

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7749 OF 2014

1. Vijayrao s/o Annasaheb Gavane,
Age : 63 years,
Occupation : Advocate and Agriculture,
R/o. Gavane Road, Parbhani,
Taluka and District Parbhani.
2. Ajay s/o Vijayrao Gavane,
Age : 35 years,
Occupation : Agriculture,
R/o. Gavane Road, Parbhani,
Taluka and District Parbhani.

Versus

Abasaheb Kisanrao Deshmukh
Through his Legal Representative
Ashok s/o Abasaheb Deshmukh
Age : 40 years,
Occupation : Agriculture,
R/o. Deshmukh Galli, Motha Maruti,
Parbhani.

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Advocate for the petitioners : Mr. Milind Patil
Advocate for respondent-sole : Mr. A. S. Bajaj
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CORAM : V. K. JADHAV, J.
RESERVED FOR ORDER ON : 01.03.2016
ORDER PRONOUNCED ON : 11.03.2016

ORDER :-

1. By consent of learned counsel for the parties, matter is heard finally at admission stage.

2. By this writ petition, petitioners have challenged the order dated 22.08.2014 passed by Joint Charity Commissioner, Aurangabad, below Exh. 140 in the proceedings of Miscellaneous Application No. 07 of 2008 filed under Section 41D of the Maharashtra Public Trusts Act, 1950, thereby rejecting the application seeking disposal of the enquiry in view of subsequent developments.

3. Brief facts giving rise to the present writ petition are as follows:

a) Petitioners claim themselves to be the founder trustees of Mahatma Phule Education Society, Parbhani, bearing registration No. PTR-No. F-34 (P). Deceased Abasaheb Kisanrao Deshmukh, who was also a trustee of the said trust, during his lifetime, had filed application under Section 41D of the Maharashtra Public Trusts Act, 1950 (for short "the Act of 1950") making allegations therein against the petitioners and two others. The said proceedings are registered as Miscellaneous Application No. 7 of 2008. During pendency of the said proceedings in Miscellaneous Application No. 7 of 2008, original applicant Abasaheb Kisanrao Deshmukh died. His son namely Ashok Abasaheb Deshmukh submitted an application for bringing himself on record as the legal representative of deceased Abasaheb Kisanrao Deshmukh. Said application, since allowed by the Joint Charity Commissioner, the proceedings remained continued against

present petitioners.

b) The petitioners are, at present, not the trustees of said trust, as a new managing committee is elected. Thus, the new managing committee is in-charge of said trust Mahatma Phule Education Society, Parbhani in view of the elections held on 26th May 2014. The petitioners herein, therefore, submitted an application Exh.140 praying therein to dispose of the proceeding as infructuous as no executable order can be passed against petitioners as they are no more trustees. The Joint Charity Commissioner, by order dated 22.08.2014, has rejected the said application. Hence this writ petition.

4. Learned counsel for the petitioners submits that, after the trustees, against whom enquiry under Section 41D is pending, cease to be trustees of the trust by way of subsequent change in the managing committee of the trust, enquiry under Section 41D of the Act of 1950 becomes unwarranted and deserves to be withdrawn. Learned counsel submits that in view of elections held on 26th May 2014, new managing committee has taken over the charge, and therefore, no executable order can be passed against petitioners in view of the fact that they are no more trustees. Learned counsel submits that it is a well settled principal of law that a court of law or a superior tribunal would not entertain an appeal or revision application

wherein no effective order can be passed, and for the said purpose, not only the fact situation as was obtaining on the date of filing of the application shall be taken into consideration, but also the events which took place subsequent thereto. Learned counsel submits that after the elections, change has been reported to the appropriate authority as required under Section 22 of the Act of 1950. It is well settled that the enquiry postulated under Section 22 of the Act of 1950 is only to ascertain the factum as to whether the change has occurred or not. In the event, the competent authority is satisfied that the change has not occurred in accordance with law, only then that change will have to be undone and *status quo ante* will have to be restored.

5. Learned counsel for the petitioners, in order to substantiate his submissions, placed reliance on the decision in following cases:

1. Judgment dated 23.01.2009 delivered by this Court in ***Writ Petition No. 5095 of 2007 (Balasaheb Kishanrao Jadhav and others vs. Shaikh Shakeel Mohammad Sharif and others)***,
2. ***Hidayatkhan Bismillakhan Pathan vs. Vaijnath***, reported in ***AIR 2009 SC 2426***,
3. ***Chembur Trombay Education Society & others vs. D. K. Marathe & others***, reported in ***2002 (3) Bom.C.R. 161***,

4. ***Madanrao Nanasaheb Chavan vs. State of Maharashtra & others***, reported in **2003 (1) Bom.C.R. 447** and
5. ***Mukesh Nashikrao Tirpude & another vs. Wamanrao Tatobaji Kombade & others***, reported in **2008(4) Bom.C.R. 309.**

6. Learned counsel for respondent-original applicant submits that after the death of original applicant Abasaheb Kisanrao Deshmukh, petitioners herein filed application Exh.130 for abatement of proceedings. The said application Exh.130 came to be rejected by the Joint Charity Commissioner vide order dated 20.05.2014. Joint Charity Commissioner, while rejecting the said application Exh.130, has observed that the enquiry is already completed by giving sufficient opportunity to the parties. Initially, the matter was heard, but judgment was not passed by the then Joint Charity Commissioner, and therefore, the matter was actually posted for fresh hearing. Petitioners herein, challenged the said order before this Court by way of filing writ petition No. 4644 of 2014. Said writ petition came to be dismissed by order dated 10.06.2014. Being aggrieved by the same, petitioners challenged the said order and the order passed by Joint Charity Commissioner before the Honb'le Supreme Court. However, the Special Leave Petition came to be dismissed by Hon'ble Supreme Court by order dated 17.07.2014. Learned counsel submits that while filing writ petition before this

Court, petitioners have suppressed the fact that a meeting was held on 26th May 2014, wherein, elections of the trust were held. According to the petitioners, change report is filed on 19.06.2014, however, the same is also not mentioned in the Special Leave Petition before the Supreme Court. Learned counsel submits that the present petitioners have prepared false and fabricated record about elections subsequently, when they realized that the proceedings cannot be abated on the count of death of original applicant.

7. Learned counsel for the respondent submits that serious allegations have been made against the present petitioners about malfeasance, misfeasance and misappropriation of property of the trust and the enquiry is completed long back and the matter is now posted for final arguments. Learned counsel for the respondent has disputed that the change has occurred on 26th May 2014. Learned counsel submits that the petitioners are harping upon to get the matter decided on technical grounds instead of on merits.

8. Learned counsel for the respondent submits that the object of sub-section (3) of Section 41D of the Act of 1950 is to protect the trust from misappropriation, criminal breach of trust or other act of trustee prejudicial to the interest of trust, whereas, action of punishment under sub-section (1) is directed against trustee or other

person by way of punishment of suspension, removal or dismissal. Learned counsel submits that if the provisions of sub-section (1) and (3) are considered together, it appears that suspension for a particular period is also contemplated as a punishment and it could be considered as lesser form of punishment as compared to removal or dismissal, and therefore, enquiry under Section 41D is required to be continued and in case the trustee is suspended as a matter of punishment, he would not be entitled to hold the office of trustee during his suspension period and thus, indirectly would not be able to contest election during that period.

9. In order to substantiate his contentions, learned counsel for the respondent placed his reliance on the decision in the case of ***Mohd. Abdul Rasheed s/o Mohd. Abdul Razzak and another vs. Deputy Charity Commissioner, Aurangabad and others*** reported in ***2009(4) All MR 263***.

10. Section 41D of the Act of 1950 reads as under:

“41D Suspension, removal and dismissal of trustees

(1) The Charity Commissioner may, either on application of a trustee or any person interested in the trust, or on receipt of a report under section 41B or suo motu may suspend, remove or dismiss any trustee of a public trust, if he,___

(a) makes persistent default in the submission of accounts report or return;

(b) willfully disobeys any lawful orders issued by the Charity commissioner under the provisions of this Act or rules made thereunder by the State Government;

(c) continuously neglects his duty or commits any malfeasance or misfeasance, or breach of trust in respect of the trust;

(d) misappropriates or deals improperly with the properties of the trust of which he is a trustee; or

(e) accepts any position in relation to the trust which is inconsistent with his position as a trustee;

(f) if convicted of an offence involving moral turpitude.

(2) When the Charity Commissioner proposes to take action under sub-section (1), he shall frame charges against the trustee or the person against whom action is proposed to be taken and give him an opportunity of meeting such charges of testing the evidence adduced against him and of adducing evidence in his favour. The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge, with the reasons therefor.

(3) Pending disposal of the charges framed against a

trustee the Charity Commissioner may place the trustee under suspension.

(4) Where the Charity Commissioner has made an order suspending, removing or dismissing any trustee and such trustee is the sole trustee or where there are more than one trustee and the remaining trustees, according to the instrument of trust, cannot function or administer the trust without the vacancy being filled, then in that case the Charity Commissioner shall appoint a fit person to discharge the duties and perform the function of the trust, and such person shall hold office only until a trustee is duly appointed according to the provisions of the instrument of trust.

(5) A trustee, aggrieved by an order made under sub-section (1), may, within ninety days from the date of communication of the order of suspension, removal or dismissal, apply to the Court against such order.

(6) An appeal shall lie to the High Court against the decision of the Court under sub-section (5) as if such decision was a decree from which an appeal ordinarily lies.

(7) The order of the Charity Commissioner shall, subject to any order of the Court or in appeal, be final.”

11. It appears that the word “suspension” used at two places, in sub-section (1) and in sub-section (3), are in different context. So far as the word “suspension” used in sub-section (1) of Section 41D is

concerned, the same is about termination of enquiry and another one is pending disposal of the enquiry. Obviously, appeal is provided against order passed under sub-section 1 of Section 41D of the Act of 1950.

12. Learned counsel for the petitioner relied upon the judgment delivered by this Court dated 23.01.2009 in writ petition No.5095 of 2007 (supra). This Court, in the said judgment, has observed that as the petitioners therein, themselves have tendered their resignation, which has been accepted by the management and the change to that effect has been approved by the Assistant Charity Commissioner, there is no purpose left in the proceedings under Section 41D of the Act of 1950. This Court accordingly, in the said matter, made rule absolute in the above terms with further observations that respondents therein are free to initiate any appropriate legal action which can be validly initiated under the provisions of law and quashment of the proceedings in the said matter will not be an impediment in their way. In the case stated above, this Court had no occasion to consider that the word “suspension” used at two places in Section 41D is under different context and suspension for a particular period is also contemplated as a punishment, may be in the lesser form as compared to “removal or dismissal”.

13. The Division Bench of this Court, in the case of **Mohd. Abdul Rasheed s/o Mohd. Abdul Razzak & another** (*supra*), relied upon by learned counsel for the respondent, in paragraph No. 19 of the judgment, has made the following observations:

"19 We are in agreement with the arguments advanced by Shri M.M.Joshi, advocate that the object of sub-section (3) is to protect trust from misappropriation, criminal breach of trust or other act of trustee prejudicial to the interest of trust; whereas action of punishment under sub-section (1) is directed against trustee or other person by way of punishment of suspension, removal or dismissal. It is true that ordinarily suspension is pending inquiry and is not intended to be a final order like removal or dismissal, but if we consider sub-section (1) and (3) together it appears that suspension for particular period is also contemplated as a punishment. Suspension for particular period could be considered as lesser form of punishment of removal or dismissal. It will have to be conceded that the Bombay Public Trusts Act does not lay down removal or dismissal as disqualification from again becoming trustee of a public trust. In fact that is one of the infirmities in the Bombay Public Trusts Act. The legislature ought to have laid down what would be the consequence of removal of trustee, as distinguished from his dismissal; whether the trustee would be disqualified or debarred from becoming trustee for ever, or he would be entitled to contest an election to the office of trustees even after such order of removal or dismissal. However, suspension can have such effect. Suppose if

tenure of trustee elected is three years and trustee is suspended for six years he would not be entitled to hold office of trustee for such period and thus indirectly would not be able to contest election during such period."

14. The enquiry under Section 41D is yet to be concluded in the present case. On conjoint reading of sub-section 1 and sub-section 3 of Section 41D, it appears that suspension for a particular period is also contemplated as a punishment. It cannot be, therefore, said that no purpose left in the proceedings under Section 41D of the Act of 1950 in the present case on the count that petitioners are no more the trustees.

15. In the case in hand, petitioners have not tendered their resignation. On the other hand, the near and dear ones of the petitioners are shown to have been elected as members of the new management. Furthermore, the change report is still pending. After the death of original complainant, the application submitted by the present petitioners at Exh.130 came to be dismissed by the Joint Charity Commissioner vide order dated 20.05.2014. Said application Exh.130 came to be submitted seeking abatement of the proceedings on the count of death of original applicant-complainant. The order passed below Exh.130 came to be challenged before this Court by way of writ petition No. 4644 of 2014 and this Court, by

order dated 10.06.2014, dismissed the said writ petition. Present petitioners challenged the said order by filing Special Leave Petition before the Hon'ble Supreme Court. The said Special Leave Petition came to be dismissed vide order dated 17.07.2014. It appears that the enquiry is almost concluded and it was posted for final hearing in the matter. I find much substance in the submission made on behalf of the respondent that petitioners are deliberately avoiding to contest election for the reason that enquiry under Section 41D is pending against them.

16. In view of the above discussion, I do not find any fault in the impugned order passed by the Joint Charity Commissioner. There is no substance in the writ petition. Hence, the writ petition is hereby dismissed. In the circumstances, there shall be no order as to costs.

17. Learned counsel for the petitioner, at this stage, requests for continuation of interim relief granted earlier for further period of four week. However, considering the facts and circumstances of the case, the request stands refused.

(V. K. JADHAV, J.)

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