IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1115 OF 2017
with
CAF/2220/2017

Shri Mansukhlal Velji Senghani & Ors. ... Appellants

Vs.

The Charity Commissioner & Others ... Respondents

Mr.V.A. Thorat, Senior Advocate with Mr.Kishore Jain and Danhit Jain i/b Divya D. Jain and Priyal Chheda for the Appellants

Mr.Yogesh Dabke, AGP, for Respondent No.1
Mr.J.P. Sen, Senior Advocate i/b Kavita A. Shah for Resp. Nos.2 to 5

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **NOVEMBER 16, 2017**

P.C.:

1. Heard. Admit. By consent of of the parties, Appeal is called out and taken up for final hearing forthwith.

2. This First Appeal is directed against the judgment and order dated 11.7.2017 passed by the learned Adhoc Judge, City Civil Court, Greater Mumbai in Charity Application No.1 of 2016. The brief facts and the chronology of the events are as under:

Respondent No.2 in the said application is a religious trust having various lands. The suit properties are situated at Mauje Kole, Sub-District of

Kalyan, District Thane admeasuring 50 Acres 22 Gunthas. The settler of the Trust has donated the lands to the trust. However, in the year 1953, the settler changed the mind; withdrew the landed properties by making application to the Charity Commissioner. Accordingly, the change report was accepted and by order dated 10.12.1953, those properties were deleted from Schedule I of the Trust by the Charity Commissioner The settler made a will dated 1.8.1967 and bequeathed this landed property to his wife. Thereafter, he died.

3. The will was probated in the year 1995, the legatee claimed the property and had entered into an agreement by sale which was executed by the legate with the appellant for sale of those lands on 11.5.1996. Public notice was issued on 27.5.1996 and on 27.5.1996, the appellants were given the registered power of attorney, in respect of the lands. Then, a registered deed of conveyance dated 31.12.1997 was executed between the appellants and the wife of the settler. The appellants became the owner of the said lands. On 29.12.1998, the Charity Commissioner informed that the property does not belong to the trust. The respondent No.4 moved application bearing No.19 of 2010 for sale of the landed property of the trust before the Charity Commissioner, being a trustee of the said trust. The Charity Commissioner by order dated 31.10.2012 did not give permission because the trustees did not give and were not willing to give public notice for sale of the properties. In between, a criminal complaint was made by respondent No.2 on 22.1.2014 with the office of the Charity Commissioner. The application made on 22.1.2014 was turned down by the Charity Commissioner vide order dated 7.7.2014.

4. Thereafter, Respondent No.4 gave another complaint dated 10.8.2015 to the Charity Commissioner that deletion of the lands from Schedule I which is a property of the trust, is illegal and fradulent and therefore, it is necessary for the Charity Commissioner to look into the matter and correct its record. The Charity Commissioner treated that application as a revision by its order dated 20.1.2016 and decided the said application on the same day i.e., on 20.1.2016 with order as follows:

> “The properties situated at Mauje Kole, Sub-District of Kalyan, District Thane admeasuring 50 Acres 22 Gunthas be recorded as trust properties and accordingly the previous entries in Schedule I be restored.”

5. The appellants being purchasers, were aggrieved by the order passed by the Charity Commissioner and so, they challenged the said order before the learned City Civil Court, Greater Bombay, by filing Charity Application No.1 of 2016. It was dismissed by the City Civil Court and hence, this First Appeal.

6. Mr.Thorat, learned Senior Counsel appearing for the appellants, has submitted that this case needs to be remanded for want of proper compliance of section 70A of the Maharashtra Public Trusts Act (old

Bombay Public Trusts Act, 1950). He submitted that the Charity Commissioner is bound to give notice to the appellants before passing any order on the complaint given by the respondents. The learned Senior Counsel has submitted that no notice was issued by the Charity Commissioner in the said complaint / letter. He pointed out the endorsement made by the Charity Commissioner on the letter dated 10.8.2015 wherein the Charity Commissioner on 20.1.2016 has ordered that "this letter be treated as a revision. Register it accordingly."

7. The learned Senior Counsel has submitted that the order under challenge before the City Civil Court was passed on the same day i.e., on 20.1.2016, by the Charity Commissioner. This clearly shows that he did not have time to issue notice to the appellants and thus have failed to comply with the proviso to section 70A of the Maharashtra Public Trusts Act (for short, hereinafter referred to as 'the Act'), which was mandatory. On the point of procedure under section 70A, the learned Senior Counsel for the appellants relied on the judgment in the case of **Hidayatkhan Pathan vs. Vaijnath[1].**

8. Mr.Sen, learned Senior Counsel appearing for Respondent Nos.2 to 5, while supporting the orders passed by the Charity Commissioner and the learned Judge of the City Civil Court, has argued that section 70A

1 (2009) 7 SCC 506

enables the Charity Commissioner to examine the orders passed by the subordinate officers. The Charity Commissioner has power to call the record of the office of the Assistant Charity Commissioner or Deputy Charity Commissioner and to pass orders if he comes across any illegality or omission on the part of these officers. The Charity Commissioner in fact has sent notice to the persons concerned i.e., the legal heirs of the original trustee/settler and, therefore, it cannot be said that the Charity Commissioner did not follow the procedure laid down u/s 70A of the Act. The learned Senior Counsel pointed out that the Charity Commissioner and the learned Judge of the City Civil Court have rightly taken into account the inquiry report of the Deputy Charity Commissioner wherein it is held that the change report of 1953 without issuing notice to the other trustees and without making any proper inquiry as per section 22 of the Act and, therefore, the Charity Commissioner had issued notices on 27.11.2015 to the person concerned and Smt. P. Maharaj Goswami, the widow of the original trustee. However, though the notices were issued, none appeared except the representative of the trust and, thereafter considering the finding in the inquiry conducted by the Deputy Charity Commissioner, the Charity Commissioner has rightly restored the entries of the lands in Schedule I. The learned Judge of the City Civil Court has considered all these aspects and held that fraud was played on the trust by the predecessor in title of the appellants and the properties were illegally deleted from Schedule I causing wrongful loss of the trust. He informed that a civil Suit is pending in the Civil Court at Kalyan between the trustee and the appellants about title of the suit lands.

9. At the outset, the challenge given in this First Appeal is on the point of non-compliance of the procedure u/s 70A of the Act. Section 70A of the Act is an enabling provision under which the Charity Commissioner enjoys the power to annul, reverse, modify or confirm the findings or the orders of the Deputy Charity Commissioner or the Assistant Charity Commissioner. This can be done by the Charity Commissioner either on an application given by the party or any person or suo motu. During the inquiry, the Charity Commissioner may direct the subordinate officer to take evidence or he himself can take evidence. The proviso to section 70A reads thus:

> "Provided that the Charity Commissioner shall not record or pass any orders without giving the party affected thereby an opportunity of being heard. ….."

10. In the case of **Hidayat Khan Pathan (supra),** a change report was submitted u/s 22 of the Maharashtra Public Trusts Act and the inquiry was conducted. When the order of the Assistant Charity Commissioner was challenged before the District Judge, the matter was remanded to the Joint Charity Commissioner with directions that fresh inquiry u/s 70A of the Act to be conducted. It was held by the Supreme Court that the section confers on the Charity Commissioner suo moto jurisdiction to call for and examine the record of the authority working below him and satisfy himself as to the correctness of the same and place the record in order. However, for that purpose, the parties affected thereby are required to be given opportunity of hearing.

11. The word 'affected' is used. The Oxford dictionary meaning of the word “affected” is as under:

“Influenced or touched by an external factor.”

12. Thus, the words 'concerned' or 'trustee', or 'legal heirs' are not used but by introducing the word 'affected', the Legislature wanted to convey that pursuant to the order passed earlier, if there is change in the record in the cases before the Charity Commissioner and if further transactions have taken place with the trust or other third parties, then, those persons are bound to be affected if the entries are changed or the record is restored alongwith entries and orders passed earlier. Therefore, the Legislature has thoughtfully used the word 'affected' which takes care of the persons going to be influenced by such change of record and therefore, under the principle of natural justice those persons are required to be heard and so, it is mandatory for the office of the Charity Commissioner to issue notice to the affected person.

13. This revisional power available to the Charity Commissioner u/s 70A of the Act is necessarily to be used judiciously. The section enables the Charity Commissioner to call the record, orders of the Assistant Charity Commissioner and Deputy Charity Commissioner and if he comes across any illegality in the record, then, he has power to set right his office by annulling, reversing, modifying the said orders after conducting inhouse inquiry. The change made in the record of the office of the Charity Commissioner can be either confirmed or reversed or modified by the Charity Commissioner under this section. However, the function of the Charity Commissioner and the powers used by him u/s 70A during the inquiry are the powers u/s 74 of the Act which state that all inquiries and appeals under the Act shall be deemed to be judicial proceedings within the meaning of sections 193, 219, 228 of the Indian Penal Code, hence, other party is to be heard before deciding the application u/s 70A of the Act.

14. Thus, I hold that the Charity Commissioner should have issued the notice to the affected persons and in absence of the same, the impugned order of the Assistant Charity Commissioner and further orders passed therein are set aside. The appellants shall waive of the notice and appear before the Assistant Charity Commissioner. All the parties to appear before the Assistant Charity Commissioner on

12th December, 2017 and the Assistant Charity Commissioner to give hearing to all and decide it afresh in accordance with law.

15. First Appeal is disposed of accordingly. In view of the disposal of the First Appeal, Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)