

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 266 OF 2016

1. Sadanand Parshuram Naik Parsekar
alias Sadanand Parshuram Naik Desai,
aged 72, retired,
Gauri Co-op. Housing Society,
Tivrem, Marcel Goa 403 107,
2. Guruprasad Naik Desai,
major of age,
3. Shamsunder D. Naik Desai,
major of age,
4. Shripad R. N. Desai,
major of age,
All residents of
238- Madhalawada Parse Pedne, Goa. ... Petitioners

V e r s u s

1. State of Goa,
represented by
Under Secretary Revenue – II,
Revenue Dept., Secretariat,
Porvorim Goa.
2. Mamlatdar of Pernem Taluka
and Administrator of Devalayas
Pernem Goa.
3. Anand Raghunath Desai,
H.No.263, Bamanwado,
Parcem, Pernem Goa. 403 512
4. Devendra K. P. P. Desai,
major of age,
H.No.263/4, Bamanwada,

Parse Pedne Goa
403 512

5. Mahesh D. Naik,
major of age,
H.No.238, Madhalawada,
Parse Pedne Goa
403 512

6. Waman K. Prabhu
major of age,
H.No.250 Bamanwada,
Parse Pedne Goa
403 512

7. Pravin D. Naik Desai
major of age,
Mangalya 815/A Mugali,
St. Jose de Areal,
Salcete Goa
403 709.

.... Respondents

Mr. Sudin Usgaonkar, Senior Advocate with Mr. K. Padgaonkar,
Advocate for the petitioners.

Mr. P. Faldessai, Addl. Government Advocate for the respondent nos.
1 and 2.

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar,
Advocate for the respondent no.3.

Mr. Sahish Mahambrey, Advocate for the respondent nos. 4 to 7.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 11th April, 2016

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. Sudin Usgaonkar, learned Senior Counsel appearing for the petitioners, Mr. P. Faldessai, learned Addl. Government Advocate appearing for the respondent nos. 1 and 2, Mr. S. D. Lotlikar, learned Senior Counsel appearing for the respondent no.3 and Mr. S. Mahambrey, learned counsel appearing for the respondent nos. 4 to 7.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the respective respondents waive service.

4. Upon hearing the learned counsel appearing for the respective parties, the main grievance raised by the petitioners is that the committee which was duly elected and was holding the office of the concerned Devasthan was according to the petitioners unauthorisedly and arbitrarily dissolved by the impugned order dated 12.02.2016. It is the contention of the petitioners that the term of the

office of the concerned committee who are the respondent nos. 4 to 7 was due to expire on 31.03.2016. It is further their contention that the respondent no.3 lodged a complaint against the working of the Managing Committee inter-alia on the ground that the audited accounts were not submitted within the time stipulated in the Devasthan Regulations and that the voters list had not been finalised though the elections were statutorily scheduled on the second Sunday of February, 2016. It is further pointed out that though the comments of the Managing Committee were sought by the respondent nos. 1 and 2, and the Managing Committee submitted the audited accounts nevertheless, the impugned order came to be passed without giving a hearing as provided in Article 44 of the Devasthan Regulations. The respondent no.3 who was the complainant has raised an objection that the petitioners have no locus standi to file the present petition as the concerned Managing Committee has not approached the Court by raising their grievance. But however, the respondent nos. 4 to 7 who are parties to the above petition and the earlier Managing Committee in fact supports the case of the petitioners.

5. The learned Addl. Government Advocate points out that it

is the contention of the respondent nos. 1 and 2 that as the comments were received from the Managing Committee, no further hearing was required in terms of the relevant provisions of law.

6. Mr. S. D. Lotlikar, learned Senior Counsel appearing for the respondent no.3 however submits that even assuming that there was no hearing as contended by the petitioners, nevertheless, according to him on bare perusal of the replies furnished by the respondent nos. 4 to 7 to the complaint lodged by the respondent no.3, it clearly reveal that all the allegations have been duly established. The learned Senior Counsel as such submits that giving a hearing to the respondent nos. 4 to 7 would be an empty formality as according to him the allegations are well established and would meet the same fate as in the impugned order.

7. Mr. Sudin Usgaonkar, learned Senior Counsel appearing for the petitioners however submits that in the judgment of the Division Bench of this Court reported in **1999(1) Goa L.T. 442** in the case of **Shri Shannum Pandu Parab Gaunkar V/s State of Goa and others**, the law has been well settled that principles of natural

justice cannot be sacrificed when the committee is being dissolved in terms of Article 44 of the Devasthan Regulations. The learned Senior Counsel further pointed out that the records reveal that the Managing Committee had immediately after submitting the comments forwarded the audited reports to the respondent no.2 though they have raised an objection to the format of filing such accounts. It is also brought to our notice by the respondents that an Ad-hoc Committee is already in place and any order passed by this Court would jeopardize the day to-day functioning of the affairs of the Devasthan as the constitution of the Ad-hoc committee has not been challenged in the present petition.

8. We have given our thoughtful consideration to the rival contentions. Considering that the dispute was concerning the management of the Devasthan and to have a workable solution, on the last date of hearing a suggestion was made to see whether the Ad-hoc committee could be substituted by a mutually agreed members but however, it was reported that this exercise was not possible.

9. On perusal of the judgment of this Court in the case of

Shri Shannum Gaunkar (supra), it has been observed at paras 6 and 11 thus :

“6. Perusal of Articles 44 and 45 of the Devasthan regulations makes it abundantly clear that the Government is sufficiently empowered to dissolve an elected Committee of a Devasthan when the management of the Temple by such Committee becomes prejudicial to the Devasthan or when the Committee disobeys the lawful orders issued by the authorities. Moreover, such dissolution has to be preceded by a proper opportunity of being heard to the Committee to be dissolved. Article 44 of the Devasthan Regulations does not exclude principles of natural justice and, on the contrary, makes it incumbent for the Government to give a fair opportunity of being heard to the Committee to be dissolved before taking any decision for the dissolution of the Committee.

11. As already observed above, the Government is empowered to dissolve the elected Committee. But such dissolution has to be preceded by a proper opportunity of being heard to the Committee which is sought to be dissolved. In the case in hand, undisputedly

there was no prior hearing given to the dissolved Committee. Shri Bharne, the learned Government Advocate, sought to rely upon two letters, being letter dated 25-3-1994 by Deputy Collector addressed to Under Secretary (Revenue) and the other dated 23rd February 1993 by the Mamlatdar of Bicholim addressed to the Collector of North Goa, in support of his contention that the dissolved Committee was sufficiently heard in the matter before passing the Order dated 2nd November 1995. Perusal of letter dated 25-3-1994 by the Deputy Collector to the Under Secretary (Revenue) discloses that the Mamlatdar of Bicholim had issued show cause notices to the President and Attorney of the Managing Committee for not implementing the Court's Order dated 9-11-1990 and the same notices were duly replied by the Managing Committee. The Court's Order dated 9-11-1990 was directing the Managing Committee to include names of certain persons as the Mahajans of the Devasthan. The said letter also refers to a report by the Mamlatdar of Bicholim dated 23rd February 1993 with a proposal for dissolution of the existing Committee and the appointment of an ad-hoc Committee. The letter does not disclose the reason for such report by

the Mamlatdar. The letter also discloses that the Managing Committee and representatives of four aggrieved families were also heard by the Collector on 26-2-1993 and a settlement was arrived at which was not honoured by the Managing Committee. Moreover, letter dated 23rd February 1993 by the Mamlatdar of Bicholim to the Collector of North Goa discloses that the election of the Managing Committee which was scheduled in February 1992 was stayed by the Civil Court by its Order dated 6th February 1992 and that the old Committee though its tenure had already elapsed and according to the Mamlatdar, in terms of Article 40, para 4 of the Devasthan Regulations, the old Committee could not have continued further and in view of Article 45, therefore, he proposed the names for the new Committee till the elections are held. It was those names which were accepted by the Government and the new Committee was accordingly appointed by Order dated 2nd November 1995. The affidavit filed by the respondent no.5 who is the attorney in the newly appointed Committee also discloses that it was only after the Order dated 2nd November 1995 that a notice was issued dated 14th December

1995 by the Mamlatdar to the President of the dissolved Committee as well as that of the new Committee to remain present in the Office of the Mamlatdar. All these facts clearly disclose that the dissolved committee was never heard before invoking the powers under Article 44 of the Devasthan Regulations by the Government. Undisputedly, the dissolution of the old Committee was on the ground of Article 44(2) which says that the Committee can be dissolved in case of the disobedience to the legitimate warnings or lawful orders by the authorities to such Committee. The contention of the respondents is that the Committee was dissolved on account of failure on the part of the dissolved Committee to include the names of the various persons who were directed to be enrolled as the Mahajans of the Temple by the Civil Court. In other words, it was merely on account of failure to comply with the Order of the Civil Court that the action in terms of Article 44(2) of the Devasthan Regulations was taken by the Government and before taking such action, the dissolved Committee was never heard though such hearing was mandatory in terms of provisions of the said Articles. When a provision in a Statute clearly makes it

mandatory to comply with the basic principles of natural justice and the authority who is acting under such provision does not afford such opportunity to the affected party or parties, the action by the authority cannot be termed as the lawful and, on the contrary, it would be certainly void and bad in law. Considering this basic principle of law and there being clear violation on the part of the Government in complying with the basic principles of natural justice which were otherwise specifically required to be complied with under Article 44 before dissolving the elected Managing Committee of the Devasthan, the Order dated 2nd November 1995 and amended Order dated 2nd August 1996 cannot be sustained and are liable to be quashed and set aside.”

10. On going through the observations therein, it cannot be disputed that the principles of natural justice would have to be followed before the Managing Committee of the Devasthan is dissolved. In the present case, though the comments were sought by the respondent no.2 in the context of examining whether there was any case made out to proceed with the complaint lodged by the respondent no.3 nevertheless, before the ultimate decision

undisputedly no hearing or opportunity was given to the Managing Committee before the subject dissolution of the Committee. On this short point alone the impugned order passed by the respondent no.2 stands vitiated.

11. No doubt, as pointed out by Mr. S. D. Lotlikar, learned Senior Counsel appearing for the respondent no.3, the reply filed by the Managing Committee would prima facie show that there was some breach committed by the Managing Committee in performing their functions, nevertheless, the report of the Administrator suggest that the norms complained of about furnishing the audited accounts every year by the Devasthan in the earlier term were not followed. Apart from that, there is material on record to point out that in the month of November/December, 2015 a copy of the audited accounts were submitted by the respondent nos. 4 to 7. In these circumstances, we find that it was incumbent upon the respondent nos. 1 and 2 to give a hearing to the Managing Committee before proceeding to pass the impugned order.

12. As far as the contention of the learned counsel appearing

for the respondents with regard to the locus of the petition, we find that undisputedly the petitioners are Mahajans of the concerned Devasthan. Apart from that, such Mahajans have a right to ensure that the proper and legal Managing Committee is running the affairs of such Devasthan. Besides that as pointed out herein above, the respondent nos. 4 to 7 who are the members of the Managing Committee support the averments made in the petition.

13. Taking note of the above findings, we shall now examine what relief can be granted in the present petition. Undisputedly, a new Ad-hoc committee has already taken charge of the affairs of the Devasthan and removing such committee at this stage would gravely jeopardize the day to-day affairs of such Devasthan. In such circumstances, we find it appropriate in the interest of justice that the impugned order dated 12.02.2016 would be subject to any further orders which the respondent nos.1 and 2 would pass after hearing the respondent nos. 4 to 7 in respect of the action taken by the respondent nos. 1 and 2 to dissolve the Managing Committee. Article 40, para 5 of the Devasthan Regulations, reads thus :-

“Para 5 – Every member of the Committee, effective or substitute, shall hold office for a period for which he had been duly elected or appointed and shall on expiry of the said term be eligible for re-election or re-appointment :

Provided that notwithstanding the expiry of the term of Office, the member of the Committee shall continue in the office until his successor has been duly elected and has assumed office”.

On plain reading of the said provisions, it clearly provide that the Committee shall continue in office until the successor has been duly elected or has assumed office. No doubt, this would be subject to the powers reserved in terms of Articles 44 and 45 of the Devasthan Regulations.

14. In such circumstances and in the interest of justice, we pass the following :

O R D E R

(i) The impugned order dated 12.02.2016 passed by the respondent no.2 is subject to further orders which the respondent no.2 would pass after hearing

the respondent nos. 4 to 7 in accordance with law.

(ii) The respondent nos. 1 and 2 are directed to hear the respondent nos. 4 to 7 and all concerned parties after giving an opportunity of being heard and proceed to pass a fresh order in the light of the above observations in accordance with law. Needless to say that any orders passed by the respondent no.2 shall supersede the impugned order dated 12.02.2016.

(iii) The respondent nos. 4 to 7 and all concerned parties shall appear before the respondent no.2 on Monday i.e. 18th April, 2016 at 03.00 p.m. in the office of the respondent no.2 and abide by further directions of the respondent no.2.

(iv) In the meanwhile, until the final decision by the respondent no.2, the Ad-hoc committee shall only carry out the day today affairs of the concerned Devasthan and not take any major financial decision of such Devasthan.

(v) The respondent nos.1 and 2 shall take the

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said fresh decision within one month from today.

(vi) Rule is made absolute in the above terms.

(vii) The petition stands disposed of accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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