

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.4231 OF 2016

- 1) Nisar Fatema w/o Hyder Ali Khan,
Age 55 years, Occupation Service,
R/o "Khan House", Opp. Degloor Naka,
Police Chowki Nanded, Dist. Nanded.
- 2) Nuzhat Fatema w/o Habiboddin Farooqui,
Age 49 years, Occupation Service,
R/o Ansari Complex, Sarafa, Nanded
Dist. Nanded.
- 3) Nikhat Fatema w/o Mukit Ahmad Siddiqui,
Age 42 years, Occupation Household,
R/o Ansari Complex, Sarafa, Nanded
Dist. Nanded.
- 4) Nusrat Fatema w/o Sayad Viqar Hashmi,
Age 39 years, Occupation Household,
R/o Ansari Complex, Sarafa, Nanded
Dist. Nanded.
- 5) Nasir Ahmad s/o Amiroddin Ansari,
Age 37 years, Occupation Doctor,
R/o Ansari Complex, Sarafa, Nanded
Dist. Nanded.

...Appellants.
(Ori.Appellants)

VERSUS

- 1) Sk. Moinoddin s/o Sk. Farid,
Age 63 years, Occupation Business,
R/o Railway Station Road, Mudkhed,
Dist. Nanded.
- 2) Md. Khaja Baban Sab,
Age 68 years, Occupation Business,
R/o Bazar Mahela, Mudkhed,
Dist. Nanded.
- 3) Ab. Hafiz s/o ab. Raheman,
Age 63 years, Occupation Business,

R/o Railway Station Road, Mudkhed
Dist. Nanded.

4) Md. Sharif s/o Md. Khaja,
Age 43 years, Occupation Business,
R/o Bazar Mahela, Mudkhed
Dist. Nanded.

5) Ab. Hakim s/o Md. Husain,
Age 57 years, Occupation Business,
R/o Gouiri Bazar, Mudkhed,
Dist. Nanded.
(Deleted As Per leave granted by
Court on 24-02-2017)

6) Mujeeb Ahmed s/o Amiroddin Ansari,
Age 46 years, Occupation Service,
R/o Bazaar Mahella, Mudkhed,
Tq. Mudkhed Dist. Nanded.

...Respondents.
(Ori.Respdts.)

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Mr. S. R. Choukidar, Advocate for Appellants.

Mr. S. V. Natu, Advocate for Respondents No.1.

Mr. Quadri Taher Ali, Advocate for Respondents No.2 & 3.

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CORAM : SMT.VIBHA KANKANWADI, J.

Date : 01-08-2019.

ORDER :

1. Present appeal has been filed by the original appellants challenging the order and decree passed in Misc. RJE No.127 of 2015, 128 of 2015 and 129 of 2015 by learned District Judge -1, Nanded, on 25-10-2016, whereby their appeals under Section 72 of the Maharashtra Public Trust Act challenging the Judgment and order dated 23-07-2015 in Appeal No.16 of 2012 by learned Joint Charity Commissioner, Aurangabad was dismissed. Before the Learned Joint Charity Commissioner the present appellant had challenged the

rejection of their application in Change Report No.26 of 2009 dated 09-07-2012 by learned Assistant Charity Commissioner, Nanded.

2. A Trust by name Bharat Education Society, Mudkhed Dist. Nanded was registered under the Societies Registration Act, 1860 and Old Bombay Public Trusts Act, 1950. Thereafter, as per the orders passed in Enquiry Application No.796 of 2008 dated 18-08-2008, a scheme was framed by learned Assistant Charity Commissioner, Nanded for better management of the Trust. Thereafter, Change Report was filed bearing No.26 of 2009, however the said decision by learned Assistant Charity Commissioner which was initially passed was set aside in Revision No.07 of 2010 by learned Joint Charity Commissioner dated 04th January 2011 and remanded the matter for fresh enquiry on the point of membership. After the remand, the matter has been decided on 09-06-2012. In the nutshell in all the appeals those were preferred later on after rejection of the change report it was contended before learned Joint Charity Commissioner that, the learned Assistant Charity Commissioner did not consider that in the meeting held on 29-12-2008 resignations those were tendered were accepted and then Mujeeb Ahamad Amiruddin Ansari was elected as president. The other group challenged the fact that the validity of membership of incoming trustees was not considered properly. The parties had tried to contend that, the president Shaikh Mainoddin Shaikh Farid,

Secretary Md. Khawja Baban Sab and Member Mohd. Moin Abdul Gafur had resigned of their post and membership. Thereby three posts fell vacant and in their place one Nujahat Fatema Habibuddin Faraqi was appointed as President, Majeed Ahmad Amiruddin Ansari was appointed as Secretary and one Nusrat Fatema S. Vikhar Hashmi was appointed as Member, and therefore, that change report was produced. After due enquiry the learned Assistant Charity Commissioner rejected the change report and the appeals challenging the said decision by the rival groups were also rejected by the learned Joint Charity Commissioner. Thereafter, the matter was taken before learned District Judge-1, Nanded under Section 72 of the Maharashtra Public Trusts Act and after hearing all the parties those three Misc. RJE were dismissed.

3. Heard learned advocate Mr. S. R. Choukidar for appellants, learned advocate Mr. S. V. Natu for respondents No.1, and learned advocate Mr. Quadri Taher Ali for respondents No.2 and 3. Learned advocates representing other respondents were absent.

4. It has been vehemently submitted on behalf of the appellants that, all the authorities below have failed to consider the evidence on record. There was substantive evidence in the form of Exhibits 30 to 34 in the form of applications seeking membership, Exhibit 28 (notice book) wherein it was specifically mentioned that the agenda

for the meeting was in respect of acceptance of membership. All those documents have been abruptly set aside on the ground of suspicion, on the count of some alleged overwriting. In fact the Courts below ought to have compared the signatures or ought to have appointed an expert to aid them to come to the conclusion that there is alleged forgery. When as per the rules the majority had decided and accepted the resignation of all the three persons and then in place of them three more members were appointed, no fault can be found and accordingly the change report ought to have been accepted.

5. Per contra, the learned advocate appearing for the respondents supported the reasons given by all the three authorities below.

6. At the outset it can be seen that, though the present appeal is styled as a first appeal yet practically this Court would be the fourth Court dealing with the same matters. Three Courts earlier have dealt with the facts of the case involved and had appreciated the evidence. Therefore this Court is expected to deal with the law points only. It appears that, there was no attempt on the part of the authorities to seek an experts opinion, however they have used the provisions of Section 73 of the Indian Evidence Act. The suspicious circumstances have been clearly stated by learned Assistant Charity

Commissioner as well as by learned Joint Charity Commissioner. Both the appellate authorities have not casually taken the objections but crosschecked those facts once again with the record and it was found that due to the erasers and additions of the words those documents in the form of resignation letters are suspicious. Those documents were basically challenged by the respondents or opponents before the Assistant Charity Commissioner, and therefore, it ought to have been brought on record by the authority who intended the change to be made to prove that those signatures were made by the persons who were outgoing. Even as regards the subject of allowing the incoming members, it is also inserted to suit the case. No doubt as regards the comparison of the signatures are concerned, the Courts should be slow yet ; the Courts are definitely require to take into consideration the suspicious circumstances pointed out in respect of any document which are apparent on the face of the record. Therefore, taking into consideration the facts of the case, all the authorities had come to the conclusion that those documents are suspicious, and therefore, the change report was not accepted. This Court does not see any reason to interfere in those findings, and therefore, the first appeal stands dismissed. No order as to costs.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.