear that if the Petitioner No. 1 has any right to take recourse to such remedy as is available in law, disposal of the present Petition in view of the Consent Terms, would not come in his way.

11 In that view of the matter, the Consent Terms dated 20th February, 2015 as amended by letter dated 31/3/2015 are taken on record and marked "X" for identification. The Petition is disposed of in terms of Consent Terms. However, it is made clear that disposal of the Petition in terms of Consent Terms, would not come in the way of the Petitioner No. 1 to take recourse to such remedy as is available to him in law. We further make it clear that we have disposed of the

Petition since the majority of the trustees have supported the said Consent Terms and that we have not entered into the merits of the matter.

12 Needless to state that undertaking given in the Consent Terms are accepted and treated as an undertaking to this Court.

13 As is evident that the dispute basically arises out of the personal views of the trustees of the trust and on account of that various trustees are represented by various lawyers. We make it clear that fees of the lawyers engaged by independent trustees would not be paid from funds of the said trust. The respective trustee will bear costs of the same.

14 At this stage, Shri Balsara requests for stay to the order passed by us. Perusal of the record would reveal that no interim order of any sort was passed by this Court. What has been done by us is accepting the Consent Terms which are recorded by the majority of

the trustees of the said Trust and all the members of the Managing Committee of PLIH and the respondent No. 18. In that view of the matter, we do not find that request made by Shri Balsara deserves to be considered. The same is rejected.

(A.S. GADKARI, J)

(B.R.GAVAI,J)