

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.1093 OF 2015
ALONG WITH
CIVIL APPLICATION NO.3330 OF 2015**

Rajendra Shivshankar Ghongade & Ors. .. Appellants/Applicants
Vs.
Vijaykumar Raghunath Bandewar & Ors. .. Respondents

Mr.Atul G. Damle, Senior Advocate a/w Mr.A.M. Kulkarni, Mr.Sarthak
S. Diwan and Ms.Akanksha Helaskar for the appellants/applicants.
Mr.I.M. Khairdi for the respondent nos.1 to 3.

CORAM : R.D.DHANUKA, J.
DATE : 27th January 2020

P.C.:

. By this first appeal, the appellants (original applicants) have impugned the judgment and order dated 5th August 2015 passed by the learned District Judge-1, Barshi in Civil Application No.87 of 2014 arising out of the order dated 17th May 2014 passed by the Assistant Charity Commissioner, Solapur in Scheme Application No.8 of 2011. By consent of parties, the First Appeal is heard finally.

2. The appellant had filed Scheme Application No.8 of 2011 for the purpose of framing a Scheme in respect of Shri Sacchidanand Santnath Maharaj Deosthan which was registered vide Registration No.316/Solapur. The said application was opposed by the respondents nos.1 to 3 by filing reply.

3. By an order passed by the learned Assistant Charity Commissioner on 17th May 2014, the said application filed by the applicants came to be allowed. Learned Assistant Charity Commissioner has sanctioned the scheme as propounded by the appellant however, appointed the applicants as the office bearer of the Trust for a period of 5 years. Being aggrieved by the said order passed by the learned Assistant Charity Commissioner, the respondent nos.1 to 3 herein preferred an appeal bearing Civil Application No.87 of 2014 before the learned District Judge-1, Barshi.

4. By judgment dated 5th August 2015, the learned District Judge-1, Barshi allowed the said Civil Application No.87 of 2014 and was pleased to set aside the impugned judgment and order dated 17th May 2014 passed by the learned Assistant Charity Commissioner under Section 50A of the Maharashtra Public Trusts Act, 1950 (for short “the said Act”). Being aggrieved by the said judgment dated 5th August 2015, the applicant (original appellant) preferred this appeal.

5. Mr.Damle, learned senior counsel invited my attention to the findings rendered by the learned Assistant Charity Commissioner in support of his submission that the learned Assistant Charity Commissioner had found necessity of framing the scheme of the said Trust which was not in place though the Trust was formed prior to 1960.

6. It is submitted by the learned senior counsel that though the learned District Judge-1 has also rendered a finding that there was necessity of framing the scheme of the said Trust, the learned District Judge-1 has set aside the judgment and order passed by the learned Assistant Charity Commissioner in toto and dismissed the said Scheme Application No.8 of 2011.

7. Learned senior counsel submits that it is not in dispute that the respondents themselves had propounded the said scheme under Section 50A of the said Act. The said application was however, pending at the time when the said application under Section 50A was filed by the appellant.

8. It is submitted that since both the parties have propounded separate schemes and the learned District Judge-1 had recorded such finding, the said Civil Application No.87 of 2014 filed by the respondent could not have been allowed by the learned District Judge-1.

9. Learned counsel for the respondent nos.1 to 3, on the other hand, does not dispute that his clients also have filed a separate application for framing of the said scheme under Section 50A of the said Act and that the said application is pending. He submits that various findings rendered by the learned Assistant Charity Commissioner about

the conduct of the respondents were without any basis and thus the learned District Judge-1 has rightly set aside the order passed by the learned Assistant Charity Commissioner. Upon raising a query by this Court, this Court was informed that a separate application bearing Scheme Application No.23 of 2013 for propounding the scheme under Section 50A of the said Act was filed and that the same was pending before the learned Assistant Charity Commissioner.

10. Since it is common ground that both the parties have propounded a separate scheme and framing of scheme is not contested by either party and since the respondents are aggrieved only by the observations made by the learned Assistant Charity Commissioner and the order appointing the appellants as first trustees, in my view, interest of justice would be met with if both the orders passed by the two Courts below are set aside and the matter is remanded back to the learned Assistant Charity Commissioner.

11. I therefore pass the following order :-

- (i) The impugned judgment and order dated 5th August 2015 passed by the learned District Judge-1, Solapur in Civil Application No.87 of 2014 is set aside;
- (ii) The impugned judgment and order dated 17th May 2014 passed by

the learned Assistant Charity Commissioner in Scheme Application No.8 of 2011 is also set aside;

- (iii) In view of this order setting aside the order passed by the learned Assistant Charity Commissioner in Scheme Application No.8 of 2011, Civil Application No.87 of 2014 filed by the respondents does not survive and is accordingly disposed of;
- (iv) Scheme Application No.8 of 2011 is restored to file.
- (v) Scheme Application No.8 of 2011 filed by the respondents under Section 50A of the said Act for framing the scheme also to be heard along with the Scheme Application No.23 of 2013 expeditiously.
- (vi) The learned Assistant Charity Commissioner shall decide the matter afresh on its own merits without being influenced by the observations made and the conclusions drawn by the impugned order dated 17th May 2014 passed by the learned Assistant Charity Commissioner and by the impugned order dated 5th August 2015 passed by the learned District Judge-1.
- (vii) Both the parties would be at liberty to make their further submissions to propound their respective scheme for the said Trust.

- (viii) All the pending applications filed by both the parties against each other under Sections 41D or 41E or any other provisions of the said Act shall remain stayed till the said Scheme Application Nos.8 of 2011 and 23 of 2013 are decided by the learned Assistant Charity Commissioner.
- (ix) The parties would be at liberty to pursue those applications which are pending after disposal of the Scheme Application Nos.8 of 2011 and 23 of 2013 filed by both the parties depending upon the outcome of those Scheme Applications filed by the parties inter se.
- (x) Interim arrangement which is in force in so far as management of the Trust is concerned, to continue till the said Scheme Applications are decided by the learned Assistant Charity Commissioner and for a period of four weeks thereafter in the event of the said order is adverse against the respondents.
- (xi) The learned Assistant Charity Commissioner shall make an endeavour to dispose of both the applications within three months from the date of the parties appearing before the learned Assistant Charity Commissioner.
- (xii) Parties are directed to remain present before the learned Assistant Charity Commissioner on 10th February 2020 at 11.00 a.m.

(xiii) None of parties shall seek any unnecessary adjournment before the learned Assistant Charity Commissioner.

12. First Appeal is disposed of on aforesaid terms. In view of disposal of the first appeal, pending civil application in the First Appeal does not survive and are accordingly disposed of. No order as to costs.

R.D.DHANUKA, J.