

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11100 OF 2017

RAJARAM KISHANRAO POTDAR
VERSUS
KRUSHNATH NAGNATH PATIL AND OTHERS

Ms.Anjali Dube, Advocate for the petitioner.
Mr.P.G.Borade, AGP for State.
Mr.V.D.Gunale, Advocate for respondent Nos. 1 to 3, 5 to 7.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 2, 2022

PER COURT :

1. Heard the learned counsel Ms.Anjali Dube for the petitioner, the learned counsel Mr.V.D.Gunale for the respondents/trustees, and the learned AGP for respondent Nos.10 and 11.

2. The petitioner is aggrieved by an order passed by the District Judge, Omerga on 03.11.2016, rejecting the application filed by the petitioner for restoration of Civil M.A.No.05/2012 which came to be dismissed in default by the Court on 22.04.2014. It is this order which hurt the petitioner and the present petition is filed.

3. The sequence of events would reveal that the respondents are the trustees of a Trust by name High School Lohara, Tq.Lohara, Dist. Osmanabad alongwith respondent Nos. 1 to 7 and the claim of the petitioner is that respondent Nos. 1 to 7 misused their powers, indulged themselves in misappropriation and did not submit the audit report for 16 long years and have failed to hold the elections. This resulted into an enquiry being conducted by the Assistant Charity Commissioner, Osmanabad u/s 37 of the Bombay Public Trusts Act against the said trustees and as per the report, action u/s 41D was contemplated against respondent Nos. 1 to 7. Instead, the submission of the learned counsel is to the effect that the enquiry was initiated u/s 41A and 41D proceedings which were proposed, came to be closed. This action gave rise to the petitioner filing an application u/s 41D(5) of the Bombay Public Trusts Act before the Additional District Judge at Omerga vide application No.5/2012 and a relief came to be sought to the effect that the order passed by the Assistant Charity Commissioner, Osmanabad be quashed and set aside and directions be issued to the Joint Charity Commissioner, Latur to re-open the report of the Assistant Charity Commissioner, Osmanabad and pursuant thereto initiate an enquiry u/s 41D against respondent Nos. 1 to 8. This application came to be

dismissed on 22.04.2014 by the following order :-

"Applicant and their Advocate absent when called for. The application is dismissed in default for non appearance of the applicants."

4. MCA No.14/2014 came to be filed by the petitioner on 28.04.2014 seeking restoration of the Misc.Application No.05/2012 and the reason justifying the restoration was contained in paragraph No.3 of the application, wherein it was stated that the applicant No.1 was suffering from illness and taking treatment at Shirgire Hospital, Lohara and some other hospital also, whereas applicant Nos. 2 and 3 were on pilgrimage and out of the town for 2 months and unable to contact the Advocate. It is these reasons which were scrutinized by the learned Judge to satisfy himself about sufficiency of cause being shown to set aside the order of dismissal and for restoration of the application. On consideration of the material, the learned Judge has referred to a certificate dated 28.03.2014, issued by one Dr.Hemant Shirgire, but the learned Judge record that this certificate only certify that applicant No.1 was suffering from viral fever on 28.03.2014. As far as the 2 other applicants are concerned, no details have been provided to justify their absence from the town for last 2 months or to establish the

contention that they are on the pilgrimage. Recording that the petitioner remained absent for more than one year and did not prosecute the application, nor even took steps for effecting service on the respondents, the learned Judge recorded that on 22.03.2014, the petition was dismissed against respondent Nos. 1 and 9 and ultimately on 28.03.2014, the application is dismissed in default. Recording that the conduct of the petitioner indicates that they were not interested in taking proper steps in the matter and only after the petition was dismissed in default, medical certificate of applicant No.1 is obtained. The conduct of the applicants was therefore deprecated by the learned District Judge and he deemed it fit not to exercise the discretion in favour of the applicants, who were not diligent in prosecuting the application filed by them and their absence for last one year justify the dismissal of the application.

5. The learned counsel for the petitioner is not able to demonstrate before me that the finding rendered by the learned Judge is perverse. There is no dispute about the dates and the fact that the petitioner was not diligent in prosecuting the application filed by him though it is sought to be contended by the learned counsel that there was

something seriously wrong in the working of the trust as the respondents/trustees had misappropriated the funds and indulged themselves into a gross misconduct which warranted an action u/s 41D of the Bombay Public Trusts Act. The petitioner may have good case on merits, but it is pertinent to note that the proceedings filed in the year 2012 were not prosecuted diligently by the petitioner and the learned Judge was left with no option other than to dismiss the proceedings in default.

In any case, on account of lapse of time, certain subsequent developments must have occurred and Mr.Gunale states that the election of the Trust has subsequently held and new trustees are elected and petitioners are not trustees in the newly elected body, which statement is however seriously disputed by the learned Advocate Ms.Anjali Dube.

Coupled with the aforesaid fact, as is orally narrated before this Court by the learned counsel for the respondents and also not finding sufficient justification to disturb the findings in the impugned order, the same is upheld. Writ petition is dismissed.

(BHARATI H. DANGRE, J.)