

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.4033/2019

Omprakash V Kashiprasad

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. U.S. Dastane, Adv for petitioner.
Mr. A.J. Salway, Adv for resp. no.3.
Mr. M.M. Agnihotri, Adv for resp. no.4/Intervenor.
Mrs. Barabde, AGP for resp. no.2.

CORAM : AVINASH G GHAROTE, J.
DATE : 08-02-2023

Heard Mr Dastane, learned Counsel for the petitioner, Mr. Salway, learned Counsel for the respondent no. 3, Mr. Agnihotri, learned Counsel for the respondent no. 4 (intervenor) and learned AGP for respondent nos. 1 and 2.

2. The petition challenges the following judgments :

A. The judgment dated 27-07-12 passed by the Assistant Charity Commissioner, Wardha, whereby the Change Report No. 350/07 filed by the applicant/reporting trustee has been rejected.

B. The judgment by the Joint Charity Commissioner in Appeal No.37/12 dated 10-10-12 dismissing the appeal and

C. The judgment of the Principal District Judge, Wardha dated 29-07-17 in Trust Appeal No. 7/12. dismissing the appeal.

3. Mr Dastane, learned Counsel for the petitioner, by inviting my attention to the constitution of the Agrasen Bhawan Trust, Wardha (pg 21) and specifically clauses 2, 8, 10, 15, 16 and 17 submits that the provisions of the Trust Deed contemplate constitution of a "Trustee Mandal" by virtue of clause 7 comprising of 3 persons whose tenure would be for a minimum period of 10 years and also the creation of a Managing Committee by virtue of clause 13. Any vacancy arising in the Trustee Mandal, is required to be filled in by the mode as provided in clause 10. He submits that, the initial trustees at the time of creation of trust were 7 persons (page 22), who were required to constitute the Managing Committee as contemplated by clause 13, however, the Managing Committee never came to be constituted. These original trustees appear to have appointed a Trustee Mandal, comprising of 3 persons (pg 31), out of which only 1 survived namely; Shri Wasudeo Gangabus Saraf. The other trustees having passed away. The said trustee, filed a change report on 09-02-2007, which came to be registered as Change Report No.350/07, which was for the purpose of including two names namely; (1) Shri Omprakash Govindram Saraf (2) Shri Kashiprasad Ratanlal Poddar in the 'Trustee Mandal' on account of a General Body Meeting claimed to have been held on 25-09-2005. The said Change Report, itself records, that Shri Kashiprasad Ratanlal Poddar, had tendered his

resignation on 02-08-2006. He, therefore, submits that the change as was reported was legal and valid and was required to be upheld by setting aside the impugned judgments.

4. Mr Salwey, learned Counsel for the respondent no. 3, supports the impugned judgment and by inviting my attention to clauses 10(a) and 10(b) of the trust document submits that the Trustee Mandal was to be elected by the General Body after every 10 years as per clause 10(a) and any vacancy created in the Trustee Mandal was to be filled in by the Managing Committee as per the requirement of clause 10(b). He therefore submits that since this was not done the impugned judgments are correct. He further submits that since the term of the Trustee Mandal had already expired and since the Managing Committee was not constituted, 2/3rd members of the trust by a requisition had called the General Body meeting of the trust on 05-03-2019, in which the resolution was passed, for holding elections, to the Trustee Mandal as well as the Managing Committee and the Election Officer was appointed who thereafter conducted the elections on 11-05-2019 and the persons elected to the Trustee Mandal as well as the Managing Trustee have since filed a Change Report No. 285/2019, which was pending before the Assistant Charity Commissioner.

5. Mr. Agnihotri, learned Counsel for respondent no.4, supports the argument of Mr Dastane, learned Counsel for the petitioner. He further submits that the

interim arrangement was made by the learned District Judge in an appeal u/s 41(E)(5) of the Bombay Public Trusts Act (for short, 'BPT Act') in Trust Appeal No. 1/2011, whereby a committee comprising 3 persons was appointed to book the Bhawan for any ceremony under intimation to the Assistant Charity Commissioner and to deposit the amount of booking in the trust account which arrangement was to continue till the election of the Trustee Mandal and the Managing Committee as per the bye-laws of the trust and since the election claimed to have been held by respondent no.3 was still in dispute, it was contended that the said arrangement could be continued.

6. The learned AGP by inviting my attention to the affidavit on behalf of respondent no.2 has submitted that no change report in respect of the so-called election held on 11-05-19 has been filed or is pending before the Assistant Charity Commissioner and the Change Report No.285/19 was in respect of a meeting dated 03-12-10. She, therefore, submits that the impugned judgments, ought not to be interfered with.

7. The learned Assistant Charity Commissioner by his judgment dated 27-07-12 rejected the Change Report No.350/07 and holding that as per the constitution of the trust, the tenure of the Trustee Mandal was 10 years and since the term of the Trustee Mandal was completed in the year 1987 the holding of election by the Trustee Mandal for filling of vacancy was not permissible as what was required to be done, was to have held the election of the Trustee

Mandal and since this was not done there was violation of the constitution of the trust. It is further held that the Trust Deed/bye-laws did not have a provision which empowered the trustee to convene a meeting and since the meeting dated 25-09-05 was convened by the sole surviving trustee the meeting lacked validity. It is on these two grounds the change report was rejected. In Appeal No. 37/12 by the judgment dated 10-10-12 (pg 90 onwards) (para 10), it was held that the General Body meeting could not have been called for filling in interim vacancies in the Trustee Mandal which is what the change report purported to do and therefore the appeal was dismissed. The learned District Judge in a further appeal u/s 72 of the Maharashtra Public Trusts Act, by the judgment dated 29-7-17 has concurred with the view expressed by the authorities below (para 25 pg 141).

8. A perusal of the various clauses of the Trust Deed of Agrasen Bhawan Trust, Wardha would indicate that vide clause 8 the Trustee Mandal, was to comprise of 3 persons whose term was to be for a minimum period of 10 years. Clause 10 of the Trust Deed is material and is quoted as under :- (Pg 24)

“10. ट्रस्टीयो का चयन : अ) समिती के सर्वसाधारण सदस्य आप में से ही प्रति इस वर्ष के बाद बहुमत से ट्रस्टीयो का चुनाव करेंगे /

ब) बीच समय में हुए रिक्त स्थान की पूर्ति प्रबंध समिती बहुमत से चुनाव द्वारा करेंगी /

क) संबंधित ट्रस्टी सदस्यता से वंचित होने पर ट्रस्टी मंडल से निवृत्त या मुक्त समझा जावेगा /”

9. Clause 10(a) would therefore make it clear that after the term of the Trustee Mandal was over, the same was to be elected by the General Body of the trust comprising of all its ordinary members. As against this clause 10(b), contemplates that any vacancy created in the Trustee Mandal would be filled in by the Managing Committee by a majority. The Change Report No.350/07 (pg 31) would indicate that it has been filed for the purpose of filling in the vacancies, in the Trustee Mandal, which according to the requirement of clause 10(b), could only have been done by the Managing Committee. However, since the Managing Committee was not constituted at all the said course of action was clearly not available. In such circumstances, it was first necessary to have constituted the Managing Committee which would then undertaken the task of filling in the vacancy, in consonance with clause 10(b). Since there is a specific mode prescribed in clause 10(b) for filling of the vacancy in the Trustee Mandal, the same ought to have been adopted, which apparently has not been done, as a result of which, the alleged change which is claimed to have occurred on 25-09-2005, has rightly not been accepted by the Court and authorities below.

10. Though it is contended by Mr Salwey, learned Counsel for respondent no. 3 that election was held on

11-05-19 and change report in respect of which is pending before the Assistant Charity Commissioner, the reply of the respondent no.2/Assistant Charity Commissioner categorically states that there is no change report pending before him regarding any election of the Trustee Mandal claimed to have been held on 11-05-19. What is stated, in para 19 (pg 156) in his affidavit is that a change report bearing no.285/19 in relation to the change, which is claimed to have been held in terms of what has been happened in the General Body meeting dated 3-12-10 is pending. Though it is contended by Mr Salve, learned Counsel for respondent no.3 that the Change Report No.285/19, is in fact in respect of the election of the Trustee Mandal held on 11-05-19, however the same in light of the position as stated by the learned Assistant Charity Commissioner in his affidavit dated 24-05-21, cannot be accepted.

11. The situation therefore which is extant is that as of date, there is no legal change report, in respect of the alleged election of the Trustee Mandal dated 11-05-19 pending before the Assistant Charity Commissioner, as per his affidavit dated 24-05-21. Though the C.R. No. 285/19 has been filed some time in the year 2019, since it is contended that it related to the election dated 11-05-19, it was incumbent upon the respondent no.3 to have made appropriate correction if at all that was necessary which has not been done, till date, in view of which, there is no other option than to rely upon the affidavit of the Assistant Charity Commissioner which states that there is no change

report in respect of the alleged election of the Trustee Mandal dated 11-05-19.

12. This obviously, creates a vacuum which cannot be permitted to be continued in the interest of the trust. Mr. Salwey, learned Counsel for respondent no.3 submits that there are certain errors in Change Report No.285/19, which the respondent no.3 proposes to get corrected since it relates to the election held on 11-05-19 and the same, shall be got done within a period of 15 days from today, in which case, the learned Assistant Charity Commissioner, can be directed to decide the Change Report within a stipulated period of time.

13. However, till such time, it would be necessary to ensure that someone is there to conduct the affairs of the trust which cannot be left in a vacuum. The arrangement made by the learned PDJ in Trust Appeal No.1/2011 u/s 41E(5) of the BPT Act in its judgment dated 27-9-17, would be appropriate, considering which, the following interim arrangement is made.

(a) Indrakumar Balmukund Saraf and the Inspector in the office of the Assistant Charity Commissioner, Wardha are hereby appointed to oversee the affairs of the Agrasen Bhawan Trust, till such time the Change Report No.285/19 is decided, which is directed to be decided by 30-06-2023.

(b) It is made clear that the arrangement shall come

into force within a week of this judgment and any bookings of the Bhawan which may have made by respondent no. 3 till today shall be protected and honoured by the Committee also. The committee, shall only have the power to grant the premises of the trust for any function, however the amounts so received, shall be deposited in the trust account and an accounting of the same shall be maintained.

(c) The respondent no.3 shall handover the affairs and possession of the Bhawan to the committee so appointed within a period of one week from today.

(d) The respondent no.3, shall also place in custody of respondent no. 2 the books of accounts of the trust as well as all other related documents, under acknowledgment, in C.R. No.285/19.

14. The petition is accordingly disposed of in the above terms. No costs.

JUDGE