



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1499 OF 2019
IN
FIRST APPEAL NO.756 OF 2019

Rang Babaji Shinde and Ors. (deleted) ... Applicant.
Versus
Govind Anandrav Shinde and Ors. ... Respondents.

Mr. Prafulla Shah a/w. Ms.Gunjan Shah, for the Applicant.
Mr. Vaibhav Gaikwad, for the Respondent Nos.1 to 3.
Mr. A.R. Patil, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.
Date : August 30, 2024

P. C. :

1. Heard.
2. Civil Application has been preferred seeking stay of the order dated 15th March, 2019 passed by the Joint Charity Commissioner in Application No.80 of 2016, allowing the Application under Section 41D of the Maharashtra Public Trusts Act, 1950 (for short, "**Trusts Act**"). By an order of even date, the First Appeal has been admitted. The issue is whether the ad-interim relief of *status quo* granted by this Court should be continued or not as interim relief.
3. By the impugned order, the Joint Charity Commissioner has held that in the meeting held on 7th April, 2011, the appointment of

the trustees was made by hereditary mode. He has further observed that by the judgment and order passed in Change Report No.170 of 2012, the learned Assistant Charity Commissioner, the Change Report was rejected on the ground that the new trustees are appointed by hereditary mode though there is no such provision in the Scheme framed in Application No.7 of 1976. He has further held that in the meeting held on 7th April, 2011, where the new trustees came to be appointed, one of the trustees i.e. Khashaba Narayan Shinde is stated to have expired on 27th June, 2011 and therefore, the minutes of meeting which was held on 7th April, 2011 i.e. prior to date of death of Khashaba Narayan Shinde are forged minutes of meeting.

4. Mr. Shah, learned counsel appearing for the Applicant would point out the order passed on 31st May, 1978 by which the Scheme came to be framed where it is stated that the family members cannot be said to be excluded from the management and that they can certainly be appointed as trustees, if they are found fit and suitable and that it is the right of the surviving trustees to appoint a new trustee whenever a vacancy occurs due to death. He would further submit that therefore there is no prohibition on appointment of a family member as a trustee upon the death of one of the members. He would further submit that as far as the Change Report No.170 of 2012 which was filed there was a mistake as instead of 7th July, 2011

the date of the meeting is wrongly typed as 7th April, 2011. In support, he would produce the affidavit of one of the trustees which was affirmed on 6th January, 2014 and filed in the Change Report No.170 of 2012.

5. *Per contra*, Mr.Gaikwad, learned counsel appearing for the Respondents would submit that the minutes of the meeting annexed alongwith the Change Report showed that the meeting was held on 7th April, 2011. He would further point out the Resolution for appointment of the trustees resolving to appoint the new trustees by hereditary mode when the same was prohibited under the Scheme. He would further submit that as the order of the learned Joint Charity Commissioner in Change Report No.170 of 2012 rejecting the Change Report had attained finality, the Joint Charity Commissioner has rightly taken the same in consideration. He would further submit that the proceedings of the meeting dated 7th April, 2011 are clearly forged and fabricated as the same refers to death of one of the trustees i.e. Khashaba Narayan Shinde who expired on 27th June, 2011.

6. Considered the submissions and perused the record.

7. The order of 31st May, 1978 passed framing the Scheme dealt with the contention whether the hereditary mode of succession should be maintained even if the Scheme is settled and the Deputy

Charity Commissioner had held that he is unable to accept the contention raised on behalf of the opponent trustees and that he has further observed that it is not proper to confine the management of the trust only to a particular family. It is therefore clear that the Scheme prohibited succession by hereditary mode and what the Scheme permitted was that the family members cannot be excluded from the management and they can certainly be appointed as trustees if they are found fit and suitable. Upon *prima facie* reading of the Scheme only if the family members are found fit for appointment as trustees, they can be appointed and the appointment of the heirs of deceased trustees cannot be as a mode of succession.

8. While adjudicating the Change Report No.170 of 2012, the learned Assistant Charity Commissioner has considered the proceedings of the meeting dated 7th April, 2011 which clearly resolved that the new trustees are appointed by hereditary mode of succession which was prohibited by the Scheme. Learned Assistant Charity Commissioner has rejected the Change Report and it is not shown that there is any challenge to the said finding or that the same has been set aside. The finding had thus attained finality.

9. Now coming to the issue as regards the meeting held on 7th April, 2011. The Change Report which was filed firstly referred to the

meeting of 7th July, 2011 of which the notice was given on 1st July, 2011. Thereafter, by way of an affidavit filed by the trustee and which was tendered across the bar by Mr.Shah, an Application for amendment was made stating that by typing mistake the meeting is shown as to be held on 1st July, 2011, whereas the meeting was held on 7th April, 2011 and therefore, the Change Report was amended from the meeting of 7th July, 2011 to 7th April, 2011. The Appellants-trustees themselves amended the date of the meeting from 7th July, 2011 to 7th April, 2011 which is borne out from the affidavit of the trustee tendered by Mr.Shah. Therefore, the submission of Mr.Shah that the meeting was held on 7th July, 2011 is contrary to the record. Once the meeting is shown to have been held on 7th April, 2011, the minutes of meeting cannot refer to the death of Khashaba on 27th June, 2011 and appoint new trustee in his place by hereditary mode of succession. The Change Report having been rejected on this ground, it assumes importance while adjudicating the application under Section 41D of the Trusts Act. One of the grounds on which the trustee can be suspended, removed or dismissed is willful disobedience of any lawful order issued by the Charity Commissioner under the Act or Rules.

10. *Prima facie*, therefore, it appears that one of the trustees i.e. Khashaba Narayan Shinde had expired on 27th June, 2011 and as his death was reflected in the minutes of the meeting, the meeting could

not have been held on 7th April, 2011 in which the new Trustee has been appointed in place of Khashaba. *Prima facie*, the proceedings produced in support of Change Report appear to be forged documents. Further as the Scheme prohibited hereditary mode of succession and the minutes of the meeting clearly records that the new trustees are appointed by hereditary mode of succession, *prima facie*, there is lawful disobedience of the order passed by the Joint Charity Commissioner as contemplated by Section 41D (b) of the Trusts Act.

11. In light of the above, I see no reason to continue the ad-interim relief as interim relief. Civil Application stands dismissed.

12. At this stage, request is made by the learned counsel for the Applicant for extension of the protection for further period of eight weeks. The protection which was granted earlier is extended for further period of eight weeks from today.

[Sharmila U. Deshmukh, J.]