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

WRIT PETITION NO.2438 OF 2022

Narendra Namdev Mulik and Others ...Petitioners
vs.
Ananda Demji Chougale and Others ...Respondents

Mr. Prashant Bhavake, for the Petitioners.
Mr. Shriniwas Patwardhan a/w. Ms. Mrinal Shelar, for the Respondents.

CORAM : N. J. JAMADAR, J.
RESERVED ON : FEBRUARY 9, 2024
PRONOUNCED ON : JUNE 10, 2024

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, heard finally.

2. This petition under Article 226 and 227 of the Constitution of India assails the legality, propriety and correctness of the judgment and order dated 16th November, 2017 passed by the learned Joint Charity Commissioner, Kolhapur Region, Kolhapur in Appeal No.39 of 2016 under section 70 of the Maharashtra Public Trusts Act, 1950 (Trust Act, 1950) whereby the appeal preferred by the respondent Nos. 1 to 8 came to be allowed by setting aside the order passed by the Assistant Charity Commissioner-1, Kolhapur dated 7th May, 2016 in Change Report No. 1925 of 2009 accepting the change dated 14th July, 2009 as legal and valid.

3. The background facts leading to the petition, though the dispute has a checkered history, can be summarized as under:-

Shree Shiv-Parvati Shikshan Prasarak Mandal, Vetwade, Tal. Panhala, Dist. Kolhapur (petitioner No. 12) is a public charitable trust registered under the provisions of (the Societies Registration Act, 1860) and Trust Act, 1950. The petitioner Nos. 1 to 4 claim to be the President, Vice-President, Treasurer and Secretary respectively of the trust and petitioner Nos. 5 to 11 claim to be the members of its managing committee. In the 14th Annual General Body Meeting (AGBM) of the trust held on 13th July, 2008, the petitioner Nos. 1 to 11 were allegedly enrolled as members of the trust. In accordance with the clause 6(b)1 of the Constitution of the trust, the petitioner Nos. 1 to 11 became eligible to be elected as members of the managing committee of the trust after completion of one year's membership of the trust.

4. On 14th July, 2009, the petitioners claim, the 15th AGBM of the trust was convened. The subject of electing a new managing committee of the trust was on the agenda of the meeting. In the said meeting, the petitioner Nos. 1 to 11 came to be elected as the office bearers and managing trustees for a term of three years.

5. Ananda Chougale (respondent No. 1 herein) the Secretary of the erstwhile managing committee filed Change Report No. 1925 of 2009 dated 9th November, 2009 reporting the change. The reporting trustee had also filed affidavits of the outgoing trustees giving consent as well as no objection for accepting the said change. On 28th June, 2011 outgoing trustee, the chairman has also filed the affidavit of evidence in respect of Change Report No. 1925 of 2009. By an order dated 27th July, 2011 the learned Dy. Charity Commissioner, Kolhapur was persuaded to allow the Change Report No. 1925 of 2009 and the names of the petitioner Nos. 1 to 11 were recorded in the Public Trust Register.

6. The respondent Nos. 1 and 3 to 5 filed an application for setting aside the order dated 27th July, 2011 claiming that the said order was passed ex parte. An application for condonation of delay being Inquiry Application No. 11 of 2011 was also filed by respondent Nos. 1 and 3 to 5. By an order dated 3rd August, 2012 learned Dy. Charity Commissioner was persuaded to reject the application for condonation of delay.

7. Respondent No. 7 carried the matter in appeal in Appeal No. 49 of 2012 before the learned Joint Charity Commissioner along

with an application for condonation of delay in preferring the appeal. By an order dated 17th May, 2013, the learned Joint Charity Commissioner was pleased to allow the appeal and remand the matter back to the learned Dy. Charity Commissioner for a fresh decision.

8. The petitioners preferred an application being Misc. Application No. 189 of 2013 before the District Court, Kolhapur assailing the aforesaid order passed by the learned Joint Charity Commissioner. By an order dated 8th August, 2014, the learned Additional District Judge, Kolhapur was persuaded to dismiss the application preferred by the petitioners under section 72 of the trust Act, 1950.

9. The petitioners carried the matter in appeal before this Court in First Appeal No. 1070 of 2014. Eventually, by an order dated 19th January, 2016 the said First Appeal No. 1070 of 2014 came to be dismissed as withdrawn with a direction to the Dy. Charity Commissioner to decide the Change Report No. 1925 of 2009 in a time bound manner. In the meanwhile, the appellants /petitioners herein were restrained from taking any major decision in respect of the trust properties.

10. On 16th February, 2016 the respondents filed an objection to the Change Report No. 1925 of 2009. After considering the pleading and the material on record, by judgment and order dated 7th May, 2016, the learned Assistant Charity Commissioner-I was persuaded to accept the Change Report No. 1925 of 2009 as legal and valid. It was, inter alia, observed that the respondents did not enter the witness box to affirm that the documents evidencing the change are false and fabricated. Nor the respondents had filed any criminal complaint.

11. Being aggrieved, the respondents preferred an appeal being appeal No. 39 of 2016, before the learned Joint Charity Commissioner, Kolhapur. By the impugned judgment and order, the learned Joint Charity Commissioner was persuaded to allow the appeal holding, inter alia, that the learned Asstt. Charity Commissioner had not examined the objections raised by the respondents as to the legality and validity of the membership of the petitioner Nos. 1 to 11 and fabrication of the record and discrepancies in the documents tendered on behalf of the petitioners in respect of their claim that they were elected in the AGBM of the trust held on 13th July, 2008.

12. Being further aggrieved, the petitioners have preferred this petition.

13. An affidavit in reply is filed on behalf of respondent No. 1. The substance of the resistance put forth by the respondents is that the petitioners have forged the record of the trust and on the strength of the such forged record, the petitioners have claimed that they became the members of the trust and were subsequently elected as the office bearers and the members of the managing committee, of the trust. Notice of AGBM and the proceedings of the said meeting were also forged by the petitioners. The respondents have thus supported the impugned judgment and order.

14. An affidavit in rejoinder is filed on behalf of the petitioners controverting the contentions in the affidavit in reply.

15. I have heard Mr. Prashant Bhavake, learned counsel for the petitioners, and Mr. Mr. Shriniwas Patwardhan, learned counsel for the respondents, at length. The learned counsel for the parties took the Court through the proceedings before the Assistant Charity Commissioner, documents relied upon by the parties and the various orders passed by the authorities under the Trust Act, 1950.

16. Mr. Bhavake, the learned counsel for the petitioners strenuously urged that the learned Joint Charity Commissioner committed a grave error in law in interfering with a well reasoned order passed by the Assistant Charity Commissioner without coming in close quarters with the findings of the Assistant Charity Commissioner. The Appellate Authority has overturned the findings of the Assistant Charity Commissioner on the basis of surmises and conjectures without evaluating the evidence. A strong reliance was placed by Mr. Bhavake on the decision of the Supreme Court in the case of **Santosh Hazari v. Purushottam Tiwari**[1], wherein the Supreme Court enunciated the duty of the First Appellate Court in reversing a judgment passed by the Trial Court.

17. Mr. Bhavake, further submitted that the learned Joint Charity Commissioner played down the fact that the respondents did not lead any evidence to substantiate the grounds that the documents were forged and fabricated. In the absence of any evidence adduced by the respondents, the Appellate Authority could not have overturned the findings of the Assistant Charity Commissioner. Likewise, the learned Joint Charity Commissioner committed an error in law in ignoring the fact that the Change Report was lodged by the erstwhile trustee and it was supported by

1 (2001) 3 Supreme Court Cases 179.

the evidence of outgoing trustees giving no objection for accepting the change. The subsequent somersault by the outgoing trustees ought to have been considered by the learned Joint Charity Commissioner in the backdrop of the entire material on record. Instead the learned Joint Charity Commissioner selectively read the evidence to non-suit the petitioners. Therefore, the impugned judgment and order deserves to be quashed and set aside.

18. Mr. Shriniwas Patwardhan, the learned counsel for the respondents, joined the issue by canvassing submissions that since the petitioners failed to discharge the initial burden, the respondents were not required to adduce evidence in defence. Therefore, the petitioners can not draw any mileage from the fact that the respondents did not enter into the witness box. Mr. Patwardhan, would submit that the learned Joint Charity Commissioner has recorded categorical findings that the petitioners No. 1 to 11 who were allegedly elected as members of the managing committee were not validly inducted as members of the trust and the alleged AGBM never took place and there was no election, as claimed. Those twin findings are based on evaluation of the material on record. The learned Joint Charity Commissioner noted that the same document was relied upon by the petitioners in two different

Change Reports. The notice was illegal and, resultantly, the meeting which was allegedly held, was also illegal. Such findings of fact recorded by the Joint Charity Commissioner are not open for interference in exercise of writ jurisdiction, urged Mr. Patwardhan.

19. To lend support to the submission that if the meeting of the trust was held without giving requisite notice, the proceedings of such meeting do not have any sanctity and consequently such change cannot be accepted as legal and valid, Mr. Patwardhan placed reliance on the decision of this Court in the case of **Santosh Shankarlal Agrawal v. Purushottam Jaganath Murme**[2]**.** Reliance was also placed on another decision of this Court in the case of **Krishnarao Kanhaiya Naidu & Ors. v. Jeevraj B. Agrawal & Ors.**[3]

20. I have given careful consideration to the submissions canvassed across the bar. The moot question that warrants determination is, whether the change reported vide Change Report No. 1925 of 2009, which had purportedly occurred on account of Resolution No. 4 passed in the AGBM of the trust held on 14th July, 2009, was legal and valid ?

2 2017 (6) Mh.L.J. 888.
3 2010(2) Mh.L.J. 31.

21. To begin with, it is necessary to note that inquiry into the change, contemplated by section 22 of the Trust Act, 1950, is a judicial inquiry. The scope of inquiry under section 22 is not limited to the factum of change, as such, *de hors* the legality thereof. A change to be accepted by the Charity Commissioner and recorded in Public Trust Register (PTR) must be such change which has been lawfully made and not merely a change which has, in fact, been made. The Charity Commissioner thus, must pose unto himself a question as to whether there has been a change *de jure* and not merely *de facto*. It implies that the change reported must be a legal one in the sense that it has been made in confirmity with the instrument of the trust in the nature of the constitution and/or rules regulating the mode of succession where the change is reported in the trustees/members of managing committee of the trust.

22. Whether the authorities under the Trust Act, 1950 have examined the legality and validity of the change reported vide C.R. No. 1925 of 2009 on the aforesaid touchstone ? A brief resume of the facts in the context of two principal objections to change, namely, the petitioners being not the members of the trust and the alleged meeting dated 14th July, 2009 had not been validly

convened and held, may be necessary.

23. The constitution of the trust envisages four types of members of the trust, namely, Founder member, Honorary member, Patron member and Ordinary member. Clause 6(b) of the constitution provides that a new member shall not be entitled to contest election to the managing committee of the trust and also cast vote in such election as an elector, unless he has been a member of the trust continuously for a minimum period of one year. Clause 10 of the constitution provides for a managing committee comprising of 11 members. Under clause 11 the term of the managing committee is three years and the mode of succession is by election in AGBM, by majority.

24. Incontrovertibly the trust was registered on 13th September, 1994. Originally, there were 23 members of the trust. The petitioners claimed, on 13th July, 2008 in the 14th AGBM of the trust, the petitioners No. 1 to 11 were enrolled as new members of the trust. The general body meeting of the trust to elect the new managing committee for the year 2009-2012, according to the petitioners, was held on 14th July, 2009, purportedly after one day of the petitioners completing the minimum tenure of one year's

membership and became entitled to vote and contest the election to the office of member of the managing committee. Indisputably, the petitioners No. 1 to 11, who came to be elected in the said meeting dated 14th July, 2009, were all new members allegedly enrolled on 13th July, 2008.

25. The learned Joint Charity Commissioner was of the view that the aspect as to whether the petitioners No. 1 to 11 were validly inducted as members of the trust and were thus entitled to be elected, ought to have been inquired into by the Asstt. Charity Commissioner. The factors that, apart from the copy of the register of members, no other document was placed on record to show that the petitioners No. 1 to 11 were inducted as members of the trust; Narendra Mulik, the petitioner No. 1, the reporting trustee had feigned ignorance about the procedure followed for inducting new members of the trust; in the affidavit in lieu of examination in chief filed by Maruti Mane, it was affirmed that there were only 23 members of the trust and Narendra Mulik, petitioner No. 1 conceded in the cross examination that in C.R. No. 269 of 2008 there is an endorsement that on 12th October, 2018 the list of members (Exhibit 19 therein) was verified with the original register of members wherein names of petitioner Nos. 1 to 11 were

not entered as the members of the trust, weighed with learned Joint Charity Commissioner. In the aforesaid backdrop, in the view of the learned Charity Commissioner as the learned Assistant Charity Commissioner, had not determined the issue of legality of membership of petitioner Nos. 1 to 11 the change reported vide Change Report No. 1925 of 2009 to the effect that all newly inducted members were elected as the members of the managing committee, appeared suspicious.

26. Mr. Bhavake criticized the aforesaid approach of learned Joint Charity Commissioner. It was submitted that the legality of the membership of the petitioner Nos. 1 to 11 was not within the remit of inquiry envisaged by section 22 of the Trust Act, 1950. The issue of legality of the membership was never agitated by respondent Nos. 1 to 8 and adjudicated by the competent authority. Therefore, the said issue could not have been inquired into by the authorities under Trust Act, 1950, especially in the proceedings under section 22 of the Trust Act, 1950.

27. I find it rather difficult to accede to the aforesaid broad submission sought to be canvassed by Mr. Bhavake, especially in the facts of the case at hand. As noted above, one year's

membership of the trust is the qualification to be an elector for, and also get elected to, the managing committee. The petitioner Nos. 1 to 11 were allegedly inducted as the members of the trust on 13th July, 2008 and, exactly one year thereafter on 14th July, 2009, the petitioner Nos. 1 to 11 were allegedly elected as members of the managing committee and none from the original 23 members was elected. Almost instantaneous election of the petitioners no sooner than they acquired the membership qualification is a matter which is required to be appreciated in the light of concomitant circumstances.

28. The factors adverted to by the Joint Charity Commissioner (referred to in paragraph No. 25 above) are relevant and germane for the determination of the controversy. The reporting trustee in an affidavit in lieu of examination in chief filed on 20th June, 2011 could not have affirmed that there were only 23 members of the trust, when the petitioner Nos. 1 to 11 were allegedly inducted as members of the trust in the year 2008. Clause-6(b) of the constitution provides that to become a member of the trust a person was required to give an application. Apart from an extract of membership register, no documents were placed before the authorities under the Trust Act, 1950 to substantiate the claim that

the petitioner Nos. 1 to 11 had made such application to become members of the trust and they were so admitted as the members of the trust in the AGBM allegedly held on 13th July, 2008. To add to this, Mr. Mulik, petitioner No. 1 conceded in the cross examination that in Change Report No. 269 of 2008, there is an endorsement that the original membership register was verified on 12th October, 2010, and the names of the petitioners No. 1 to 11 were not included therein as members of the trust. Cumulatively, all these factors erode the claim of the petitioner Nos. 1 to 11 that they were inducted as members of the trust, a year prior to the alleged meeting held on 14th July, 2009.

29. The reliance placed by Mr. Patwardhan on the decision of this Court in the case of **Krishnarao Naidu** (supra) appears to be well founded. In the said case, the learned single judge of this Court repelled the submission that the Charity Commissioner has no right to decide the issue of membership. It was observed, inter alia, that Charity Commissioner has a power to decide the question of validity of enrollment of members since the question would always be whether the office bearers were elected by a valid electorate. If the persons who are not validly included in electoral roll elect, then election by those persons would be invalid. Therefore the Charity

Commissioner would certainly have a right to go into the question of validity of electoral roll if called upon to decide the same. Charity Commissioner has always an over all control over any trust. Therefore such an act on part of the Deputy Charity Commissioner was not one without jurisdiction.

30. In the case at hand, as noted above, one year's membership of the trust was the qualification for being both the elector and elected. The petitioner Nos. 1 to 11 claimed to have exercised the right of franchise as member and also got elected in the AGBM of the trust, which was held immediately after a day of their completing the tenure of one year's membership of the trust. In that context, the absence of material to substantiate the claim of having been validly elected as members of the trust and, on the contrary, positive material to show that the names of the petitioners Nos. 1 to 11 were not included as members of the trust in the register of the trust, which was verified on 12th October, 2010, dents the claim of petitioner Nos. 1 to 11.

31. The learned Joint Charity Commissioner, in my considered view, correctly delved into the aspect of legality and validity of the membership of the petitioner Nos. 1 to 11, which the learned

Assistant Charity Commissioner had failed to examine. Once, the legal competence of petitioner Nos. 1 to 11 to be an elector falls in the arena of controversy, the edifice of their claim of having been elected as members of the managing committee gets dismantled.

32. On the second count of the validity of the meeting allegedly held on 14th July, 2009, in exercise of writ jurisdiction, undoubtedly this Court need not delve into the thickets of facts. Nonetheless, there is one factor which impinges upon the legality and validity of the alleged AGBM held on 14th July, 2009, inexorably.

33. Clause (8) of the constitution provides that a notice of AGBM be given 15 days prior to the date of the meeting. The Secretary of the trust was to convene such meeting on the advise of the President.

34. In the cross examination, Mr. Narendra Mulik, petitioner No. 1, conceded that the notice of AGBM was to be issued by the Secretary of the trust. Prior to 14th July, 2009 Ananda Chougule, respondent No. 1, was the Secretary of the trust and the latter had issued the notice of the meeting. Narendra Mulik, went on to concede that the notice (Exhibit 19) does not bear the date of issue.

Mr. Mulik blamed his memory to state as to when the notice for the meeting allegedly held on 14th July, 2009 was issued. He went on to concede in unequivocal terms that the notice does not bear the signature and seal of the Secretary of the trust.

35. An endeavour was made to wriggle out of the situation by asserting that the signature of the Secretary is on the succeeding page. However, at the same time, Mr. Narendra Mulik conceded that the signature of the Secretary Ananda Chougule is under the caption list of the members who were present for the meeting and the said signature is in acknowledgment of the receipt of the notice.

36. It becomes abundantly clear that the purported notice of 15th AGBM of the trust neither bears the date of issue of notice nor the signature and seal of office of the Secretary of the trust. The signature of the then Secretary Ananda Chougule finds place on the document (page 386) under the caption, "following members received the notice of 15th AGBM of the trust". Two aspects assume salience. First whether the Secretary of the trust had validly convened the AGBM of the trust. Second, whether the notice was legal and valid in the sense that there was 15 days prior notice. On the basis of the material on record, both the issues deserve a

negative answer. Notice(Exhibit 19) neither bears the date of issue nor the signature and seal of the authority issuing the said notice. If the notice was not validly issued, it impaired the legality and validity of the alleged meeting held on 14^{th} July, 2009.

37. In the case of **Santosh Agrawal** (supra), the learned single judge of this Court, in the facts of the said case, adverted to the question whether the notice was legal and valid and found that as, in the first place, 15 days notice in advance was not received by the appellant and respondent No. 2 therein and, on that ground itself, the Dy. Charity Commissioner had rightly held that the meeting was not legal, proper and valid.

38. The legality and validity of the notice of AGBM in the light of the aforesaid twin infirmities of absence of date of notice and the authority who had issued the said notice, can not be brushed aside as a minor infraction. The twin infirmities go to the root of the matter and affect the legality of the alleged meeting.

39. As noted above, the applicants failed to adduce any parole evidence to establish the date of issue of notice as well as the person who had issued the notice. In this view of the matter, the learned

Joint Charity Commissioner was within his rights in returning a finding that there was no valid notice of the AGBM.

40. In this view of the matter, the learned Joint Charity Commissioner was justified in not giving much weight to the fact that respondents did not enter into the witness box to bolster up their defence that the documents were forged and fabricated. The submission on behalf of the petitioner that the respondents did not adduce evidence pales in significance as the documents relied upon by the petitioner Nos. 1 to 11 themselves bely their claim. I find substance in the submission of Mr. Patwardhan that the petitioners' case fell on its own and, therefore, the respondents were not required to adduce evidence aliunde.

41. The further submission of Mr. Bhavake that respondent Nos. 1 to 8 had filed affidavits affirming the genuineness of the proceeding in the meeting dated 14th July, 2009 also does not advance the cause of the petitioners for reasons more than one. The change report was filed on 9th November, 2009. The said affidavits were not filed in the said Change Report No. 1925 of 2009 but were allegedly affirmed before the Executive Magistrate on 26th May, 2011. Secondly, the affidavits do not partake the character of affidavits

which are filed in a judicial or quasi-judicial proceedings. Thirdly, the tenor of the affidavit indicates that an endeavour has been made to bound down the respondent Nos. 1 to 8. The Deponents professedly affirmed that they will not raise any grievance in future and in the event the assertions in the affidavits were found false, they will be liable to be punished under the provisions of Penal Code.

42. Few other factors, have also been adverted to by the learned Joint Charity Commissioner reflecting upon the veracity of the claim of petitioner Nos. 1 to 11. However, as the challenge mounted on behalf of the respondent Nos. 1 to 8 on two pivotal aspects of legality of membership and legality and validity of the notice of AGBM allegedly held on 14th July, 2009, was found to be well merited, I deem it superfluous to delve into those factual aspects.

43. The conspectus of aforesaid consideration is that the Appellate Authority has rightly interfered with the order passed by the Assistant Charity Commissioner. No interference is thus warranted in exercise of extra ordinary jurisdiction. The petition, therefore, fails.

Hence, the following order.

ORDER

1] The petition stands dismissed.

2] Rule discharged.

3] No costs.

(N. J. JAMADAR, J.)

44. At this stage, Mr. Bhavake, the learned counsel for the petitioners submits that the ad-interim order has been continued throughout.

45. Mr. Bhavake, therefore, seeks continuation of the ad-interim relief for a period of six weeks to facilitate the petitioners to assail this order.

46. Ad-interim order shall continue to operate for a period of six weeks from today.

(N. J. JAMADAR, J.)