

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8866 OF 2018**

Vidyarthi Vikas Mitra Mandal,
Through its President,
Shri. Rajendra Dattatray Bhosale & Ors.Petitioners.

Vs.

Shantaram Dhondiba Chorghe & Ors.Respondents.

Mr. S.V. Pitre for the Petitioner.
Mr. Rahul Kadam for the Respondent Nos. 1 to 7.
Mr. P.V. Nelson Rajan, AGP for the Respondent Nos. 8 to 10-State.

CORAM : A. S. GADKARI, J.

DATE : 11th JUNE 2019.

P.C.:-

The present Petition under Article 227 of the Constitution of India, takes exception to the Judgment and Order dated 3rd April, 2018 passed by the Joint Charity Commissioner, Pune Region, Pune i.e. Respondent No.9 herein, in Revision Application No. 130 of 2016, dismissing the said Revision and confirming the Order dated 13th March, 2015 passed by the Assistant Charity Commissioner-1, Pune Region, Pune i.e. Respondent No.8 herein, below Exhibit 232 in Miscellaneous Application No. 16 of 2010.

2 Shorn off unnecessary details, the facts giving rise to the

present Petition can briefly be stated as under:-

(i) The record indicates that, the Petitioners are the persons mentioned at serial Nos. 1 to 10 and 18 at page No. 04 of Order dated 13th October, 2014 passed by the Respondent No. 8 below Exhibit 174 in Miscellaneous Application No. 16 of 2010.

The Petitioner Rajendra D. Bhosale and two other Trustees of Petitioner No.1-Trust had filed an Application No. 35 of 2006 under Section 50-A (1) of the Maharashtra Public Trusts Act, 1950 (for short, "*the M.P.T. Act*") for settlement of Scheme before the Deputy Charity Commissioner, Pune Region, Pune on the ground that, Rules and Regulations of the Petitioner No.1-Trust had become outdated, the operation and the scope of Trust has increased. It was also contended that, there was need to streamline the administration and to remove the deficiencies from the functioning of the Petitioner No.1 Trust. The Deputy Charity Commissioner, Pune Region, Pune by its Order dated 11th January, 2010, partly allowed the said Application and settled the Scheme of the Petitioner No.1-Trust as per Annexure-'A' annexed to the said Order.

The Deputy Charity Commissioner further ordered that, any of the Members can make an Application within one month of the

Order before the Respondent No. 8, Pune for appointment of First Board of Trustees.

(ii) In pursuance of the said Order dated 11th January, 2010, the Respondent Nos. 1 to 7 filed Miscellaneous Application No. 16 of 2010 praying that, as per clause No. 14 of the Scheme, out of the 7 founder members i.e. the Applicants therein (Respondent Nos. 1 to 7 herein), that have been conferred Life Membership vide Clause 8 of the Scheme, any four Members may kindly be appointed as the First Board of Trustees of the Society viz. Vidyarthi Vikas Mitra Mandal i.e. the Petitioner No.1 herein.

(iii) The Respondent No. 8 thereafter, called Applications from the Members of the Petitioner No.1-Trust, who are desirous for the appointment of First Board of Trustees and in response thereto, about 30 persons filed their Applications.

(iv) As noted hereinabove, the Petitioners are the persons who are at serial Nos. 1 to 10 and 18 in the said list and at page No.4 of the Order dated 13th October 2014. In the said Order, the Respondent No.8 after perusing the record and various Applications, framed a point for its consideration that, whether the Respondent Nos. 1 to 7 are entitled for the appointment of First Board of Trustees of the

Petitioner No.1 Trust?. In answer to the said point, the Respondent No.8 held that, he was answering the said point partly positively and further observed that, it is necessary to interrogate or personal interviews of the desired Members who have shown their willingness for the appointment of the First Board of Trustees. The Respondent No.8 therefore, paused the said proceedings there, for conducting oral interviews of the desirous members, before passing the final Order in the matter.

(v) The record further indicates that, the Petitioners challenged the said Order dated 13th October, 2014 before this Court by way of filing a Writ Petition No. 10073 of 2014.

This Court, by its Order dated 12th November, 2014 directed the Respondent No. 8 to first consider the claim of the Petitioners, namely the persons named at Serial Nos. 1 to 10 and 18 of page No. 4 of Order dated 13th October, 2014, whether or not they are the Life Members of the Trust.

It was further directed that, in the event, the Respondent No. 8 comes to the conclusion that, the said persons i.e. the Petitioners therein are in fact Life Members of the Trust, they will be considered along with Respondent Nos. 1 to 7 herein for filling up the

posts of Trustees on the Board of Trustees from the Life Member's category. It was made clear that, while considering the claim of the Petitioners, the Respondent Nos. 1 to 7 were also entitled to be heard in the matter.

(vi) In furtherance of the directions issued by this Court, partly modifying the said impugned Order dated 13th October, 2014, the Respondent No.8 framed issue accordingly below Exhibit 232. That, Shri. Rajendra D. Bhosale adduced oral evidence below Exhibit 238 and submitted relevant documents in support of his claim. The record reveals that, the Respondent Nos. 1 to 7 did not adduce further oral evidence in support of the issue framed below Exhibit 232.

(vii) The Respondent No.8 by its Order dated 13th March, 2015 passed below Exhibit 232, rejected the prayer of the Petitioners herein and it was ordered that, the persons named at Serial Nos. 1 to 10 and 18 mentioned on page No.4 of Order dated 13th October, 2014, below Exhibit 174 i.e. the Petitioners herein, are not entitled to consider that, they are the Life Members of the Trust.

(viii) The Petitioners therefore filed Writ Petition No. 12942 of 2015 before this Court, challenging the said Order dated 13th March, 2015 passed below Exhibit 232. The learned Judge of this Court by its

Order dated 16 March, 2016 was pleased to dispose of the said Petition on the ground that, substantive alternate remedy under Section 70A of the M.P.T. Act was available to the Petitioners and relegated them to adopt the said remedy.

(ix) The Petitioners accordingly, filed Revision Application No. 130 of 2016 under Section 70A of the M.P.T. Act before the Respondent No.9. The Respondent No.9, after hearing the parties and after appreciating the evidence available on record, has dismissed the said Revision by its impugned Judgment and Order dated 3rd April, 2018 confirming the Order dated 13th March, 2015 passed below Exhibit 232 by the Respondent No. 8.

3 Mr. Pitre, the learned counsel for the Petitioners submitted that, by letter dated 6th April, 2005, the Respondent No. 1 has tendered his resignation from his Membership of the Trust and therefore, now he cannot claim to be a Life Member of the said Trust *inter-alia* claiming to be a Member of the First Board of Trustees of Respondent No.1-Trust. He submitted that, the Respondent No. 8 at the first instance in its Order dated 13th March, 2015 and the Respondent No.9 in its Revisional jurisdiction have committed error in holding that, the the Petitioners are not Life Members of the Petitioner

No.1-Trust. He submitted that, both the Authorities below have committed an error in arriving at the said conclusion, while rejecting the claim of the Petitioners as a Life Members. He therefore, prayed that, the impugned Orders dated 13th March, 2015 and 3rd April, 2018 passed by the Respondent Nos. 8 and 9 respectively, may be set aside by allowing the present Petition.

4 *Per contra*, Mr. Kadam, the learned counsel appearing for the Respondent Nos. 1 to 7 vehemently opposed the Petition and submitted that, in view of the observations made by the Respondent Nos. 8 and 9 in their impugned orders, a safe inference can be drawn that, the Petitioners are not Life Members of the Petitioner No.1-Trust and therefore, their claim for becoming Members of the First Board of Trustees of the said Trust, cannot be entertained. He submitted that, the impugned Orders passed by Respondent Nos. 8 and 9 are speaking orders and requires no interference in its writ jurisdiction by this Court. He therefore pray that, the present Petition may be dismissed.

5 A perusal of record would reveal that, while settling the Scheme under Section 50-A(1) of the M.P.T. Act, in Application No. 35 of 2006 by its Order dated 11th January, 2010, the Deputy Charity Commissioner, Pune Region, Pune had not directed to approve the

Life Membership immediately but, had directed that, any of the Members of the Trust can make an Application within one month of the Order before the Respondent No.8 for appointment of First Board of Trustees. It further clearly appears from the record that, Mr. Rajendra D. Bhosale tried to keep control over the Trust for administration as permission was granted temporarily, pending the proceedings before the Deputy Charity Commission, Pune Region, Pune by this Court in First Appeal No. 1926 of 2007 by its Judgment and Order dated 31st July, 2008. It was clarified by this Court in the said Order that, the persons mentioned as Trustees in change report No. 492 of 2008 would manage the affairs of the Trust and in case of any difficulty, were entitled to approach the Charity Commissioner.

It further appears that, the Respondent No. 8 in the impugned Order has observed that, prior to sanction of the said Scheme, Mr. Rajendra D. Bhosale was not founder Member and his attempts to up-gradation of his position in the Trust, was not legal and against the policy/object of the Trust. It is further observed that, under the said circumstances, the procedure adopted by the Petitioners was illegal and *ultra-vires*. That, the contention advanced and the evidence laid by the Petitioners is not trustworthy to consider

their claim as sought for. The Respondent No.8 therefore, came to the conclusion that, the Petitioners herein are not entitled to be considered to be Life Members of the Trust.

6 It further appears from record that, the Petitioners were not Life Members and/or the founder Members of the Trust and in a meeting of Board of Trustees held on 9th February, 2010, their status was upgraded to the category of the Life Members of the Trust. In the Scheme approved by the Deputy Charity Commissioner, Pune Region, Pune, there is a provision that, until the new body is elected as per the provisions of the Scheme, the old body to continue. The record is silent about the fact that, the said old body was authorized by the Deputy Charity Commissioner, Pune Region while framing and approving the Scheme that, the said old body can take policy decision as regards to up-gradation of Members.

The change in the category of membership is clearly a policy decision and this fact has not been disputed by the Petitioners before both the Authorities below. There is nothing on record to indicate that, by leading cogent evidence, the Petitioners have proved the fact that, their membership has been upgraded by following due procedure as per the Scheme sanctioned by the Deputy Charity

Commissioner, Pune Region, Pune.

7 It appears that, the necessary and relevant copies of the Resolutions were also not produced before the lower Authorities. The Respondent No.9 in its impugned Order has observed that, the conduct of the Revision Applicants shows that, they are trying to control over the affairs of the Trust and therefore, are adopting various tactics. The material available on record clearly indicates that, the Petitioners herein have failed to prove that, their membership has been legally and validly upgraded to the Life Members of the Trust.

8 As noted earlier, there is a concurrent finding recorded by both the Authorities below.

The Constitution Bench of the Supreme Court in the case of *Syed Yakoob Vs. K.S. Radhakrishnan & Ors.*, reported in AIR 1964 SC 477, while enumerating the nature and limits of the jurisdiction of the High Court in issuing a writ of certiorari has held that, the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that the findings of fact reached by the inferior court or Tribunal as result of

the appreciation of evidence cannot be reopened or questioned in writ proceedings. That, an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding.

9 The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High

Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and

courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

10 The pleadings in the Petition and the arguments advanced by the Petitioners amounts to re-appreciation of evidence. After perusing the entire record, this Court finds that both the impugned Orders are elaborate and well reasoned and do not require interference by this Court in its writ jurisdiction under Article 227 of the Constitution of India.

Petition being devoid of merits, is accordingly rejected.

(A.S. GADKARI, J.)