

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.869 OF 2009

Hindurao Balwant Pawar	..	Appellant
Versus		
Suhas Anantrao Nikam & Anr.	..	Respondents

WITH

FIRST APPEAL NO.862 OF 2009

Dipak Shivraj Jadhav & Ors.	..	Appellants
Versus		
Vithal Balkrishna Devale & Anr.	..	Respondents

WITH

FIRST APPEAL NO.868 OF 2009

Hindurao Balwant Pawar	..	Appellant
Versus		
Uday Prabhakar Paranjape & Anr.	..	Respondents

Mr. S.S.Patwardhan with Ms. Sukhman S. Rait for appellants in all first appeals

Mr. Umesh Mankapure for respondent No.1 in all F.As.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 8th February 2018.

P.C.

1] Heard learned Counsel for parties. Admit.

2] Since, the issue involved is very small and in view of subsequent developments pending these appeals and since the appeals are pending since the year 2009 by consent of learned Counsel for both the sides, these appeals are taken up for final hearing.

3] All these appeals are filed against the same parties involving similar issue regarding one common trust known as “Vishnu Digambar Paluskar Shikshan Sanstha” at Sangli.

4] Change Report No. 63 of 1996 is filed in First Appeal No.862 of 2009, Change Report No.64 of 1996 is filed in First Appeal No.869 of 2009 and Change Report No.65 of 1996 is filed in First Appeal No.868 of 2009 before the Assistant Charity Commissioner under section 22 of the Bombay Public Trust Act, 1950 (for short hereinafter referred to as “Act”) by the respondents in these first appeals and the same were accepted by the Assistant Charity Commissioner.

5] In Change Report No.63 of 1996, the opponent Vitthal Devde

has prayed for deletion of two names i.e. Deepak Jadhav and Hindurao Pawar, who were the main contesting appellants in the present appeals. The said change report was accepted by the Charity Commissioner. Against this order, an appeal being Appeal No.41 of 1997 was filed before the Joint Charity Commissioner, Pune which came to be allowed and the order of Assistant Charity Commissioner was set aside. This order of Joint Charity Commissioner was challenged by way of Mis. Application No.241 of 2000 before the District Judge, Sangli under section 72 of the Act. This application was allowed and the Judgement and order of Joint Charity Commissioner was set aside by restoring to file the order passed by the Assistant Charity Commissioner dated 31st July 1997 accepting the change report. Against this order of District Judge, Sangli in Misc. Application No.241 of 2000 the appellants have filed this first appeal.

6] In appeal No.869 of 2009 Change Report No.64 of 1996 was filed under section 22 of the Act. The same was accepted by the Assistant Charity Commissioner by his order dated 15th December 1997, wherein the of minutes of meeting dated 30th April 1991 were accepted. In the said meeting deletion of two trustees namely

Vishwas Rawal and Prakash Kowadkar was accepted and two other persons namely Madan Jadhav and Mrs. Sunita Rawal were accepted as replacement qua deleted trustees. The said order was challenged under section 70 of the Act before the Joint Charity Commissioner vide Appeal No.40 of 1997 who by an order dated 17th November 2000 allowed the said appeal and set aside the order of Assistant Charity Commissioner. An application being Misc. Application No.242 of 2000 was filed before the District Judge -2, Sangli challenging the Judgement and order dated 17th November 2000 passed by the Joint Charity Commissioner in Appeal No.40 of 1997. The District Judge, Sangli vide order dated 6th February 2009 allowed the appeal and the order of Joint Charity Commissioner dated 17th November 2000 was set aside thereby the order passed by the Assistant Charity Commissioner dated 15th December 1997 accepted the change report was restored.

7] In First Appeal No.868 Change Report No.65 of 1996 was filed thereby seeking change of appointment of entire Managing Committee was accepted by an order dated 15th December 1997 by in charge Assistant Charity Commissioner, Sangli and entries in Schedule -I were directed to be amended accordingly. The said

order accepting the change report and directing amendments was challenged in appeal under section 70 of the Act before the Joint Charity Commissioner, Pune who by his judgement and order dated 17th November 2000 allowed the said appeal partly and directed that names of outgoing trustees be deleted and names of incoming trustees be recorded as de-facto trustees. The Assistant Charity Commissioner was appointed and directed to hold elections. The said order was challenged before the District Court Sangli by filing Misc. Application No.242 of 2000. The learned District Judge allowed the said application on 6th February 2009 and restored the order of Assistant Charity Commissioner to file. This order of District Court is challenged by way of this First Appeal.

8] Since 2009, all these appeals were pending for admission. In all these appeals from the date of filing till today neither stay was granted to the impugned order nor any interim relief in favour of appellants was granted.

9] The learned Counsel for the appellants has submitted that in two appeals (F.A.No.869 of 2009 and F.A.No.862 of 2009) there was a point of limitation raised as there is a delay in filing report before

the Charity Commissioner. He submitted that the change report ought to have been filed within 90 days. However, though the meeting took place in the year 1991, for implementation the said change report was filed in the year 1996 and thus there was a delay of five years. He further pointed out that the notice issued in the case of change report No.64 of 1996, was faulty as it was not signed by the then Secretary (Mr. Jadhav) or the President but it was signed by the Vice President. Mr. Patwardhan further submitted that these change reports are illegally accepted by the Assistant Charity Commissioner and, therefore, the orders of the learned Dist. Judge upholding the orders of the Assistant Charity Commissioner accepting the change reports need to be set aside.

10] Learned Counsel Mr. Mankapure, appearing for the respondents submits that the point of limitation is not raised in Appeal No.868 of 2009 as the entire Managing Committee came in existence in the year 1995 and, thereafter, the committee submitted the change reports. He further submitted that in the case of Change Report No.63 of 1996 and 64 of 1996 it was expected that the then President would submit the change report. However, he failed to submit the same and, thereafter, when the new body which came

into existence in the year 1995, moved the change reports. He further submitted that in the case of Change Report No.64 of 1996 of the substitution or replacement of the two trustees, the earlier trustees who were replaced and who had submitted the resignation had no objection for the said replacement and, therefore, the change report was accepted. He submitted that photocopies of four orders passed by the Deputy Charity Commissioner (i) dated 11th July 2017 thereby accepting enquiry applications/ change report Nos. 556 of 2001 in respect of election of the trustees and Executive Council along with office bearers of the trust for the period from 2001 to 2006; (ii) dated 11th July 2017 accepting change report 513 of 2006 for the period 2006 to 2011 (iii) dated 11th July 2017 accepting change report No.248 of 2011 from 2011 to 2016 and (iv) dated 11th July 2017 accepting change report No.824 of 2016 for the period 2016 to 2021. By these reports further elections of members of Trust and Managing Committee, office bearers were accepted post dated. On a query, I am informed that these orders dated 11th July 2017 passed by the Deputy Charity Commissioner Sangli are not challenged before the Joint Charity Commissioner by the present appellant. Thus, it appears that from 1996 onwards, nearly for about 20 years the trust is run by the two office bearers of the

trust who are respondents herein.

11] As it is argued and pointed out by the learned Counsel for the respondents in First Appeal No.869 of 2009, that the name of the previous trustee Mr. Kowadkar and Mrs. Rawal were accepted in the meeting dated 30th April 1991 and the names of Mr. Jadhav and Mr. Rawal were replaced, it was necessary for the appellants to examine Mr. Kowadkar and /or Mr. Rawal to show that they did not resign and their resignation were erroneously accepted. However, they did not object to their replacement and under the circumstances, the said acceptance of change report of the replacement cannot be faulted with. Further, the names of then President and Secretary i.e. the present appellant Mr. Hindurao Pawar and Mr. Jadhav were deleted and for that change report No.63 of 1996 was filed. However, the said change report was not communicated to the Assistant Charity Commissioner as the entire new Managing Committee was created in 1995 and the change report of the new managing committee was accepted in the year 1995.

12] This delay was explained and accepted by the learned Judge

in his orders. The reasoning given by the learned District Judge in accepting the orders of the Assistant Charity Commissioner cannot be faulted with. These are the subsequent developments which show that the trust is run thereafter for the last 20 years by the different trustees and the office bearers of the managing Committee for nearly three consecutive terms. The acceptance of their appointment and creation are not challenged before the Joint Charity Commissioner. All these issues are really now only academic due to the subsequent events.

13] To this proposition, I take support from the judgement of this Court (S.C.Pratap, J) in the case of Jagatnarayansingh Swarupsingh Chithere and Ors. Vs. Swarupsingh Education Society and Anr., reported in 1980 Mh.L.J. 372 wherein this court dismissed the appeal in view of the subsequent developments by stating that the 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.

14] Similarly in the case of Hidayatkhan Bismillakhan Pathan Vs. Vaijnath and Ors., reported in (2009) 7 SCC 506 the Supreme Court

has held that the court of law or superior tribunal would not entertain the appeal or revision application wherein no effective order can be passed in view of the subsequent developments.

15] Considering this, all the appeals are hereby dismissed. No orders as to costs. Civil applications, if any, are dismissed in view of dismissal of the appeals.

(MRS.MRIDULA BHATKAR, J.)