

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4607 OF 2017

Dara Sheriar Irani & Ors.	 Petitioners
V/s.	
The Salsette Parsi Association & Ors.	 Respondents

Ms. Kainaz Irani, i/by Mr. Satish Kumar Chettiyar, for the Petitioners.

Mr. S.R. Tejpal, i/by M/s. Tejpal & Co., for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 12TH DECEMBER 2017.

P.C. :

1. Heard Ms. Irani, learned counsel for the Petitioners, and Mr. Tejpal, learned counsel for the Respondents.

2. By this Petition, the Petitioners are challenging the order dated 6th August 2016 passed by the City Civil Court, Mumbai, in Chamber Summons No.1624 of 2015 taken out in Suit No.8345 of 2002, thereby allowing the said Chamber Summons and permitting to bring the names of the Trustees on record.

3. The grievance of learned counsel for the Petitioners is that, as the Change Report filed by the Trust is still pending before the Charity Commissioner, under Section 22 of the Maharashtra Public Trusts Act,

and that inquiry is not held and the Change Report is not finalized, it was not proper on the part of the Trial Court to bring names of those Trustees on record as Plaintiffs in that Suit. In support of her submission, the learned counsel for the Petitioners has relied upon various Judgments. However, if one considers the facts of the present case, in my considered opinion, those Judgments cannot be relevant at all.

4. It is pertinent to note that the Suit is filed by the Respondent-Trust for getting possession of the suit premises from the Petitioners on the ground that they are tress-passers in the said suit premises. As one of the Trustees, namely, '*Nadar Behram Mulla*' has died and is no more, the Change Report is filed before the Charity Commissioner for bringing the name of another Trustee on record. Similarly, the Trustee by name '*Jer Dhanjishah Moos*' has resigned and, therefore, in his place, name of another Trustee is suggested and that Change Report is pending. Now, merely because the Change Reports are pending before the Charity Commissioner, can it be said that these persons cannot function at all as 'Trustees'?

5. In this respect, learned counsel for the Respondents has rightly placed reliance on the Judgment of this Court in the case of *Vijay K. Mehta and Anr. Vs. Charu K. Mehta and Ors.*, 2008 (5) *Mh.L.J.* 853,

wherein, in paragraph No.22, it was categorically held that, “*order under Section 22(3) of the B.P.T. Act merely gives finality to the changes already effected by the Trust*” and, therefore, it will not be proper to accept the argument that, unless that order thereon is passed, the Trustees, whose names are appearing, should not be allowed to function.

6. In paragraph No.25 of the said Judgment, it was further held that, “*the finality attached to the order passed under Section 22(3) of the Act cannot be stretched to such an extent so as to hold that the trustees appointed by the Trust cannot function as trustees unless and until their names are recorded in the register as per the order passed under Section 22(3) of the Act.*”

7. The order under Section 22(3) of the Act, thus, merely gives finality to the changes already effected by the Trust and the said order does not make changes effective from the date of the order.

8. Learned counsel for the Petitioners has relied upon the Judgment of this Court in *Rajabhau Damodar Raikar Vs. Assistant Charity Commissioner, Pune and Ors.*, 2015 (4) Mh.L.J. 275; especially, paragraph No.14 thereof, which states that,

“A Change Report, whether contested or not, has to be decided after holding an inquiry in a manner provided in Rule 7 of the Bombay Public Trusts Rules, 1951. No Change Report can be accepted unless the Assistant Charity Commissioner or Deputy Charity Commissioner, as the case may be, after holding an inquiry, comes to a conclusion that the change, as reported, has occurred. Sub-section (3) of Section 22 requires findings to be recorded with reasons while disposing of the Change Reports whether there is a contest or not.”

9. There can, absolutely, not be two opinions about the legal proposition laid down in this authority. However, the same is not relevant for the purpose of this Writ Petition in the light of the law laid down in the above-said Judgment of *Vijay K. Mehta (Supra)*, wherein it is categorically held that, *“merely because the Change Reports are pending before the Charity Commissioner, the Trustees cannot be restrained from discharging their duties”*.

10. Here in the case, admittedly, the Change Reports are pending before the Charity Commissioner and, that too, on account of death of one Trustee and resignation of another Trustee. Therefore, the consequential appointments are made in their places and those Change Reports are under consideration. That does not mean that their names should not be brought on record of the Suit, which is filed by the Trust for getting possession of the suit property, which belongs to the Trust

and which, according to the Trust, is tress-passed by the Petitioners. If at all the Petitioners had any grievance about the said Change Reports, the proper remedy for them is to approach the Charity Commissioner, but, here in the case, it cannot be said that the impugned order passed by the Trial Court permitting the Respondents to bring the names of the new Trustees on record and deleting the names of earlier Trustees, who has expired or who has resigned, can be called as illegal so as to warrant interference therein. It is pertinent to note that, the Trial Court has also granted liberty to the Petitioners to file additional affidavit, if they require and if found necessary.

11. In consequence, the impugned order dated 6th August 2016 passed by the City Civil Court, Mumbai, in Chamber Summons No.1624 of 2015 taken out in Suit No.8345 of 2002, does not call for any interference. Hence, the Writ Petition stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]