

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8014 OF 2016

Shri Vinod Popat Pawar. .. Petitioner

Vs

Shri Herambh Sadashiv Vanshive and Others. .. Respondents

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Shri P.B. Shah along with Shri Kayval P. Shah for the Petitioner.

Shri Siddharth R. Roughe for the Respondent No.2.

Ms. Aparna Vhatkar, AGP for the Respondent No.3.

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CORAM : A.S. OKA & A.K. MENON, JJ

DATED : 4TH APRIL 2017

ORAL JUDGMENT (PER A.S. OKA, J)

1. The order dated 13th December 2016 directs final disposal of this Petition at the admission stage. The Petitioner was appointed as a Trustee of the second Respondent which is a Public Charitable Trust registered under the Maharashtra Public Trust Act, 1950 (for short “the said Act of 1950”). In First Appeal No.71 of 1886, a scheme for the management of the second Respondent was framed by this Court. The scheme underwent modifications from time to time. In the present Petition, we are concerned with the modification made by the Judgment and Order dated 20th February 1986 in Civil Reference No.7 of 1983.

2. Before we deal with the factual controversy, it will be necessary to advert to the relevant clauses in the scheme framed by this Court. Clause 10 (unamended) reads thus:-

“10. It shall be competent to the District Judge on his own motion or upon the application or upon representation made of any person interested in the Sansthan, to remove from the management any trustee who is in the opinion is unfit for the management of the Sansthan or incompetent or negligent in the discharge of his duties. He may also suspend any trustee, if necessary, pending inquiry into his conduct. Any order of removal of a trustee under this clause shall be subject to confirmation by the High Court, and the High Court, after notice to the Trustee or Trustees concerned and the District Judge may confirm or set aside the order.”

3. By the order dated 20th February 1986 passed by a Division Bench of this Court, the following modification was ordered to be made:-

“11. The following amendment is proposed:

In the Scheme, wherever the term 'District Judge' appears, that will be substituted by the term 'Joint Charity Commissioner, Pune,' and wherever the term 'High Court' appears, the same will be substituted by 'the District Judge', Pune.”

4. By this Petition under Article 226 of the Constitution of India, the Petitioner has taken an exception to the order dated 7th May 2016 passed by the learned Joint Charity Commissioner, Pune in Misc. Application No.52 of 2016. As pointed out earlier, as per the

amendment carried out to the scheme under the order dated 20th February 1986, now the jurisdiction under Clause 10 of the said Scheme to remove from the management any trustee of the second Respondent Trust after holding an inquiry vests in the learned Charity Commissioner. The learned Joint Charity Commissioner is empowered to exercise the powers of the Charity Commissioner. It is the power under Clause 10 of the said Scheme which was exercised by the learned Joint Charity Commissioner while passing the impugned order. The English translation of Clause 2 of the operative part of the impugned order reads thus:-

“2. Shri Vinod Popat Pawar is hereby removed from the post of Trustee of Chinchwad Deosthan Trust, Pune, bearing Trust Registration No.A-591 (Pune). As per the provisions of the Constitution of the Trust, the power to confirm the said order is vested with the Hon'ble District Judge, Pune, and therefore, the matter be sent to the Hon'ble District Judge, Pune for confirmation.”

5. The clause 3 of the impugned order directs that an entry of the said order be made in the Scheduled-I of the register of the Public Trusts maintained under the said Act of 1950. It is not in dispute that the Petitioner has applied for review of the said order before the learned Joint Charity Commissioner. There are various grounds pressed into service such as the failure to give opportunity to the Petitioner of being heard. It is contended that one Shri Heramb Sadashiv Vanshive, who is shown as the Complainant before the Joint Charity Commissioner,

Pune, is not in existence. Lastly, it is contended that the second Respondent has proceeded on the footing that by the impugned order, the Petitioner stands removed from the post of Trustee though admittedly, the proceedings for confirmation of the said order are pending before the District Court. The submission is that the order of removal comes into force only if the order of the learned Charity Commissioner is confirmed by the District Court. It is contended that the Trustees of the second Respondent are preventing the Petitioner from discharging his duties as a Trustee. The learned counsel appearing for the Petitioner on instructions of the Petitioner states that the Petitioner will not press the Application for Review of the order dated 7th May 2016 and will withdraw the same. We accept the said statement.

6. Yesterday, when the matter was called out, we had called upon the learned counsel appearing for the second Respondent to make the stand of the Trustees very clear. Today, on instructions, he states that the order of removal of the Petitioner from the post of a Trustee of the Trust will come into operation only after it is approved by the learned District Judge. He states that if this Court is holding that the Petitioner continues to act as Trustee of the second Respondent Trust, certain restrictions may be imposed in the larger interest of the Trust. The learned AGP has submitted to the orders of this Court.

7. We have given careful consideration to the submissions. We have already adverted to the relevant clause in the scheme being Clause No.10 and the amendment made to the said clause. In view of the amendment made by the order dated 20th February 1986, on the Application or representation made by any person interested in the second Respondent Trust or on his own motion, the learned Charity Commissioner is empowered to remove any person from the post of a Trustee of the second Respondent Trust on the grounds set out in Clause 10 of the scheme. There is a power to suspend a trustee pending the inquiry. Clause 10 of the scheme specifically says that any order of removal of a trustee made under the said clause shall be subject to confirmation by the District Court after notice to the trustee or trustees concerned. There is a power conferred on the District Court to either confirm or set aside the order of the Charity Commissioner. Thus, the order which may be passed by the learned Charity Commissioner or by the learned Joint Charity Commissioner of removal of a trustee by exercising the powers of the Charity Commissioner under Clause 10 of the scheme is specifically made subject to confirmation by the higher Court, namely, the District Court. Thus, it follows that the drastic order of removal of a Trustee will come into force only after its confirmation by the District Court.

8. In fact, the impugned order of the learned Joint Charity Commissioner clearly provides that the matter be forwarded to the learned District Judge, Pune, for confirmation.

9. Now the learned counsel representing the Trustees of the second Respondent has fairly accepted that the Petitioner continues to be a Trustee of the Trust. A Trustee of the said Trust can be removed only as provided by the scheme sanctioned by this Court. So long as the Trustee is not removed after following the procedure laid down in the scheme, for all intents and purposes, he continues to be a Trustee of the second Respondent Trust.

10. Under Section 17 of the said Act of 1950, there is a provision for maintaining such books, indices and other registers as may be prescribed. If there is any change as contemplated by Section 22 of the said Act of 1950, an entry is required to be made in such register/book.

11. In the present case, the learned Joint Charity Commissioner committed an error by passing an order directing an entry to be made in the register maintained in accordance with Section 17 of the said Act of 1950 and the Rules framed thereunder. The entry of removal of the

Petitioner as a Trustee of the second Respondent Trust could have been made only after and only if there is a confirmation by the District Court.

12. As the order of the learned Joint Charity Commissioner is subject to the confirmation by the District Court, all issues regarding the alleged illegality about the said order raised by the Petitioner can be gone into by the learned District Judge and, therefore, it is not necessary for us to consider the said submissions about the illegality of the impugned order in this Petition.

13. Accordingly, we dispose of the Petition by passing the following order:-

ORDER :

- (a) The impugned order dated 7th May 2016 is clarified and it is declared that so long as the impugned order is not confirmed by the District Court as laid down in Clause 10 of the said scheme, the Petitioner will continue to act as a Trustee of the second Respondent Trust notwithstanding the impugned order;

- (b) If an entry of removal of the Petitioner as a Trustee is already made on the basis of the impugned order in the register of the Public Trust, the said entry shall be deleted within a period of two months from today;
- (c) We make it clear that all the issues regarding the legality and validity of the order dated 7th May 2016 are expressly kept open;
- (d) Needless to add that before deciding the issue of confirmation of the impugned order dated 7th May 2016, the learned District Judge shall issue notice to the Petitioner, to the second Respondent as well as to the learned Joint Charity Commissioner. He shall give an opportunity of being heard to the Petitioner and to the second Respondent before taking any final decision on the issue of confirmation;
- (e) We make it clear that we have not made any adjudication on merits of the controversy and all the questions are left open to be decided by the learned District Judge;

- (f) It will be open for the second Respondent to apply before the learned District Judge for giving necessary priority to the hearing of the confirmation proceedings.

(A.K. MENON, J)

(A.S. OKA, J)