

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2965 OF 2018

Sudhakar Ambadas Ghode and another
Vs.
Ravindra Hariramji Munne and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A.P.Thakre, Advocate for petitioners
Shri Sunil V. Manohar, Senior Advocate a/b S.D.Abhyankar,
Advocate for respondent no.1.

CORAM : A.S.CHANDURKAR, J.

DATED : March 28, 2019

By this writ petition under Article 227 of the Constitution of India, the petitioners seek to challenge the judgment dated 04.05.2018 passed by the learned District Judge in proceedings under Section 50-A of the Maharashtra Public Trusts Act, 1950 (for short, the said Act).

The respondent nos. 1 to 9 herein had initiated proceedings under Section 50-A(3) of the said Act before the learned Assistant Charity Commissioner praying that the bye-laws of the Public Trust namely Saraswati Mata Vidya Prasarak Mandal, Thanegaon be modified to enable its proper administration. The said respondents claimed to be the persons interested and according to them, the recorded trustees namely the Secretary and the Treasurer, who are the present petitioners, were acting against the interests of the Trust by committing various illegalities. It is their case that if the bye-laws as suggested by them were modified, the same would be helpful for the smooth administration of the Public Trust. This application was opposed by the petitioners herein by filing their reply. According to them, the applicants were not the persons interested in the Trust and various change reports filed by them had been dismissed. The only intention on

the part of the applicants was to oust the legally enrolled members and to induct outsiders therein. It was further pleaded that the Trust was being properly administered and the existing bye-laws were sufficient to safeguard the interests of the Trust.

The parties led evidence in support of their respective stands. The learned Assistant Charity Commissioner after considering the material on record held that it was not found necessary or expedient to modify the existing bye-laws. It was held that there was no material to conclude that the existing bye-laws were not workable and that there was a need for modifying the same. Hence, by order dated 04.05.2017, the said application was rejected.

The original applicants then filed an appeal under Section 72 of the said Act. The learned District Judge, after considering entire evidence on record found that the petitioner no.2 herein had himself admitted that it was necessary to amend the bye-laws for proper conduct of the day-to-day business. The issuance of the notices to the present petitioners for the meetings of the Managing committee and the General Body was not disputed. Hence by judgment dated 04.05.2018 the order passed by the Assistant Charity Commissioner was set aside and the application as moved came to be allowed. A scheme for proper management and administration of the Trust came to be settled. Being aggrieved, the petitioners have challenged the said judgment.

Shri A.P.Thakare, learned counsel for the petitioners referred to the existing bye-laws of the Trust as well as adjudication of various change reports. He submitted that the existing bye-laws were sufficient to administer the Trust and to safeguard its interests. There was no material on record brought by the original applicants to justify framing of the scheme. According to him, the bye-laws of the Trust were sought to be amended by filing Change Report No.45 of 2004 which had been accepted by the Assistant Charity Commissioner. However, at the instance of the respondent no.2 and others, the matter was sub-judice. As further proceedings challenging the said amendment were pending, it was not necessary to frame the scheme as proposed. It was then submitted that the

applicants were not the members of the Trust and hence they were also not in its Management. The said applicants had been removed from the membership of the Trust and hence there was no need to entertain the proceedings initiated by such persons. Referring to the evidence on record, it was submitted that the learned Assistant Charity Commissioner rightly dismissed the said application by referring to the attempt of the respondents to have a back-door entry. The learned District Judge without properly considering the material on record proceeded to set aside that order and grant the scheme. In support of his submissions, learned counsel placed reliance on the following decisions :-

- A) Vijay K. Mehta and another Vs. Charu K. Mehta and others
2008 (5) Mh.L.J. 853.
- B) Abdul Sattar Sher Mohammad Qureshi and others Vs. Haji Mustaq Ahmad Sher Mohd. and others 2009(1) Mh.L.J. 411.
- C) Dinkar Krishnarao Mamliwar and others Vs. Charity Commissioner, Mah. State Bombay and others . 1993 B.C.J.428
- D) Writ Petition No.1562/2015 (Kashiram W.Humane and ors. Vs.Ratiram W.Humane and others (decided on 10.01.2017)
- E) Madhukar s/o Narayanrao Agrulwar and anor. Vs. Shriram s/o Zinguji Bhalavi and others, 2010(1)Mh.L.H. 775.
- F) Mallikarjun Basvanappa Masute and anor. Vs. Dattatraya Krushnaji Wadane and others. 2005(2)Mh.L.J.266
- G) Vasantrao Vishwanathrao Mane and others Vs. Apparao Baibanna Sidore and others, 2008(3)Mh.L.J.
- H) Shivaji Bhavanrao Patil and another Vs. Shikshan Prasarak Mandal, Malshiras and others, 2017(3)Mh. L. J. 644.
- I) Dr.R.P.Kapoor and others Vs. The Charity Commissioner, Maharashtra State, and others, AIR 1989 Bombay 274.
- J) Murlidhar Janrao Kale and others Vs. State of Maharashtra and others 2011(1) Mh.L.J. 849.

It was thus submitted that the impugned order was liable to be set aside.

Shri Sunil Manohar, learned Senior Advocate for respondent no.1, on the other hand supported the impugned judgment. Referring to extract of Schedule I of the Public Trust, it was submitted that three of the present applicants were shown as existing trustees and therefore, they were the persons interested who could have filed the application under Section 50-A of the said Act. According to him, the original applicants had sufficient locus to maintain the proceedings. It was submitted that on 25.12.2013 a resolution was passed by the Managing Committee to amend the existing bye-laws. It was thereafter confirmed by the General Body on 02.02.2014 as well as by the Special General Body on 18.03.2014. Notices given to all the members were duly served and this fact was not disputed even by the witnesses examined by the petitioners. While the petitioner no.1 did not examine himself, the petitioner no.2 in his cross-examination had admitted that modification of the bye-laws was necessary. Referring to his deposition at Exhibit 55, it was submitted that the said witness did not question the aspect of issuance of notices while holding the meeting of the Managing Committee on 25.12.2013. It was thus clear that after following due procedure, it was resolved to amend the bye-laws of the Trust. A reference was then made to various documents that were filed along with Civil Application No. 1331/2018 in which a prayer was made to vacate the interim order already passed. It was submitted that the petitioner no.1 had been removed as a trustee in proceedings under Section 41-D of the said Act. This Court in Writ Petition No.6547 of 2016 had noted this aspect and had directed the Assistant Charity Commissioner to act as an Administrator of the Trust. In the light of the fact that the petitioner no.1 had been removed as a trustee under Section 41-D of the said Act and as the petitioner no.2 in his deposition had admitted the need for modification of the bye-laws, the impugned order did not call for any interference.

I have heard learned counsel for the parties at length and have gone through the various documents placed on record. Perusal of the extract of Schedule I of the Public Trust Register indicates that the names of three of the applicants are shown as trustees therein. In other words, the said three applicants

are recorded as trustees. Under the provisions of Section 50-A of the said Act, two or more persons interested can apply for framing of a scheme of the Trust. Though, it was urged that most of the applicants had been removed as trustees, in the light of the fact that the names of atleast three applicants are shown in Schedule I of the Public Trust Register, it is found that the applicants had sufficient locus to maintain the proceedings.

It has been found that the applicants had examined applicant no.3- Lata Dhondse before the learned Assistant Charity Commissioner. She had deposed about various steps taken including issuance of notices and passing of the resolution by the Managing Committee on 25.12.2013 and by the General Body on 02.02.2014 resolving to modify the bye-laws of the Trust. As observed by the learned District Judge, there was no serious challenge to her deposition as regards service of notice to the members for attending those meetings. On the contrary, the petitioner no.2 in his cross-examination clearly admitted that there was a need for amending the existing bye-laws for the proper administration of the Trust. In view of the fact that the General Body of the Trust had resolved to have bye-laws modified due weightage to that aspect would have to be given. Another aspect which cannot be lost sight of is removal of the petitioner no.1 as trustee under Section 41-D of the said Act. The observations of the Division Bench of this Court in Writ Petition No.6547 of 2016 in the order dated 15.03.2017 speak for themselves. There is no justification therefore to disregard the passing of the resolution of the General Body for that purpose.

Though the learned counsel for the petitioners sought to rely upon various decisions referred to hereinabove as well as the aspect that unless it was shown that the existing bye-laws were not workable, the amendment was not warranted, it is to be seen that the petitioner no.2 himself has admitted the necessity for such modifications. In that view of the matter, the petitioner no.2 cannot be permitted to urge otherwise. The conduct of the petitioner no.1 speaks for itself in the light of the observations of the Division Bench in Writ Petition No.6547 of 2016.

It is thus found that the learned District Judge has taken into consideration all the relevant aspects while recording a finding that it was necessary to modify the existing bye-laws. In absence of any jurisdictional error, it would not be permissible to re-appreciate the entire material on record so as to interfere with that order.

In that view of the matter, the writ petition stands dismissed. No costs.

On behalf of the petitioners, it is prayed that the interim order dated 22.05.2018 passed by this Court be continued for some period to enable the petitioners to take further steps in the matter. This request is opposed by the learned counsel for the respondent no.1.

For a period of **three weeks** from today, the aforesaid ad-interim order shall continue to operate. However, the petitioners shall not take any policy decision affecting the administration of the Trust or any of its employees.

JUDGE

Andurkar.