

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 2833 of 2020

Pramod S/o Tejram Gabhane and others

Versus

Nana Daulatji Wanve and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.M.Ghare, Advocate for the petitioners.

Shri S.D.Abhyankar, Advocate for the respondent nos. 2
to 6.

CORAM : ANIL S. KILOR, J.

DATED : 15th MARCH, 2023.

Heard.

2. The application moved by the petitioners under Section 50A of Maharashtra Public Trusts Act, 1950 (herein after referred as “Trusts Act, 1950”) for framing of scheme of a Trust Bahhuddeshiya Mata Navadurga Mandal, Korambi (devi) Trust bearing registration No. P.T.R.No. F-2418(B), was allowed vide judgment and order dated 3rd October, 2018 passed by the Assistant Charity Commissioner which was challenged in an appeal before the Joint Charity Commissioner, who has reversed the said judgment and order passed by the Assistant Charity Commissioner,

vide order below exhibit 1 dated 24th January, 2020 in appeal no. 362 of 2018, the same is under challenge in this writ petition.

3. The petitioners are claiming to be the trustees of the Bahhuddeshiya Mata Navadurga Mandal, Korambi (devi) Trust.

4. The petitioners filed an application under Section 50A of the Trusts Act, 1950 before the Assistant Charity Commissioner alleging mismanagement, malfeasance and misfeasance in the Trust and prayed for framing of scheme by allowing the petitioners to be appointed as first board of trustee.

5. The Assistant Charity Commissioner, thereupon, after hearing both the parties and considering the material placed on record passed the judgment and order dated 3rd October, 2018, allowing the application by framing the scheme and by further appointing the first board of trustee.

6. The scheme application was allowed on the ground that old bye-laws are not properly framed and the same need to be replaced as there are serious lacuna. Further on the ground of mismanagement, malfeasance, misfeasance and for not holding the election.

7. The respondent nos. 1 to 6 feeling aggrieved by the said judgment and order dated 3rd

October, 2018, preferred an appeal before the Joint Charity Commissioner, who passed the impugned order dated 24th January, 2020, allowing the appeal. The same is the subject matter of the present writ petition.

8. Shri Ghare, learned counsel for the petitioners has pointed out that the Assistant Charity Commissioner has observed in detailed as to how the old bye-laws are not sufficient to protect the interest of the trust.

9. He further submits that the Assistant Charity Commissioner has considered in detailed the allegations of mismanagement at the hands of the existing board of Trust and allegations of malfeasance and misfeasance. It is submitted that after getting satisfied that the board of trustees who were in existence were not able to protect the interest of the Trust, the scheme was framed and thereby first board of trustees was appointed.

10. It is further submitted that, without recording satisfactory reasons, the findings of Assistant Charity Commissioner came to be reversed by the Joint Charity Commissioner. He therefore, submits that the impugned order is erroneous.

11. He further submits that with the passage of time, the bye-laws are necessary for changes for proper

management of the Trust and considering the fact that the old bye-laws are not sufficient to protect the interest of the management, the Assistant Charity Commissioner has rightly framed the scheme. For this purpose, he has placed reliance on a Co-ordinate Bench of this Court in the case of Hiralal Jairam Thacker and others Vs. Kulin Hiralal Thacker and others in First Appeal No. 182 of 2007.

12. On the other hand, Shri Abhyankar, learned counsel for the respondent nos. 1 to 6 submits that mismanagement, malfeasance and misfeasance cannot be the ground for framing of the scheme. It is submitted that under the garb of framing of the scheme, the Assistant Charity Commissioner infact removed the complete board of trustees and appointed a new one.

13. It is submitted that there are remedies available under the provisions of Trust Act, 1950 in case of board of trustees act against the interest of the Trust or in case of mismanagement, malfeasance or misfeasance. He submits that even there are provisions if certain amended are required to be carried out in the bye-laws, however, unless there is sufficient reason is available for framing of the scheme, it cannot be framed. For this purpose, he has placed reliance on a Co-ordinate Bench of this Court in Vasantrao S/o

*Vishwanathrao Mane and others Vs. Apparao S/o Baibanna Sidore and others*¹ and judgment in the case of *Mallikarjun Basvanappa Masute and another Vs. Dattatraya Krushnath Wadane and others dated 10th January, 2005 in Second Appeal No. 842 of 2004.*

14. In the light of rival contentions of both the parties, I have perused the record and impugned order.

15. The Co-ordinate Bench of this Court in a case of *Vasantrao S/o Vishwanathrao Mane and others Vs. Apparao S/o Baibanna Sidore and others* (supra) has held thus:

18. Clinching question is whether real and substantial reasons existed for framing of a new scheme. A comparative reading of the erstwhile scheme and the new scheme would show that trivial changes are made in proposed new scheme. If a total overhauling of the erstwhile scheme was needed then the learned Assistant Charity Commissioner ought to have recorded reasons, which could support the exercise of framing a new scheme. A new scheme cannot be framed only because the erstwhile trustees did not conduct elections in time or that some of them committed act of malfeasance or misfeasance.

..... The mere fact that some of the trustees took disadvantage of their position as members of the managing committee cannot be regarded as a substantial reason to prepare a new scheme.....

....The entire exercise appears to be superfluous and undertaken to cater needs of those, who desired to

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take over management of the trust though they were outside realm of the group of valid members of the trust. The changes suggested in the new scheme were of cosmetic nature, including trivialities and indicative of colourable exercise of the powers available under Section 50A of the B.P.T. Act”

16. It is clear from the above observations a new scheme cannot be framed because of erstwhile trustees did not conduct elections in time or that some of them committed act of malfeasance or misfeasance. If a total overhauling of the erstwhile scheme was needed by recording reasons, the scheme can be framed.

17. In the present matter though the findings were recorded by the Assistant Charity Commissioner to the effect how old bye-laws are needed to be changed. However, much stress has been placed on the allegations of mismanagement, malfeasance or misfeasance and also on the point of not holding elections.

18. In the present matter, the proceeding under Section 50A of the Trusts Act, 1950 was not initiated suo moto but it was on an application moved by the petitioners.

19. If the application under Section 50A of the Trusts Act, 1950 filed by the petitioners is perused, it can be seen that the scheme was not sought to be

framed on the ground that total overhauling of the erstwhile scheme was needed.

20. The prayer clause made in the said application indicates that under the garb of framing of scheme, the petitioners wanted to be the part of board of trustee and thereby to manage the Trust.

21. In the application, the allegations are in respect of not holding the election, mismanagement, malfeasance or misfeasance which are not sufficient for framing of scheme.

22. So far as the appointment of first board of trustee by removing old board trustee, in this regard the Co-ordinate Bench of this Court in a case of *Mallikarjun Basvanappa Masute and another Vs. Dattatraya Krushnath Wadane and others* (supra) has held thus:

4. The Assistant Charity Commissioner, Osmanabad, allowed the application by his judgment and order dated 26-12-2003. By the said decision he has adopted the scheme annexed to the petition by certain modifications observing that settlement of a scheme for better management and smooth administration of the trust was necessary. He has also appointed nine persons including two applicants as initial trustees under the new scheme and those initial trustees were expected to hold elections within six months for constitution of new Board of Trustees for a period of five years.

....

I am of a considered view that powers are not as wide as expressed at the conclusion of para 8 of the judgment of Gujarat High Court. In the light of the commentary from the book of K. N. Shah, it must be said that when there is a scheme framed by competent authority such as Charity Commissioner or the Court, total substitution of the same would be in very very exceptional circumstances and ordinarily there should be endeavour to safeguard and insulate the interest of a public trust by suitable variations, alterations or amendments in the scheme. If the powers are taken to be so unbridled as can be exercised by ignoring existing scheme, those may become a tool to dislodge the existing Board of Trustees under the pretention of framing of new scheme. The powers of the Charity Commissioner, as conferred by Section 50-A, could not have been intended by the legislature to be so wide as to become arbitrary and unbridled.

23. Thus, considering the above referred observations of Co-ordinate Bench of this Court, I have no hesitation to hold that removal of old board of trustee and appointment of new board of trustee is illegal and it appears that it was the main intention behind moving an application under Section 50A of the Trust Act, 1950.

24. Thus, it can be said that the petitioners did not approach to the Assistant Charity Commissioner by filing application under Section 50A of the Trust Act,

1950, with a bonafide intention. In the circumstances, I do not find any merit in the present case.

25. The judgment cited by the learned counsel for the petitioners in the case of *Hiralal Jairam Thacker and others Vs. Kulin Hiralal Thacker and others* (supra) is distinguishable on facts and is of no help to the petitioners.

26. In the circumstances, as no perversity or legal infirmity is noticed in the impugned order, the writ petition is dismissed.

[ANIL S. KILOR, J.]

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