

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

FIRST APPEAL NO.994 OF 2018

Shri Anil Husain Satpute ...Appellant
vs.
Dnyangiri Swami Mahraj Trust,
Miraj and Ors. ...Respondents

**WITH
FIRST APPEAL NO.995 OF 2018**

Shri Anil Husain Satpute ...Appellant
vs.
Dnyangiri Swami Mahraj Trust,
Miraj and Ors. ...Respondents

**WITH
FIRST APPEAL NO.996 OF 2018**

Shri Anil Husain Satpute ...Appellant
vs.
Dnyangiri Swami Mahraj Trust,
Miraj and Ors. ...Respondents

Mr. Pramod R. Arjunwadkar with Chetan G. Patil for the
Appellant.
Mr. Sandesh Patil with Mr. Chintan Shah i/b Ms. Anusha Amin
for the Respondents.

CORAM : N. B. SURYAWANSHI, J.

RESERVED ON : 30TH OCTOBER 2023

PRONOUNCED ON : 9TH NOVEMBER 2023

JUDGMENT :

1. Heard learned Advocate for Appellant and learned Advocate for Respondent.
2. Admit.
3. First Appeals are taken up for final hearing with consent of parties. Learned Advocate waives service on behalf of Respondent.
4. Since all three First Appeals raise similar question of law and facts, they were heard together and they are being decided by this common order. Facts leading to these First Appeals in brief can be stated as :

These appeals challenge orders passed by learned District Judge in Miscellaneous Civil Application Nos.29 of 2009, 28 of 2009 and 30 of 2009, all dated 25th February 2016.

5. Respondent No.1-Dnyangiri Swami Maharaj Trust, Miraj is a registered trust having P.T.R. No.A-620 (Sangli). Scheme of trust was framed on 20th January 1975, by Joint Charity Commissioner, Bombay. As per the scheme, trustees are for life time and vacant post is to be filled by majority of existing trustees. Minimum number of trustees is five and

maximum number of trustees is seven. On 26th April 2004, Respondent No.1 reporting trustee filed Change Report No.257 of 2004, for removing name of deceased Shankar Daji Satpute and inserting name of Prakash Shankar Satpute. Change Report No.166 of 2005, is filed for removing name of deceased trustee Prakash Shankar Satpute and inserting name of Ananda Maruti Deamane. Change Report No.312 of 2006 is filed for removing name of deceased trustee Jagannath Bandu Karande and for insertion of name of Ramesh Jagannath Karande, contending that trust by passing resolution in the meeting of trustees decided to appoint incoming trustees.

6. Appellant appeared in the said proceedings and filed his objection opposing three change reports. It is the contention of appellant that during pendency of hearing of change report No.257 of 2004, the incoming trustees Prakash Shankar Satpute expired on 1st January 2005, but this fact was not reported by Respondent No.1 to the learned Assistant Charity Commissioner (for short "ACC"). All three change reports were clubbed together and were heard by learned Assistant Charity Commissioner.

7. Appellant as well as Respondent No.1 sought adjournments which were granted. On some dates though parties were present, learned ACC was busy in his work. By the impugned orders dated 6th November 2007, learned ACC accepted three change reports filed by 1st Respondent.

8. Appellant being aggrieved by the orders dated 6th November 2007, challenged the same by filing Appeal Nos.95 of 2007, 94 of 2007 and 96 of 2007 before the learned Joint Charity Commissioner (for short "JCC"). Main ground of challenge was that no opportunity was given to the appellant. Accepting the arguments of appellant, learned JCC allowed the three appeals and remanded matter back to learned ACC for consideration on merits by the judgment and order dated 2nd December 2008.

9. Respondent challenged the orders passed by learned JCC by filing Miscellaneous Application Nos.30 of 2009, 28 of 2009 and 29 of 2009. By common judgment, the District Court has allowed the applications. This order is impugned in the present first appeals.

10. Heard learned Advocates for respective parties. Perused the documents placed on record and citations relied

upon by the parties.

11. Admitted position on record is that as per the scheme of the trust, trustees are appointed for lifetime. In the judgment, learned ACC has observed that one Shivaprasad J. Satpute and appellant, both have raised objections at Exhibit-7 and Exhibit-12. Appellant/objector No.1 has not filed his say and has not conducted his case. He has also not cross examined the reporting trustee. Therefore, the matter was proceeded exparte against appellant and final orders were passed in the matter on 6th November 2007. It is thus clear that before learned ACC appellant was not given fair and sufficient opportunity to contest change report inquiries on merits.

12. In ***Prabhakar vs. Dr. Jamnadas***¹, learned Single Judge while considering scope of section 22 of Maharashtra Public Trust Act has held :

“31. In a case of Jagatnarayansingh Swarupsingh Chithere and Ors. v. Swarupsingh Education Society and Anr. 1980 Mah. L.J. 372. His Lordship has discussed the scope of Section 22 and Rule 7 of the Act and observed as under:

Though prima facie it appears to be a mere

¹ (1997) 99 (1) Bom LR 166

change, the inquiry under Section 22, Bombay Public Trust Act is a judicial process and cannot be mere factual process or one purely of a formal nature. Investigation into the legality and validity of the change is implicit.

The mere fact that a suit lie cannot nullify its judicial character and trappings nor can it obviate the need to determine either suo motu or at the instance of party aggrieved the legality and validity of the change in question. Thus, the inquiry under Section 22, does not relate only to the factum of the change but also to its legality and validity.

32. The word 'judicial inquiry' is defined in Black's Law Dictionary as under:

Such inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist.

33. Therefore, the judicial duty requires use of discretion or examination of the evidence and the decision of question of law and facts. It thus aptly makes it clear that there must be a judicial decision. Meaning of 'judicial decision' has been enumerated in Aiyar's Judicial Dictionary, 10th Edition 1988 as under.

Judicial decision-meaning of true judicial decision presupposes an existing dispute between two or

more parties and then involves four requisites:

(1) The presentation (not necessarily orally) of their case by the parties to the dispute;

(2) If the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument, by or on behalf of the parties, on the evidence;

(3) If the dispute between the is a question of law, the submission of legal argument by the parties; and

(4) A decision, which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including, where required a ruling upon any disputed question of law."

13. Learned JCC is justified in allowing appeals filed by appellant under Section 70 of the said Act by making following observations :

"All change reports were contested by appellant. When the change reports were posted for cross examination by Respondent No.1, application for adjournment was filed on behalf of appellant on the ground that his Advocate was out of station.

By the order dated 29th October 2007, learned ACC rejected the application holding that there is no provision under Section 22 of Bombay Public Trust Act or Rule 7 thereunder for grant of adjournment and 1st Respondent objected to adjournment. It is thus clear that though earlier adjournment applications of both parties were granted, this application was erroneously rejected by learned ACC. This also indicates that learned ACC has not acted fairly in rejecting adjournment application, filed on behalf of appellant. It further appears that learned Advocate for Respondent No.1 did not object application for adjournment but only prayed that appropriate orders be passed. This aspect is ignored by learned ACC while observing that in the order that Respondent No.1 has objected to said application."

14. Apart from above, from the proceedings before learned ACC, it is clear, before passing final order dated 6th November 2007, no opportunity of hearing was given to appellant. It is therefore clear that appellant was not heard in all three matters before passing impugned orders by learned ACC. In these facts, learned JCC was right in allowing appeals filed by appellant and remanding matters to learned ACC for fresh consideration.

15. Learned District Judge while allowing Miscellaneous Civil Applications filed by Respondent No.1, challenging the judgments of learned JCC has held that :

“Record and Proceedings of the change reports were called from ACC office, Sangli and it was reported that Record and Proceedings is not traceable. Therefore, Record and Proceedings of JCC office, Kolhapur was called and 1st Respondent submitted certified copies of the record which they obtained from ACC office in the year 2008”.

16. Learned District Judge proceeded to decide matters on the basis of these documents. While allowing Miscellaneous Civil Applications, learned District Judge has observed :

“Respondents had submitted applications to produce original proceeding book which means that the copies of proceedings of the meetings were on record and it appears that ACC had referred those copies of proceedings of respective meetings”.

17. While allowing Miscellaneous Civil Applications by impugned common order, learned District Judge has

observed :

"It is pertinent to note that entire record regarding trust is with the ACC office. Therefore the possibility cannot be ruled out that ACC might have referred the copy of trust deed from his record."

Learned District Court has recorded conclusions as follows :

"Therefore, it appears that proper opportunity was given to the respondents by ACC but they tried to postpone the matters by submitting adjournment applications and also they remained absent. It appears that the evidence of the reporting trustee had gone unchallenged and therefore ACC had accepted the change reports No.257/2004, 166/2005 and 312/2006. On this background, I find that ACC had accepted the change reports by giving sufficient opportunity to the respondents and the orders passed the ACC are legal and proper and therefore the point No.3 is answered in affirmative."

18. District Court has failed to appreciate the fact that principles of natural justice are violated in present matters. Reasonable and fair opportunity of hearing was denied to

appellant. Learned JCC was right in setting aside the orders passed by learned ACC and was also justified in remanding matter back for fresh consideration. The District Court has passed impugned common order on surmises and conjectures and impugned order is contrary to settled legal position that, if fair opportunity of hearing is denied to a party, the proceedings is vitiated.

19. Learned Advocate for Respondents relied on the judgment in **Hidayathkhan Bismillakhan Pathan vs. Vajinath and Others**² to contend that in view of subsequent events, i.e. subsequent change reports, present First Appeals are rendered purely academic and may not be entertained. Reliance is also placed on decision of the learned Single Judge of this Court reported in **Mallappa Guruppa Chaugule vs. Padmanna Omanna Sajane & Ors.**³ wherein it is held that :

“when the term of the Managing Committee has already expired and a new Managing Committee is elected, which has taken charge then due to subsequent developments, question raised in proceedings renders academic and need not be decided”.

² (2009) 7 SCC 506

³ 1980 Mh.L. J. 377

20. It is not possible to accept submission in view of fact that, admittedly, as per scheme of the trust, trustees are elected for the lifetime. Therefore, it cannot be said that questions to be considered in these matters is rendered purely academic.

21. District Court has exceeded its jurisdiction by setting aside well reasoned orders passed by learned JCC. Reasons assigned by District Court in impugned common judgment are unacceptable, first appeals, therefore, deserve to be allowed.

22. In the result, impugned common judgment and order passed in Miscellaneous Civil Application Nos.29 of 2009, 28 of 2009 and 30 of 2009, dated 25th February 2016, passed by District Court, Sangli are hereby quashed and set aside.

23. Learned ACC shall decide Change Report Nos.257 of 2004, 166 of 2005 and 312 of 2006 within a period of six months from the date of receipt of this order. Parties shall cooperate.

24. First Appeals are disposed of accordingly.

25. At this stage, learned counsel for respondents prays for stay of the judgment. For the reasons stated in the order, the prayer is rejected.

[N. B. SURYAWANSHI, J.]