

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.25947 OF 2017
WITH
CIVIL APPLICATION (STAMP) NO.25948 OF 2017
WITH
CIVIL APPLICATION (STAMP) NO.31926 OF 2017

Madhuri Dharma Naik and Ors. Appellants-Applicants
V/s.
Naigaum Education Society, Mumbai and Ors. Respondents

ALONG WITH
CIVIL APPLICATION (STAMP) NO.26447 OF 2017
IN
APPEAL FROM ORDER (STAMP) NO.25947 OF 2017

Mahipati Dynanu Satale Intervenor /
Prop. Respondent
In the matter between
Madhuri Dharma Naik and Ors. Appellants
V/s.
Naigaum Education Society, Mumbai and Ors. Respondents

ALONG WITH
CIVIL APPLICATION (STAMP) NO.29979 OF 2017
IN
APPEAL FROM ORDER (STAMP) NO.25947 OF 2017

Shivajirao Desai and Anr. Interveners
In the matter between
Madhuri Dharma Naik and Ors. Appellants
V/s.
Naigaum Education Society, Mumbai and Ors. Respondents

Mr. Sanjeev Gorwadkar, Senior Counsel, I/by Mr. K.G. Rikame, for the Appellants.

Mr. A.R. Patil, A.G.P., for the Respondent-State.

Mr. Sagar Talekar for Respondent No.1.

Mr. Shailendra Kanetkar for the Intervenor in CAA(St.)/26447/2017.

Mr. Suresh Kamble for the Intervenor in CAA(St.)/29979/2017.

Mr. Devidas Bajirao Bhange, Inspector No.1 from the Office of the Charity Commissioner, Mumbai, is present.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 21ST AUGUST, 2018.

P.C. :

1. Heard learned counsel for the Appellants and Respondents and also the Intervenor.

2. By this Appeal, the order dated 5th August 2017 passed by the City Civil Court, Mumbai, thereby rejecting the Draft Notice of Motion filed in L.C. Suit (Stamp) No.8053 of 2017, is challenged.

3. The said Draft Notice of Motion was taken out by the present Appellants for stay to the process of the 'Election' of the 'Managing Committee' of Respondent No.1-Education Society and restraining Respondent Nos.2 and 3 from publishing the final Voter's List in respect of the said Education Society. Respondent No.2 is the Election Officer and Respondent No.3 is the same Election Officer in his personal capacity.

4. The grievance of learned counsel for the Appellants is that, the Draft Notice of Motion is rejected only on the ground that, by the order

dated 5th August 2017 passed by the learned City Civil Court, Mumbai and by the order dated 22nd November 2016, the Deputy Charity Commissioner has validated the members only upto Sr. No.104. It is submitted that, the Deputy Charity Commissioner or the Charity Commissioner has no such authority to validate the membership only upto a particular number. In this respect, learned counsel for the Appellants has relied upon the “By-Laws” of Respondent No.1-Education Society to submit that, the only criteria for acceptance of the membership is the payment of the fees and if such fees is paid, then the person paying the fees automatically becomes the Member. “By-Law No.55” provides for “Removal of Membership”. However, there is nothing on record to show that the membership of any of the Appellants has been challenged or removed. In such situation, according to him, the Appellants were having the right to vote in the said 'Election' and this order of the Deputy Charity Commissioner, restricting validation of the Members upto Sr. No.104 was not correct.

5. In this respect, learned counsel for the Appellants has also submitted that, there is a list of “333 Members” in the Change Report No.3416 of 2006, which is already decided, and hence, it was not proper on the part of the Trial Court to reject the said Draft Notice of Motion, relying upon the orders of the Deputy Charity Commissioner validating Members upto Sr. No.104 only.

6. However, in my considered opinion, once the Deputy Charity Commissioner has passed certain order, restricting validation of the Members only upto Sr. No.104, the only remedy available for the Appellants was to challenge the said order and to get appropriate relief of stay to the said order from the 'Superior Authority'. In the Civil Suit, Appellants cannot seek any relief, which will go contrary to the orders passed by the Deputy Charity Commissioner.

7. As rightly held by learned Trial Court, there cannot be any civil right being infringed as such, so that the Civil Court should entertain the dispute and grant the relief. Therefore, the Trial Court has rightly dismissed the Draft Notice of Motion filed by the Appellants and hence, no interference is warranted in the said order. The Appeal, therefore, stands dismissed.

8. At this stage, it is submitted that, during the pendency of this Appeal, the 'Elections' were allowed to be held; however, the results of the 'Election' were not to be declared subject to further orders of this Court. Now, therefore, it is requested by learned counsel for the Appellants that, stay to the declaration of the results be continued till the Appellants seek amendment in the plaint to challenge the said orders of the Deputy Charity Commissioner.

9. In my considered opinion, there was ample opportunity for the Appellants to challenge the said order or to make amendment in the plaint. At this stage, when already the 'Elections' are conducted, there is no propriety at all in staying the declaration of the results of the 'Election'. Therefore, this prayer is rejected.

10. The Officer of the Charity Commissioner, Mumbai, namely, Mr. Devidas Bajirao Bhange, is present before the Court, who is Respondent No.3 herein, and it is made clear that he can declare the Election results.

11. In view of dismissal of the Appeal, Civil Applications pending therein do not survive and the same are disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]