

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1235 OF 2001
WITH
CIVIL APPLICATION NO. 4990 OF 2001

Shri. Bapulal U. Mulani .. Appellant
vs.
Shri. Jaysingrao B. Patil and ors. .. Respondents

Mr. Umesh Pawar i/b Mr. T.S. Ingale for the Appellant.
Mr. Vaibhav V. Ugle for Respondent Nos.1 and 2.

CORAM : M. S. SONAK, J.
DATE : 24 FEBRUARY 2017.

P.C. :-

1] Heard Mr. Umesh Pawar & Mr. T.S. Ingale, learned counsel for the appellant and Mr. Vaibhav V. Ugle for Respondent Nos.1 & 2.

2] The challenge in this appeal is to the judgment and order dated 13 August 1999. The operative portion of which reads thus:

“The application is dismissed.

The application at exh.24 is allowed, and present Applicant and persons on management are restrained from appointing any new officials till the new management come into force, after due election and the application is disposed of accordingly.

Parties to bear their own costs.”

3] Change Report No. 122 of 1986 was dismissed by the Assistant Charity Commissioner by order dated 1 December 1986 and the appeal against the same was dismissed by the Joint Charity Commissioner by order dated 7 September 1996. Aggrieved by such concurrent dismissal, the present appellant instituted Miscellaneous Civil Application (Trust) No. 188 of 1996 before the II Additional District Judge, Sangli under the provisions of Section 72 of the

Bombay Public Trust Act, 1950 (said Act). By the impugned judgment and order dated 13 August 1999, the said application came to be dismissed and the applicant and persons in management were restrained from appointing any new officials until the new management takes charges after due election.

4] Change Report No.122 of 1986 pertains to the period between 1976 and 1986. The three authorities, i.e., Assistant Charity Commissioner, Joint Charity Commissioner and finally the District Judge, Sangli have given cogent reasons as to why the Change Report could not be accepted. In any case, after the impugned order was made, fresh elections have been held from time to time and appointments of Trustees have been made, in accordance with such fresh elections. At this point of time, there is no question of interfering with the impugned judgment and order.

5] Learned counsel for the parties, however, state that on account of pendency of the present appeal, further Change Reports have been held up. Now that the present appeal is disposed of, the Assistant Charity Commissioner is directed to dispose of pending Change Reports, as expeditiously as possible and in accordance with law and on their own merits.

6] This Court, in ***Jagatnarayansingh Swarupsingh Chithere and ors. vs. Swarupsingh Education Society and anr. - 1980 Mh.L.J. 372***, at paragraphs 11 and 12, has observed thus:

“11. With all these findings in favour of the appellants, I am constrained to nevertheless dismiss the appeal in view of the subsequent developments. Court cannot ignore relevant

subsequent developments occurring during the pendency of appeal and must, in the ends of justice, mould its order in the light thereof. In this context, I may refer to Civil Application No. 2498 of 1979 by respondent No.1. Factual averments therein are not contested. Undisputed position, therefore, is that the term of the Managing Committee elected in February 1974 has already expired in February 1979 and a new Managing Committee has also been elected in March 1979. This new Committee has also already taken charge. Mr. Nashikkar, the learned Advocate for respondent No. 1 trust, makes a statement before this Court that the old Managing Committee elected in February 1974 had neither sold nor purchased any immovable property nor had it taken any such major policy decision so as to adversely affect the interest of the public trust. The said Managing Committee had only carried on routine administration. Mr. Chandurkar, the learned Advocate for the appellants, has not drawn my attention to any such act by the erstwhile Managing Committee which can be said to be against the interests of the trust. Moreover, there are many in-built provisions in the Act itself and the Rules thereunder operating as safety valve for protection of public trusts. Control of the Charity Commissioner is also there all throughout. In these circumstances, remand to inquiry into the theoretical legality or otherwise of the 1974 elections already superseded by the 1979 elections become academic.

12. This is not to say or hold that the impugned order of the learned District Judge is necessarily good and valid. But subsequent developments have rendered it unnecessary to go into that question. Question in the abstract or questions academic are normally not decided by Courts. Mr. Chandurkar submits that it was no fault of the appellants that before this appeal could reach hearing, the term of the erstwhile Managing Committee expired. That may be so. But when occasion has arisen today to consider what order should be passed on this appeal, the above developments do become relevant. Moreover, I am not prepared to totally absolve the appellants of blame for this situation, inasmuch as, nothing prevented them from moving this Court, or perhaps even the authorities below, for an appropriate interim order against the members of the erstwhile Managing Committee. Be that as it may and today faced with the situation aforesaid, this, in my view, is not a case where an order of remand can be successfully insisted upon. On the contrary,

interests of justice and of the very public trust in question would be better served by drawing a curtain on this litigation which, in the circumstances supra, has become infructuous. Keeping it nevertheless alive would be an exercise in futility.”

7] In the present case, therefore, even if the questions raised by the appellant were required to be decided in favour of the appellant, there was no question of making any effective orders, on account of subsequent developments. Therefore, adopting the course of action, as was adopted in *Jagatnarayansingh Swarupsingh Chithere (supra)*, it is only appropriate that the present appeal is disposed of. Further, in this case, three authorities, with cogent reasons, have ruled as to why the Change Report which was submitted after substantial delay, could not be accepted. There is really no case made out to interfere with the impugned orders.

8] With the aforesaid observations, the appeal is disposed of. There shall, however, be no order as to costs.

9] In view of disposal of the main appeal, Civil Application No. 4990 of 2001 does not survive and the same is also disposed of.

(M. S. SONAK, J.)