

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1479 OF 2016

IN

SUIT NO.79 OF 2017

- | | | |
|---|--|-----------------|
| 1. Mr. V.S. Asware, | | |
| Aged 77 years, Occ. Retired, (Chairman) | | Deleted |
| 2. Mr. Vilas Wagh, | | |
| Aged 74 years, Occ. Business (Trustee) | | |
| 3. Mr. S.S. Dhaktode, | | |
| Aged 75 years, Occ. Retired (Chairman) | | |
| All having address at Ambedkar Bhavan, | | |
| Plot No.17A/76, Gokuldas Pasta Lane, | | |
| Dadar (East), Mumbai – 400 014. | | |
| And the present office bearers / trustees of | | |
| “PEOPLE'S IMPROVEMENT TRUST” | | |
| earlier known as “Bombay Schedule Caste | | |
| Improvement Trust”. | | Applicants |
| <i>In the matter between</i> | | |
| 1. Mr. Shrikant Nanaji Gaware, | | |
| Aged 72 years, Occ. Lawyer (Secretary) | | |
| 2. Dr. Ratnendra Ramesh Shinde, (Dead) | | |
| Aged 55 years, Occ. Service (Treasurer) | | Deleted |
| 3. Prof. Dr. Abhay Namdev Bambole, | | |
| Aged 46 years (Trustee) | | |
| 4. Mr. Nagsen Krishna Sonare, | | |
| Aged 55 years, Occ. Service (Trustee) | | |
| 5. Mr. Uttamrao Omkar Bodwade, | | |
| Aged 71 years, Occ. Retired D.C. Police (Trustee) | | |

6. Mr. Madhukar Maroti Kamble,	]	
Aged 64 years, Occ. Retired Dy. M.C. (Trustee)	]	
7. Mr. Keshav D. Kamble,	]	
Aged 61 years, Occ. Retired (Trustee)	]	
8. Mr. Vijay R. Ranpise,	]	
Aged 58 years, Occ. Service (Trustee)	]	
All 1 to 8 having address at Dr. Babasaheb	]	
Ambedkar Samata Bhavan, Plot No.42, Sector 10,	]	
Sanpada, Navi Mumbai and present Trustees of	]	
“PEOPLE'S IMPROVEMENT TRUST”	]	
(earlier known as “Bombay Scheduled Caste	]	
Improvement Trust”), registered under the	]	
Bombay Public Trust Act, 1950, under No.A-670,	]	
having its office at Ambedkar Bhavan, Plot No.18D,	]	
Gokuldas Pasta Lane, Dadar (East), Mumbai-400014.]	]	 Plaintiffs

V/s.

1. Mr. Prakash @ Balasaheb Ambedkar,	]	
Head of Bharatiya Republican Party and	]	
Bahujan Mahasangh, residing at Rajagriha,	]	
Hindu Colony, Dadar (East), Mumbai-400014.	]	
2. Mr. Bhimrao Yeshwantrao Ambedkar,	]	
the Executive President of Buddhist Society of	]	
India, residing at Rajagriha, Hindu Colony,	]	
Dadar (East), Mumbai – 400 014.	]	
3. Mr. Anandraj Yeshwant Ambedkar,	]	
Chief of Republican Sena,	]	
residing at Rajagriha, Hindu Colony,	]	
Dadar (East), Mumbai – 400 014.	]	
4. Mr. Yogesh Pandurang Varhade,	]	
Aged 76 years, Occ. Retired,	]	
having present address at Dr. Babasaheb	]	
Ambedkar Samta Bhavan, Plot No.42,	]	
Sector 10, Sanpada, Navi Mumbai.	]	 Defendants

Mr. S.C. Daswadikar for the Applicants.

Mr. R.V. Govilkar, I/by Mr. S.T. Manek, for the Plaintiffs.

Mr. Aloukik Pai, with Ms. N.N. Thakkar, I/by Mrs. B.R. Pai, for Defendant Nos.1 to 3.

CORAM : A.K. MENON, J.

DATE : 4TH JULY, 2019.

PC :

1. The applicants in this chamber summons were initially three in number. Applicant No.1 has since expired, his name stands deleted. The chamber summons, therefore, proceeds on behalf of two applicants who claim to be Trustees of the People's Improvement Trust, earlier known as Bombay Scheduled Caste Improvement Trust. The respondents in the chamber summons are the plaintiffs in the suit. They were eight in number. Plaintiff No.2 expired during the pendency of the suit and hence the plaintiffs are now seven in number. They are also described as trustees of the aforesaid Trust. Defendant Nos.1, 2 and 3 are the sons of late Dr. Babasaheb Ambedkar. Defendant No.4 is stated to be one of the trustees of the aforesaid Trust and was intended to be a plaintiff; however, due to his unavailability, he has been joined as a formal defendant.

2. The Trust has filed the suit for mandatory order, directing defendant Nos.1 to 3 to quit, vacate and handover vacant and peaceful possession of a

plot of land described in the plaint, including the structures standing thereon. The said plot of land, with structures standing thereon, is hereinafter described as *“the suit property”*. The plaintiffs also seek a permanent injunction restraining defendant Nos.1 to 3 from entering upon, remaining in or in any manner carrying out any construction of putting up structures on the suit property and an injunction restraining the defendants from preventing or obstructing the plaintiffs' entry into the suit property and for appointment of the Court Receiver, High Court, Bombay, in respect of the suit property.

3. It is the applicants' case that the applicants may be joined as party-defendants to the suit. According to the applicants, they are proper and necessary parties to the suit. The chamber summons is supported by an affidavit of the 1st applicant (*since deceased*) dated 29th July 2016. The applicants, in their affidavit-in-support of the chamber summons, have clearly stated that plaintiff No.1 was aware that the applicants would not support to the action, which led to the incident at Ambedkar Bhavan and, therefore, plaintiffs had deliberately not joined the applicants as Trustees. An averment is made that plaintiff Nos.2 to 8 are not the trustees. This specific averment that plaintiff Nos.2 to 8 are not the trustees has been dealt with *inter alia* in paragraph No.2 of the affidavit-in-support of the chamber summons. Paragraph No.2 of the affidavit-in-support has been dealt with in

paragraph No.4 of the affidavit-in-reply and paragraph No.4 has been dealt with in paragraph No.13 of the affidavit-in-rejoinder. Although the applicants had denied that defendant Nos.2 to 8 are the trustees, the plaintiffs have asserted that they are indeed the trustees. This is evident from paragraph Nos.11 and 12 of the affidavit-in-reply. In that view of the matter, there is prima facie a denial and an affirmation that plaintiff Nos.2 to 8 are the trustees. An affidavit-in-reply dated 6th August 2016 has been filed by plaintiff No.1 in his capacity as a Secretary of the Trust.

4. An affidavit-in-rejoinder has been filed by the 1st applicant (*since deceased*) dated 17th August 2016, followed by an affidavit-in-sur-rejoinder dated 26th August 2016 on behalf of the plaintiffs. Thereafter, an additional affidavit dated 18th March 2019, in support of the chamber summons, has been filed by the 2nd applicant, claiming to be the present Chairman of the Trust. Not to be outdone, the plaintiffs have filed reply, to the additional affidavit, dated 22nd March 2019. It is in this set of the pleadings that the chamber summons was urged before me. The applicants find support from defendant Nos.1 to 3. While Mr. Daswadikar urged the case of the applicants, Mr. Pai on behalf of defendant Nos.1 to 3 supported the case of the applicants. On behalf of the plaintiffs, Mr. Manek opposed the chamber summons. I shall deal with the submissions of the learned counsel for the parties briefly.

5. It is Mr. Daswadikar's case that the applicants (including original

applicant No.1) were appointed as trustees of the Trust by the resolutions dated 7th April 1994, 24th April 2005 and 23rd August 2002. After their appointment, it is contended that the Change Reports were filed and were accepted by the Charity Commissioner, thereby bringing the new trustees on record. According to the applicants, there were three other trustees, namely, Mr. Anant Upshyam, Mr. Vasant N. Dhaware and Mr. Shankarrao Gaikwad, but they were not impleaded. According to the applicants, plaintiff No.1, as a Secretary, has acted unilaterally, without consulting the applicants. It is alleged that plaintiff Nos.2 to 8 are not the trustees at all and that the suit is a false and bogus suit, without proper consultation or discussion amongst the trustees. That no resolution has been passed by the Trust to file the suit and according to the plaintiffs, it is filed at the instance of one Ratnakar Gaikwad. It is contended by Mr. Daswadikar that plaintiff No.1, being aware that the applicants would not support filing of such a suit, had deliberately avoided impleading the applicants. The suit was motivated one and, therefore, the applicants were the necessary parties. According to Mr.Daswadikar, on or about 25th June 2016, at 2 a.m, an attempt was made to illegally demolish Ambedkar Bhavan. As a result, the trustees called a meeting of all like-minded persons, including the defendants, to restore the Ambedkar Bhavan. It is contended that the trust property was not in possession of the plaintiffs, who are attempting to grab the land. That all past and present trustees believed that Dr. Ambedkar's wishes should be respected and that the printing press,

being the personal property of Dr. Ambedkar, his heirs would be entitled to retain and manage it. It is for this reason that the printing press does not bear a description as the property of the Trust. That the suit seeking declaration and mandatory injunction cannot succeed and in any event, the applicants are bound to be heard in the matter, rather than the plaintiffs, who were in possession of the property in question and in particular the printing press. Therefore, it is contended that the chamber summons is liable to be allowed.

6. In support of the application, Mr. Daswadikar has relied upon Exhibit-D to the plaint, which is a true copy of Schedule-I admittedly issued by the Office of the Charity Commissioner. Mr.Daswadikar submitted that perusal of Schedule-I, as annexed to the plaint, reveals the names of the three original applicants and other Trustees. Even considering that the 1st applicant is no more, the names of the 2nd and 3rd applicants are appearing in the list of the Trustees and, therefore, prima facie, it is evident that the applicants were the necessary parties and their omission was deliberate, with an attempt to suppress the true facts from the court. Mr.Daswadikar in support of the submission that the applicants are in possession the premises, has relied upon the receipts of the electricity bills for the period October 2018, December 2018 and January 2019 to May 2019.

7. In his attempt to demonstrate that the applicants had been paying for

all electricity consumed at the Printing Press and having mentioned herein that these receipts are towards payments made in cash for the sums of Rs.9,120/-, Rs.24,110/-, Rs.32,810/-, Rs.5,330/-, Rs.11,000/-, Rs.21,230/- and Rs.35,570/-, Mr. Daswadikar submitted that the plaint has been filed with an intention to mislead. The plaintiffs had filed a bogus suit claiming to be in possession of the suit property and falsely alleging that they have been dispossessed physically around 25th June 2016. According to Mr. Daswadikar, the plaintiffs have contended that repairs were required to be carried out to the structure and the defendants had not been co-operating. Meanwhile, they were in receipt of the notice issued under Section 354 of the Mumbai Municipal Corporation Act, 1888, intimating that Corporation would commence demolition of the structure on 24th June 2016. According to the plaintiffs, they had made arrangements to demolish the structures on 24th June 2016 and on 25th June 2016, one of the part of the structure was demolished and some portion could not be demolished. The defendant Nos.1 to 3, being aware of the impending demolition, were called upon to co-operate, but the defendants, with an intention to make capital out of the state of affairs, have falsely claimed that the plaintiffs were demolishing the structure including the printing press, although the plaintiffs have no intention to do so and did not demolish the printing press. Mr. Daswadikar submitted that defendant Nos.1 to 3 had filed police complaints and two F.I.R.s came to be registered against the plaintiffs. The defendant Nos.1 to 3

had with an ulterior motive collected mobs resulting into riots situation near the suit properties, which was obstructed by public on 26th and 27th June 2016. Thereafter, the plaintiffs approached the Sessions Court and obtained anticipatory bail. According to the plaintiffs, though they are the owners of the suit property, one of the conditions on which they were enlarged on bail is that they would not enter the premises without following due process of law and accordingly it is the contention of the plaintiffs that they were dispossessed and now seeking to enter into the suit property by virtue of the present suit.

8. The averment in paragraph No.41 of the plaint is that the plaintiffs are practically, physically dispossessed from the suit property. Mr. Daswadikar submitted that the plaintiffs cannot enter the suit property by virtue of the condition imposed by the Sessions Court and, therefore, they filed the suit for possession. According to them, the plaintiffs are entitled to commence construction of a proposed building and were entitled to possession thereof. According to Mr. Daswadikar, a false statement has been made that the printing press structure is in wrongful possession of defendant Nos.1 to 3. In fact, in paras Nos.13 and 47 of the plaint it is contended that printing press is in possession of defendant Nos.1 to 3. Mr.Daswadikar, therefore, submitted that it will be appropriate that the chamber summons be allowed, the applicants being proper and necessary parties.

9. On behalf of defendant Nos.1 to 3, Mr. Pai supported the application. He submitted that the cause-title of the suit itself would make it evident that the plaintiffs have come up with a false case. He submitted that the address of the plaintiffs in the suit is shown as Dr. Babasaheb Ambedkar Samata Bhavan, Plot No.42, Sector 10, Sanpada, Navi Mumbai; therefore, admitting that they were not in possession of Ambedkar Bhavan at Dadar. This, he has submitted, was an indication of the fact that plaintiffs are trying to make out a false case. He referred to paragraph No.13 of the plaint, in which the plaintiffs claimed to be the lawful owners of the property and the trust buildings and that they have posted their security guards on the property. In the second paragraph No.13 also, plaintiffs have averred thus :-

“Plaintiffs state that the Defendant Nos.1 to 3 or either of them were using the said printing press structure as their offices, without any rent or charge of electricity etc., which is, at present, in their possession.”

10. It is, therefore, contended that the plaintiffs have clearly admitted that the printing press was in the possession of the defendants. Mr. Pai submitted that the printing press was part of the suit property itself and that this averment admitting that defendant Nos.1 to 3 were in possession of the printing press, which admeasures about 2,000 sq.ft., clearly proves the case of

the defendants of being in possession. He averred that plaintiff No.1 was the only trustee and that plaintiff Nos.2 to 8 were not the trustees and that he has submitted the reason for mentioning Sanpada address. Mr. Pai supported the applicants impleadment.

11. Mr. Manek on behalf of the plaintiffs submitted that the Trust was being managed by the plaintiffs and defendant No.4. Defendant No.4 was joined as a formal defendant since he was not available when the plaint was filed. According to Mr. Manek, applicant Nos.1, 2 and 3 have retired. Applicant No.1 had also expired. It is submitted that Mr. Vilas Wagh, who is applicant No.2, has retired on 28th February 2014 at the age of 75 years. Professor V.S. Asware, who is applicant No.1, had also retired on 14th July 2014 at the age of 75 years; and Dr. S.S. Dhaktode, who is applicant No.3, has also retired at the age of 75 years on or about 9th March 2015. In place of these three persons, Dr. R.R. Shinde, Mr. Yogesh Varade and Mr. Ratnakar Gaikwad had become the trustees as per resolutions dated 15th July 2014, 28th June 2014 and 30th March 2015, respectively. It is further submitted that defendant Nos.2 to 8 were also the trustees and it is not correct to state that they were not the trustees. Mr. Manek further submitted that of all the minutes of the meetings, only three were relevant and in this behalf, he has invited my attention to Exhibit-2 to the affidavit-in-reply, which is a Change Report, which records that Mr. V.A. Wagh has retired on 28th February 2014.

Exhibit-5 thereto records that Professor V.S. Asware also retired on 14th July 2014. It is further submitted that Exhibit-8 thereto records that Dr. S.S. Dhaktode had also retired on 9th March 2015. These, I have seen, are the Change Reports filed by the reporting trustee who is the 1st plaintiff and according to Mr. Manek, these Change Reports were allowed and as a result, the applicants would no longer be the trustees.

12. My attention was invited to the Trust Deed filed on behalf of the applicants, being Exhibit-A to the affidavit-in-rejoinder dated 17th August 2016. Mr. Manek submitted that this original Trust Deed dated 29th July 1944 had been amended and the amended Trust Deed dated 4th April 2005 is to be found at Exhibit-B to the plaint. Furthermore, it appears that the Change Report has been contested by applicant No.1-Vithal Satuji Asware, as seen from the order dated 6th May 2016 passed on an application under Section 73-A of the Maharashtra Public Trusts Act. The challenge is to the Change Report seeking to record resignation, which is stated to be pending. In that view of the matter, reliance was placed by Mr. Manek on the Trust Deed dated 4th April 2005, which is at Exhibit-B to the plaint, which records an amendment in clause No.6 and the amended provision to be found under Schedule "A" under the heading "Rules for the Management and Administration of the People's Improvement Trust". Rule 6 is seen to be amended to add the following proviso :-

“Provided that a Trustee shall retire on completion of his/her age of 75 years. However, the Board of Trustees in the interest of the Trust, may allow the retiring Trustee (unless he/she is healthy, competent and resolute) an extension for a maximum period of (5) years.”

13. Mr. Manek submitted that this amendment was carried out with effect from 4th April 2005 and was duly approved, but this is contested on behalf of the applicants. It is submitted that no approval is on record. It is further submitted that all the issues would be resolved, if the applicants are impleaded. In fact, it is contended in the rejoinder, in paragraph No.14, that the Trust Deed dated 29th July 1944 did not have any restriction in the age limit and that as per clause 28 of the Trust Deed, although the trustees did have power to amend the rules, no such resolution was passed or no such amendment was made. It appears that the age limit was introduced in 2005, but the same was deleted on 12th July 2013 and that the reporting trustee, i.e. plaintiff No.1, did not submit the Change Report with regard to the resolution passed on 12th July 2013 with a view to grab and take control of the Trust. It is submitted that the plaintiffs have deliberately suppressed the minutes of 12th July 2013 and the applicants have called upon the plaintiffs to produce the original minutes in the court. Mr. Manek, however, submitted that the original minutes of 12th July 2013 are not on record. In response to paragraph No.14 of the affidavit-in-rejoinder, an affidavit-in-sur-rejoinder

of the plaintiffs has been filed. While dealing with paragraph No.14, plaintiffs deny that a resolution of 12th July 2013 deleted the age limit introduced earlier.

14. However, it is contended by Mr. Manek that during 23rd November 2012 to 1st October 2013, the applicant No.1 was the Chairman and applicant No.3 was the Secretary and hence they were in-charge of the affairs of the Trust records, including the Minutes Books. The Secretary always is the reporting trustee and applicant No.3 being the reporting trustee, it was caused him to file the Change Report, including the alleged resolution dated 12th July 2013. The plaintiffs have denied that the minutes of 12th July 2013 have been suppressed. According to the plaintiffs, there are no such minutes. This, in my view, is a matter of evidence.

15. Mr. Manek has relied upon a decision in *Vijay K. Mehta and Anr. Vs. Charu K. Mehta and Ors.*¹ and submitted that the provisions of the Bombay Public Trusts Act and Rules do not mandate that an amendment to the Bye-Laws or the Rules of the constitution of the society passed by the society or press shall not operate unless and until the mandate is approved by the Charity Commissioner or the Assistant Charity Commissioner and that this view had been approved. That under the scope of section 22(3) of the Bombay Public Trusts Act, the changes already effected by the Trust will attain finality

1 2008(5)Mh.L.J.

from the date it is entered in the register and it does not mean that till the changes are recorded in the register, the trustees so appointed cannot function as trustees. Relying upon the observations made in paragraph No.22 of that Judgment, he submitted that the changes effected by the Trust will attain finality from the date it is entered in the register and till the changes are recorded in the register, the trustees could continue to function as trustees. In that sense, plaintiff Nos.2 to 8, it is submitted, were in fact entitled to act as the trustees.

16. The scope of the current application is to see whether the applicants are required to be impleaded in the suit and to be heard in the suit on the basis that they are the trustees. It is evident that there are disputes as between the trustees. In that light, it would have been appropriate that this was brought before the court. Quite apart from the background which relates to establishment of the Trust and that has no bearing on the present controversy.

17. I have also noticed that the issues have been framed on 7th February 2019 and one of the issues is whether the plaintiffs prove that they are the trustees of the Trust and, secondly, whether the plaintiffs prove that they were in actual possession of the suit property and whether they were forcibly dispossessed. It is after the issues were framed that the present chamber summons has been taken out. In my view, it is material to consider whether the applicants still continue to be the trustees in view of their contentions that

amendment to Clause 6 of the Trust Deed dated 4th April 2005 is invalid. To that extent, if it is found that the amendment is invalid, it may not be possible to countenance the recording of retirements of the applicants. It is not in dispute that these applicants had not resigned. Furthermore, their names continue to appear in Schedule-1, as can be seen from Exhibit-D to the plaint, which is filed by the plaintiffs themselves. It is presently advised that the names of the applicants do appear in Schedule-1 and the names of plaintiff Nos.2 to 8 do not appear therein. The averment made in paragraph No.5 of the plaint thus reads as under :-

‘The Change Reports of trustees have been filed with the Assistant Charity Commissioner and they are pending for approval. On the approval of those Change Reports, the names of the retired/resigned trustees will be deleted from the Schedule-I of the Trust kept in the record of the office of the Charity Commissioner and accordingly the names of those ex-trustees will be deleted from the Property Card of the Trust.’

18. Thus, admittedly, the names of the retired / resigned trustees are yet to be deleted from Schedule-I. It is, therefore, obvious that when the Change Reports are yet to be decided, the names of the applicants still continue and in that context, the fact that one of the issues required the plaintiffs to prove that defendant Nos.2 to 8 are the trustees and in view of the applicants'

contentions that they continue to be the trustees, it is necessary for the applicants to be impleaded in the suit before the suit proceeds to trial.

19. Mr. Manek had also relied upon the decision of this court in *Rajgopal Raghunathdas Somani Vs. Ramchandra Hajarimal Jhavar*² in support of his contention that Section 50 of the Bombay Public Trusts Act, 1950, provides for cumulative effect, which enables the person having interest to sue and does not prohibit from any suit being filed by the trustees and, therefore, this suit could have been filed without sanction of the Charity Commissioner. Mr. Manek has also relied on the compilation of 11 minutes of the meetings, of which I find that only 3 minutes are relevant, namely, 12th March 2014, 28th June 2014 and 4th March 2015. From these minutes, I find that the meeting of the Trust was being held “*at the office of the Trust*”, which is described as Dr. Ambedkar Samata Bhavan, Sanpada; whereas, in the plaint, the plaintiffs address is shown to be that of “*Dr. Babasaheb Ambedkar Samata Bhavan*”, whereas, the office address is shown as “*Dr. Babasaheb Ambedkar Bhavan, Plot No.18D, Gokuldas Pasta Road, Dadar (East), Mumbai – 400 014*”.

20. Since the minutes indicate that the office of the Trust was operated at Sanpada, prima facie, therefore, there is substance in Mr. Pai's submission that the office of the Trust was always at Sanpada and it deliberately described as the one at Dadar for the purpose of the suit. This of course is a prima facie

2 (1924) 48 MLJ 534

view and evidence will establish the correct position. In that view of the matter, I am of the view that the chamber summons is required to be allowed and it is accordingly I pass the following order;

- (i) Chamber summons is made absolute in terms of prayer clause (a)
- (ii) Amendment to be carried out within two weeks from today.
- (iii) No. costs. The chamber summons stands disposed in the above terms.

(A.K. MENON, J.)