



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5312 OF 2024

Ubeduraheman Abdulsalam Bagwan
& another

.. Petitioners

VERSUS

Mohammad Hanif Gulab Bagwan & others

.. Respondents

Mr. H. U. Dhage, Advocate for the Petitioners.

Mr. A. A. Nimbalkar, Advocate for Respondent Nos. 1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 18th JUNE, 2024.

PER COURT :

1. By consent of both the sides, heard finally at admission stage.

2. This Petition takes exception to the order passed by learned Assistant Charity Commissioner dated 30.03.2021 in Application Nos. 14/2012 and 24/2017 and confirmation thereof by the learned Joint Charity Commissioner by order dated 06.05.2024 passed in Appeal Nos. 13/2021 and 72/2023 under Section 17 of Maharashtra Public Trust Act, 1950.

3. Papabhai Dagdubhai Bagwan Trust is registered as a public charitable trust by executing trust deed. At the time of registration of trust, Smt. Ratanbai Papabhai Bagwan is settler of the trust and out of her own income, trust is formed. Haji Abdul Gani Yakum Saheb Bagwan i.e. grand father of Petitioners was the founder trustee thereof. On 20.03.1985, Ratanbai died and thereafter on 08.12.1986, Haji Abdul Gani also passed away. During his lifetime, he did not appoint any trustee on the trust. It is the contention of the Petitioners that they are sons of late Haji Abdul Gani and after his demise, they have obtained permission to open Urdu medium school from the Education Department and the same being run under the trust. It is also contended that there was no immovable property of trust and the school is run in the premises of Petitioner. It is the case of the Petitioners that Respondents had no concern with the trust and its affairs and the said fact becomes clear from application which was filed by them on 11.05.2012 under the Right to Information Act seeking information about the trust. It is only thereafter these Respondents filed application under Section 50A of the Act for appointment as trustees on the board of the said trust and also for framing the scheme of trust. The said application was objected by the Petitioners. Thereafter, Petitioners themselves

filed application Bearing Application No. 24/2017 under Section 50A of the act for framing of the scheme. After the Respondents got knowledge of the said proceeding, reply was filed by them therein. The learned Assistant Charity Commissioner took up both the applications i.e. applications bearing No. 14/2012 and 24/2017 for decision together and by passing the impugned judgment rejected the application filed by Petitioners and allowed the application filed by Respondents. The said orders were taken exception before the Joint Charity Commissioner who, by passing order dated 06.05.2024, rejected the appeal filed by Petitioners. Hence, this Petition.

4. Learned counsel for the Petitioners submits that a bare perusal of the trust deed settled by Ratanbai clearly indicates that the mode of appointment of trustees is not by succession. According to him, it is the Petitioners who are interested persons as contemplated by Section 2(10) of the Act, and Respondents did not have any concern with affairs of trust. It is also canvassed that late Haji Abdul Gani had obtained succession certificate in respect of the property of Ratanbai. This according to him, conclusively establishes the Petitioners' right to become trustees of the trust and excludes others including Respondents therefrom. Learned counsel for

Petitioners therefore submits that the order passed by the Assistant Charity Commissioner and confirmed by the Joint Charity Commissioner cannot sustain in law and deserves interference.

5. Learned counsel for Respondents drew attention of the Court to the pleadings of the Petitioners in Application No. 24/2017 wherein it is specifically pleaded that mode of succession for appointment of trustees of the trust is by inheritance. It is his submission that once such plea is raised by the Petitioners, they are estopped from taking contrary stand that the mode of appointment would not be inheritance. It is submitted that competent Civil Court has held Respondents to be heirs of Ratanbai and as such in view of the intention of settler they have right to be appointed as trustees. Apart from this, it is his contention that for the reason of misrepresentation and suppression of fact, Petitioners are not entitled for any relief. It is pointed out that inspite of knowledge of the Petitioners about pendency of the application filed under Section 50A of the Act by Respondents, another application is filed. According to him, their act/inaction of not taking steps for 28 years to appoint trustees show that the contentions of the Petitioners also makes them disentitle to be appointed as trustees.

6. This Court is testing the correctness of the impugned orders in a Writ Petition. The scope of Writ Petition is limited to the extent of finding out as to whether there is perversity in the findings recorded by the Courts below. Impugned orders cannot be disturbed to the touchstone of proceeding like an appeal. As far as present case is concerned, the application of Petitioners in no uncertain terms have stated that the mode of appointment of trustees would be by inheritance. Once such specific and candid plea has been raised, the principle of estoppel would apply and Petitioners cannot be permitted to take different stand after their case is rejected on merit. A person cannot approbate and reprobate at same time.

7. Learned counsel for Respondents has further drawn attention of the Court to the issue of heirship of present Respondents qua Ratanbai. According to him, in Regular Civil Suit No. 1/1996, Respondents are held to be the legal heirs and the said order has been confirmed till the second appeal before the Court. This Court, therefore, finds no reason not to accept the contention of the Respondents that they are legal heirs of Ratanbai, settler of the trust deed.

8. Perusal of the trust deed indicates that the intention of the settler of trust deed was to ensure that the appointment is done by Haji Abdul Gani Yakub who was to remain trustee during his life time. This recital of trust deed clearly demonstrates intention of Ratanbai to appoint some one who is her heir. It is different issue that Haji Abdul Gani during his life time did not appoint any trustee. As far as succession certain obtained by Haji Abdul Gani in respect of property of Ratanbai is concerned, the certificate pertains to personal property of Ratanbai. Once trust is created and an amount of Rs. 5,000/- has been donated to the trust by the settler, there is no question of Haji Abdul Gani succeeding the said amount as it has become the property of the trust. With regard to the heirship of Ratanbai qua Respondents, there is judgment of Civil Court which has been upheld by this Court in Second Appeal no. 166/2005. Thus, this Court finds substance in the contention of learned counsel for the Respondents that Respondents are interested persons qua the affairs of the trust.

9. As far as observations made by learned Assistant Charity Commissioner as well as Joint Charity Commissioner with regard to suppression of facts by Petitioners is concerned, the record

indicates that the Petitioners had knowledge about the pendency of the application for appointment of trustees and for settling the claim of the trust. In spite of such knowledge, while filing Application No. 24/2017, the said fact has been suppressed by the Petitioners. Any party which does not come to the Court with clean hands would not be entitled for any relief.

10. One more aspect deserves consideration is the fact that for a long period of 28 years from death of Haji, no steps were taken by Petitioners to get trustees appointed in the trust. Even accepting the contention of Petitioners that they were looking after affairs of school, in absence of their being appointed as trustees no any right being created in their favour.

11. Having regard to the aforesaid discussion, this Court finds no perversity in the impugned orders in order to cause any interference therein. As a result, this Petition stands dismissed.

12. Learned counsel for Petitioners seeks stay to the order passed by this Court for a period of four weeks on the ground that during the pendency of the Appeal No. 13/2021, an undertaking was

given by the Respondents not to proceed with the application filed before the Assistant Charity Commissioner, Ahmednagar. Learned counsel for Respondents submits that after disposal of the appeal, the said undertaking is lapsed.

13. In order to accord an opportunity to the Petitioners to test the order passed by this Court before the Hon'ble Supreme Court, the undertaking given in Appeal No. 13/2021 to continue for a period of four weeks from today.

(R. M. JOSHI)
Judge

dyb