

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7170 OF 2019

Anil Suryakant Desai and another	...	Petitioners
Vs.		
Bhartiya Kala Prasarini Sabha and others	...	Respondents

WITH
WRIT PETITION (ST.) NO.20906 OF 2019

Bhartiya Kala Prasarini Sabha	...	Petitioner
Vs.		
Anil Suryakant Desai and others	...	Respondents

Mr. G. S. Godbole a/w. Mr. Rupesh Geete and Ms Raksha Thakkar i/b. Parinam Law Associates for Petitioners in W.P.No.7170 of 2019 and for Respondent No.1 in W.P.(St.) No.20906 of 2019.

Mr. S. V. Pitre for Petitioner in W.P.(St.) No.20906 of 2019 and for Respondent No.1 in W.P.No.7170 of 2019.

Mr. C. D. Mali, AGP for Respondent Nos.2 to 4-State in W.P.No.7170 of 2019.

Mr. P. V. Nelson Rajan, AGP for Respondent Nos.3 to 5-State in W.P.(St.) No.20906 of 2019.

CORAM : UJJAL BHUYAN, J.
Reserved on : JANUARY 17, 2020
Pronounced on : JUNE 09, 2020

ORDER:

This order will dispose of both the writ petitions.

2. Heard Mr. Godbole, learned counsel for the petitioners in Writ Petition No.7170 of 2019 and also for respondent Nos.1 and 2 in Writ Petition (St.) No.20906 of 2019; Mr. Pitre, learned counsel for respondent No.1 in Writ Petition No.7170 of 2019 and for the petitioner in Writ Petition (St.) No.20906 of 2019; Mr. Mali, learned AGP for respondent Nos.2, 3 and 4 in Writ Petition No.7170 of 2019; and Mr. Rajan, learned AGP for Respondent Nos.3, 4 and 5 in Writ Petition (St.) No.20906 of 2019.

3. Shri Anil Suryakant Desai and Shri Rajiv Baburao Takawale are the two petitioners in Writ Petition No.7170 of 2019 whereas Bhartiya Kala Prasarini Sabha is the contesting respondent No.1 in Writ Petition No.7170 of 2019. However, in Writ Petition (St.) No.20906 of 2019, Bhartiya Kala Prasarini Sabha is the petitioner while Shri Desai and Shri Takawale are respondent Nos.1 and 2.

4. In Writ Petition No.7170 of 2019, Shri Desai and Shri Takawale have assailed the legality and validity of the order dated 01.03.2018 passed by the Assistant Charity Commissioner-1, Pune Region, Pune i.e., respondent No.2 whereby the latter had certified the list of members of Bhartiya Kala Prasarini Sabha as well as the order dated 30.03.2019 passed by the Joint Charity Commissioner, Pune Region, Pune i.e., respondent No.3 whereby he dismissed the appeal filed by Shri Desai and Shri Takawale. On the other hand, in Writ Petition (St.) No.20906 of 2019, Bhartiya Kala Prasarini Sabha has questioned the finding recorded by respondent No.3 in the appellate order dated 30.03.2019 that Shri Desai and Shri Takawale are 'persons having interest' thus having *locus* to file the related appeal.

5. Because of what appears to be unending litigation between the parties facts as narrated have become quite unwieldy. Therefore, only those facts which are considered to be relevant for the purpose of adjudication of the present dispute would only be adverted to.

6. Bhartiya Kala Prasarini Sabha is a society registered under the Societies Registration Act, 1860 and is also a public charitable trust registered under the Bombay Public Trust Act, 1950 (also known as the Maharashtra Public Trust Act, 1950). It is stated that Shri Desai and Shri Takawale (referred to as the petitioners hereinafter) were trustees of the first Board of Trustees of Bhartiya Kala Prasarini Sabha (briefly 'the Trust' hereinafter).

7. On 20.01.2018, the Trust through its Secretary Bhalchandra Mohiniraj Pathak filed an application, being Application No.40 of 2018, before respondent No.2 for certification of list of members as per the scheme settled by the Deputy Charity Commissioner. It is stated that petitioners were not made parties to the application. Be it stated that respondent No.2 vide the order dated 01.03.2018 verified the list of members as was sought for. It is alleged that while so certifying the list of members, respondent No.2 acted entirely on the basis of the application and did not give any reasons to justify such certification.

8. Expressing grievance against the said order dated 01.03.2018, petitioners preferred a miscellaneous appeal before respondent No.3 under Section 70 of the Maharashtra Public Trust Act, 1950 (briefly 'the Act' hereinafter), which was registered as Miscellaneous Appeal No.89 of 2018.

9. The Trust filed an application in the said appeal questioning maintainability of the appeal and seeking its dismissal. Petitioners filed their say asserting maintainability of the appeal.

10. By order dated 30.03.2019, respondent No.3 held the appeal to be not maintainable. However, respondent No.3 proceeded further. After rendering a finding that the appellants i.e., the petitioners had the *locus* to file the appeal, respondent No.3 however upheld the order dated 01.03.2018 on merit.

11. Aggrieved, petitioners have instituted Writ Petition No.7170 of 2019 questioning the correctness of the above two orders dated 01.03.2018 and 30.03.2019.

12. Petitioners have subsequently amended the writ petition pursuant to order of this Court dated 08.07.2019.

13. Notice in this case was issued on 16.12.2019. When it was pointed out by learned counsel for the Trust that it has also filed a writ petition being Writ Petition (St.) No.20906 of 2019, this Court directed listing of both the writ petitions together.

14. Basic contention of the petitioners is that interested persons like them were not made parties to the miscellaneous application and consequently not heard. Therefore, it was virtually an *ex-parte* proceeding. That apart, the appeal is maintainable as held by this Court in Writ Petition No.9126 of 2004. Change in the register of membership of a trust would be a finding within the meaning of Section 22 of the Act against which appeal would lie under Section 70 of the said Act. Further, a proceeding relating to certification of membership entails a judicial enquiry which respondent No.2 failed to carry out and respondent No.3 failed to consider.

15. Respondent No.1 i.e., the Trust has filed two affidavits through its Secretary Shri Pushkaraj Bhalchandra Pathak, one against the unamended writ petition and the other against the amended writ petition. In the first affidavit-in-reply i.e., against the unamended writ petition, it is stated that petitioner No.1 ceased to be trustee of the Trust in the year 2003 and petitioner No.2 was removed as a trustee in the year 2002. Thus, both of them have no *locus* to challenge the orders dated 01.03.2018 and 30.03.2019. Reference has been made to previous litigation between the parties relating to membership of the Trust.

16. Respondent No.1 i.e., the Trust in its affidavit-in-reply to the amended writ petition has stated that the Trust is managing one college of architecture and two colleges of arts in the city of Pune. As per clause 16(3)(e) of the Constitution of the Trust, the Secretary is required to submit the names of all the enrolled members every year on or before 31st March and to get it certified from the office

of the Assistant Charity Commissioner. Referring to the petitioners it is stated that they are builders having no interest in the educational activities of the Trust. Their sole interest is to grab the land belonging to the Trust. Therefore, it is contended that they are not persons interested in the affairs of the Trust. Reference has been made to orders dated 13.05.2019, 15.05.2019 and 21.05.2019 passed by the Assistant Charity Commissioner-2, Pune against which Writ Petition No.6495 of 2019 was filed by the Trust before this Court which was allowed vide order dated 11.06.2019. Respondent No.1 therefore seeks dismissal of the writ petition.

17. Petitioners have filed rejoinder affidavit wherein details of the litigation history between the parties has been referred to. Secretaryship of Shri Pushkaraj Bhalchandra Pathak has been denied. It is stated that he is neither a member nor Secretary of the Trust. Referring to various proceedings and orders passed in connection with the affairs of the Trust, it is asserted that petitioners are very much interested in the affairs of the Trust and thus have *locus standi* to challenge the order dated 01.03.2018 in appeal which is maintainable. Appellate authority was not justified in holding that the appeal was not maintainable yet proceeding to decide (dismiss) the appeal on merit which decision is also not correct in the facts and circumstances of the case.

18. Writ Petition (St.) No.20906 of 2019 has been filed by the Trust as the petitioner assailing the appellate order dated 30.03.2019 passed by respondent No.3 to the extent that the two petitioners i.e., respondent Nos.2 and 3 in Writ Petition (St.) No.20906 of 2019 was held to be 'persons having interest', thus having *locus* to file the related appeal. It is stated that petitioner No.1 (respondent No.1) ceased to be a trustee of the Trust in the year 2003 whereas petitioner No.2 (respondent No.2) was removed as a trustee in the year 2002. Subsequent application filed by them for certification of members was rejected by the Assistant Charity Commissioner. Being not even ordinary members of the Trust, petitioners could not have been held to be 'persons having interest', thus having the

locus to file the related appeal. Therefore, the Trust seeks quashing of the said finding.

19. Shri Anil Suryakant Desai (respondent No.1 herein) in his affidavit-in-reply has contended that the writ petition is not maintainable. Contesting the *locus* of the Trust in a matter relating to certification of the list of members, it has been averred that a contest in such an application can only be between persons who wish to dispute the claim for membership. Such a dispute would be essentially between persons claiming to be members and those who wish to dispute such claim. Referring to various proceedings before this Court and orders passed therein, it is contended that the expression 'persons having interest' in the context of the Act has been explained by this Court as having an inclusive definition which does not suggest that only a member of the society or a trustee of the trust can alone answer the definition of the expression 'person having interest'. Further, it is asserted that no writ or appeal can lie against a mere finding recorded in a judgment or order. After making para-wise reply, Shri Desai seeks dismissal of the writ petition.

20. Mr. Godbole, learned counsel for the petitioners in Writ Petition No.7170 of 2019 has placed before the Court a detailed list of dates starting from framing of scheme for the Trust on 16.01.1997 as well as a bulky compilation of documents. He submits that no proper enquiry was made by respondent No.2 before passing the order dated 01.03.2018 certifying the list of members submitted which vitiated the said order. This was overlooked by the appellate authority. His further submission is that appellate authority i.e., respondent No.3 was not justified in holding that the related appeal filed by the petitioners was not maintainable. Referring to orders passed by this Court, he submits that an order certifying list of members is an appealable order within the meaning of Section 70 of the Act. He therefore submits that both the orders dated 01.03.2018 and 30.03.2019 being wholly untenable in law and facts may be set-aside and quashed.

20.1. Regarding the writ petition filed by the Trust i.e., Writ Petition (St.) No.20906 of 2019, Mr. Godbole submits that the same is wholly misconceived and is not at all maintainable. No appeal or writ can be filed against a mere finding recorded by the appellate authority that too by the party succeeding in the appeal. In this connection, he has placed reliance on a decision of the Supreme Court in *Smt. Ganga Bai Vs. Vijay Kumar*, **(1974) 2 SCC 393**.

21. On the other hand, Mr. Pitre, learned counsel for the Trust submits that the two petitioners are not members of the Trust. They are not persons interested in the Trust. Therefore, they were not required to be heard while certifying the list of members. That apart, certification of the list of members is a ministerial act and no adjudication is called for at that stage. As such, no notice or hearing is necessary. The original order of certification dated 01.03.2018 and affirmation of the same in appeal vide the order dated 30.03.2019 are just, proper and valid; no interference is called for. He, however, takes exception to the finding recorded by the appellate authority that the petitioners are persons having interest which he submits is contrary to the record and law; therefore, the Trust has filed the second writ petition assailing the legality and correctness of such finding.

21.1. On a query by the Court, he candidly submits that the second writ petition would be dependant on outcome of the first writ petition.

22. Both the learned AGP submit that State has very little role to play in as much as the *lis* pertains to the internal affairs of the Trust.

23. Submissions made by learned counsel for the parties have been considered.

24. At the outset, clause 16(3)(e) of the Constitution of the Trust, which has been brought on record by the Trust by way of pleading and which has not been disputed by the petitioners, may be adverted to. As per this provision, the

Secretary shall submit the names of all the enrolled members of the Trust every year on or before 31st of March and shall get it certified from the office of the Assistant Charity Commissioner.

25. In terms of the said provision and as pleaded by the petitioners themselves, on 20.01.2018 the Trust through its Secretary Shri Bhalchandra Mohiniraj Pathak filed Application No.40 of 2018 before respondent No.2 for certification of the list of members (comprising 18 members) as per the scheme settled by the Deputy Charity Commissioner. Certification of the list of members as per annexure-A to the application was allowed by respondent No.2 vide the order dated 01.03.2018. It is seen that the Secretary of the Trust had filed documentary evidence to support the list of members (annexure-A), such as, copies of applications for membership, resolution, payment receipt, bank statement of trust, copy of scheme, list register, etc. On perusal of the above and on due consideration, respondent No.2 allowed the application by certifying the list of members.

26. Against the above order dated 01.03.2018, the two petitioners filed appeal under Section 70 of the Act before respondent No.3 which was registered as Misc. Appeal No.89 of 2018. The above order dated 01.03.2018 was questioned by the petitioners in the appeal on the following grounds:

- (i) respondent No.2 had ignored the Office Order No.60 dated 04.03.2017 of the Joint Charity Commissioner, Pune Region, Pune. As per the said order, matters in respect of trust registration Nos.1 to 1000 of Division F should be heard by Deputy Charity Commissioner, Pune. Since the registration of the Trust fell within that category, the application of the Trust ought to have been considered by the Deputy Charity Commissioner instead of respondent No.2. As such, respondent No.2 erred in passing the order dated 01.03.2018 which is therefore without jurisdiction.
- (ii) Miscellaneous Application No.40 of 2018 was entertained by

respondent No.2 though the same was neither supported by any verification nor affidavit.

(iii) respondent No.2 relied upon photostat copies of applications of members, resolution, payment receipt, bank statement of trust, copy of scheme, list register, etc. which was not legal and proper.

(iv) respondent No.2 did not hold any enquiry and deliberately ignored the membership list containing 7 Pathak family members out of 18.

26.1. On these grounds petitioners contended that the order dated 01.03.2018 was illegal and prayed for setting aside of the same.

27. An application was filed by the Trust questioning maintainability of the appeal. Basic contention was that there is no provision for filing appeal against an order approving or certifying membership list of a trust. Besides, the two petitioners (who were the appellants) had ceased to be members of the Trust long back. Therefore, they could not be termed as persons having interest or *locus* to file the appeal.

28. Petitioners filed their say regarding maintainability of the appeal and also on merit.

29. By the order dated 30.03.2019, respondent No.3 as the appellate authority dismissed the appeal of the petitioners. Firstly, respondent No.3 held the appeal to be not maintainable. Secondly, it was held that appellants i.e., the two petitioners were persons having interest thus having *locus* to file the related appeal. Thirdly, Office Order No.60 dated 04.03.2017 did not take away jurisdiction from respondent No.2 to decide the application. Fourthly, the documents relied upon by the Secretary of the Trust were duly notarized and, therefore, no illegality was caused by respondent No.2 by taking those documents into consideration while certifying the list of members.

30. Thus from the above, it is evident that while adjudicating the appeal, respondent No.3 dealt with four aspects each of which may now be examined.

31. As noticed above, respondent No.3 held the related appeal to be not maintainable but even after holding so he proceeded further and decided the appeal on merit. On maintainability, respondent No.3 noted that the appeal was filed under Section 70 of the Act. As per Section 70, an appeal may be preferred challenging the finding or order passed by a Deputy Charity Commissioner or Assistant Charity Commissioner under Sections 20, 22, 22A, 28, 54(3) and 79AA of the Act. The order dated 01.03.2018 passed by the Assistant Charity Commissioner approving the list of members which was put to challenge in the appeal was not passed under any of the above sections. Therefore, it was held that the appeal was not maintainable.

31.1. In Writ Petition No.9126 of 2004 (*Anil Suryakant Desai Vs. Assistant Charity Commissioner*), this Court passed order dated 05.11.2004 (corrected on 23.12.2004) holding that any finding in relation to entries in the register pertaining to membership of the Trust would be a finding within the meaning of Section 22 of the Act and therefore it would be appealable under Section 70(1)(b) of the Act. Because of this finding, the writ petition against such an order was not entertained by this Court relegating the petitioner to the appellate forum. Similar order was passed by this Court on 01.08.2011 in Writ Petition No.4955 of 2011 filed by the Trust. That was a case where the Assistant Charity Commissioner had rejected application of the Trust for certification of membership list.

31.2. The above orders were specifically pleaded and brought on record by the appellants i.e., the petitioners in the appeal proceeding yet respondent No.3 did not consider the same. Respondent No.1 i.e., the Trust or for that matter none of the respondents could produce any contrary order of this Court or any order of the

Supreme Court over-ruling the above decisions of this Court. In the absence thereof, the view taken by respondent No.3 that the appeal was not maintainable would not be justified. Consequently, Court would proceed on the basis that the appeal was maintainable.

32. The second finding given by respondent No.3 is that the appellants i.e., the petitioners are 'persons having interest' thus having *locus* to file the appeal. While arriving at this finding, respondent No.3 noted that petitioners were trustees of the Trust. Though they were removed from trusteeship by the Joint Charity Commissioner, Pune vide order dated 17.10.2018 passed in Application No.08 of 2004, the said order has been put to challenge in First Appeal No.31554 of 2018 wherein the above order has been stayed by this Court. In these circumstances, respondent No.3 held that the appellants i.e., the petitioners are 'persons having interest'.

32.1. It appears that petitioners were removed as trustees of the Trust under the provisions of Section 41D of the Act for making persistent default in submitting the accounts of the Trust regularly as well as for acts of malfeasance and misfeasance. The order passed by the Joint Charity Commissioner, Pune in this regard dated 17.10.2018 is under impugment before this Court in first appeal preferred by the petitioners where the said order is under stay.

32.2. In the meanwhile, petitioner No.2 had filed application before Assistant Charity Commissioner-2, Pune for certifying the list of members enrolled by him. On 13.05.2019, Assistant Charity Commissioner allowed the application filed by petitioner No.2 thus certifying the list of members furnished by him. When the status of petitioner No.2 was brought to the notice of the Assistant Charity Commissioner, he passed an order dated 15.05.2019 staying the previous order. On application filed by petitioner No.2, Assistant Charity Commissioner passed an order on 21.05.2019 limiting the stay (i.e. the order dated 15.05.2019) till

27.05.2019. These orders came to be challenged before this Court by the Trust by filing Writ Petition No.6495 of 2019. This Court vide order dated 11.06.2019 allowed the writ petition by quashing the orders dated 13.05.2019, 15.05.2019 and 21.05.2019 with the observation that the proceedings initiated be decided afresh. In Writ Petition (St.) No.29505 of 2014 (*Bhartiya Kala Prasarini Sabha Vs. Rajendra M. Balkawade*) decided on 17.11.2015, this Court held that the expression 'persons having interest' as defined under Section 2(10) of the Act has an inclusive definition. It does not suggest that only a person who is a member of a society or a trustee of a trust can alone answer the definition of the expression 'person having interest'.

32.3. In the above factual background and proceedings and orders of this Court, the view taken by respondent No.3 that the appellants i.e., the petitioners are 'persons having interest' and thus having *locus standi* to file the related appeal cannot be faulted. No interference is called for in such a finding.

33. The third finding given by respondent No.3 related to the third ground urged by the petitioners in the appeal that in view of Office Order No.60 dated 04.03.2017 the Deputy Charity Commissioner ought to have decided the Application No.40 of 2018 and not the Assistant Charity Commissioner, thereby vitiating the order dated 01.03.2018 passed by the Assistant Charity Commissioner. In this regard, respondent No.3, the appellate authority, had this to say: as per clause 16(3)(e) of the scheme of the Trust it was necessary that the list of members of the Trust was required to be certified by the Assistant Charity Commissioner. So the application was moved before the Assistant Charity Commissioner i.e., respondent No.2. That apart, Office Order No.60 dated 04.03.2017 was only for administrative convenience. It neither conferred nor did it take away the jurisdiction conferred on the Deputy Charity Commissioner or the Assistant Charity Commissioner by the statute. Thereafter, having satisfied himself that he had the jurisdiction to pass order on the Application No.40 of

2018, respondent No.2 passed the order dated 01.03.2018.

33.1. Court finds no error or infirmity in the view as taken above by respondent No.3. Besides petitioners are unable to point out any substantive statutory provision which debarred respondent No.2 from passing the order dated 01.03.2018 in Application No.40 of 2018 or that such an application can be taken up only by the Deputy Charity Commissioner and not by the Assistant Charity Commissioner.

34. The last finding of respondent No.3 covered the other grounds taken by the petitioners in the appeal viz., Application No.40 of 2018 was neither supported by any verification nor affidavit; documents relied upon were only photocopies; and that respondent No.2 did not hold any enquiry before passing the order dated 01.03.2018. These objections or grounds were more of form than of substance. It was rightly held by respondent No.3 that there was no substance in such contention. All the documents placed on record were true copies duly verified and notarized. That apart, it is seen that respondent No.2 had considered the documentary evidence filed, viz, list of members, copies of applications of members, resolution, payment receipt, bank statement of Trust, copy of scheme, list register, etc. and after having satisfied himself, passed the order dated 01.03.2018. In such circumstances, respondent No.3 rightly did not interfere with the said order dated 01.03.2018.

35. Petitioners as respondent Nos.1 and 2 in Writ Petition (St.) No.20906 of 2019 filed by the Trust has taken the stand that an application for certification of the list of members can only be contested by persons who wish to dispute the claim for membership. The specific stand is that such a dispute would be essentially between persons claiming to be members and those who wish to dispute such claim. However, in the appeal before respondent No.3, petitioners did not point out from the list of members submitted as to who should not be certified

as members of the Trust or who have been left out from such list and should be included. In other words, no material irregularity or illegality in so far the list of members submitted could be demonstrated or pointed out by the petitioners. In fact, no ground to that effect was urged by the petitioners. Therefore, in the concluding paragraph of the appellate order dated 30.03.2019, respondent No.3 noted that in the appeal memo no further points were raised by the appellants i.e., the petitioners.

36. Thus, having regard to the discussions made above, no case for interference is made out. Further, Court is of the view that the present is not at all a fit case in which interference under Article 227 of the Constitution of India is called for. Merely pointing out a technical plea or making out a legal point would not justify interference under Article 227. Repeated interference in the affairs of a trust is not desirable and should be avoided in proceedings under Articles 226 or 227 of the Constitution unless of course the well established grounds of judicial review are attracted.

37. Since Court has taken the view that the finding recorded by respondent No.3 in the appellate order dated 30.03.2019 that the petitioners are 'persons having interest' does not call for any interference, the second writ petition filed by the Trust i.e., Writ Petition (St.) No.20906 of 2019 would have to fail.

38. Consequently, both the writ petitions i.e., Writ Petition No.7170 of 2019 and Writ Petition (St.) No.20906 of 2019 are hereby dismissed. However, there shall be no order as to costs.

(UJJAL BHUYAN, J.)

Minal Parab