

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

**FIRST APPEAL NO. 1106 OF 2018
WITH
CIVIL APPLICATION NO. 151 OF 2020
WITH
CIVIL APPLICATION NO. 152 OF 2020**

Mr. Vinod Chetram Generiwala and ... Appellants/Applicants
Anr.

V/s.

Mr. Kushalchandra Lalitprasad ... Respondents
Poddar and Ors.

Mrs. Gauri Jadhav, for the appellant.

Mr. P.B. Shah with Mr. Sandeep S. Patade, for the respondent no.1.

Mr. A.R. Patil, AGP, for the State.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 31ST JANUARY 2024.

PRONOUNCED ON : 6TH FEBRUARY 2024.

PC:

1. Appeal is filed challenging the judgment and order passed by the learned District Judge, Nashik dated 31.01.2018. The learned District Judge, by way of impugned judgment and order dated 31.01.2018 in Civil Miscellaneous Application No. 103 of 2009 has allowed the application and set aside the order of remand passed by

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the learned Joint Charity Commissioner, Nashik in Trust Appeal No. 26 of 2006. The appellant claims to be trustee of the Trust namely 'Shri Raghunathji Mandir Trust', Panchvati, Nashik bearing Registration No. A-900 (Nashik) (for short 'the said Trust').

2. The facts in short giving rise to the present appeal are that:

a) The said Trust is established long back. In a Suit No. 619 of 1938, this Court by order dated 05.11.1941 settled a scheme and manner of appointment of trustees. The number of trustees were fixed i.e. minimum 5 and maximum 7. The quorum of the meeting was minimum of 3 trustees present in the meeting. Succession of the trusteeship is continual. Survival of trustees have to appoint new trustees. The trustees to be appointed from lineal male descendants and capable to act as the Trustee of the Trust. However condition is that the Trustee should be Sanatani Hindu.

b) In a meeting dated 11.10.2003 the Trustees were appointed by the other Trustees by passing a resolution. On the basis of the said resolution the present Respondent no. 1 filed a Change Report bearing Report No. 4 of 2004 on 05.01.2004 in the office of learned Assistant Charity Commissioner, Nashik. The present appellant objected the said Change Report on various grounds and mainly that the Change Report is not properly filled in. The

meeting in which new Trustees are shown to be elected itself was illegal. No reasons are assigned for a Change Report. One of the person namely Popatlal R. Abad shown as trustee in a meeting was not a Sanatani Hindu.

3. Learned Assistant Charity Commissioner recorded the evidence of Kushalchandra Lalitaprasad Poddar. He was cross-examined. He accepted that one of the Trustee namely Popatlal R. Abad is 'Jain' by religion. In the Cross-examination he has also accepted that as per the scheme the Trustee needs to be a Sanatani Hindu.

4. Learned Assistant Charity Commissioner after hearing the parties allowed the Change Report by judgment and order dated 11.08.2006. It is held that the meeting in which new trustees were shown to have been appointed was legal and valid. The trustee namely Popatlal R. Abad was working as a trustee since last 20 years without any objection etc.

5. The present appellant preferred an Appeal bearing No. 26 of 2006 before the Joint Charity Commissioner. The learned Joint Charity Commissioner held that one of the Trustee's was not Sanatani Hindu. Since one of the Trustee was not Sanatani Hindu who had attended the meeting, the meeting cannot be said to be valid for want of quorum. The learned Joint Charity Commissioner thus observed that there were certain lacunas and remanded the matter for fresh enquiry vide judgment and order dated 06.06.2009.

6. Against the said remand order respondent filed Miscellaneous Civil Application No. 103 of 2009 in the Court of learned District Judge, Nashik. The learned District Judge held that one Popatlal R. Abad was accepted as a Trustee for 20 years, no objection can be raised now. It is held that the quorum of 3 was fulfilled. There was no ambiguity or perversity in the order passed by the learned Assistant Charity Commissioner. It is further observed that no case was made out under Section 41 Rule 23(a) of the Code of Civil Procedure to remand application. No strong reason was given for remanding the matter.

7. Court also considered the Judgments reported in the cases of *'P. Purushottam Reddy and Anr. Vs. M/s Pratap Steels Ltd.'*¹, *'Chetan Mehta Vs State of Maharashtra and Ors.'*², and *'Ramchandra Goverdhan Pandit vs. Charity Commissioner of State of Gujrat'*³.

8. In the case of *"Ramchandra Pandit"* (supra) the Hon'ble Court had considered the power of the District Judge under section 72 of the Bombay Public Trust Act, and the some other judgments has allowed the application setting aside the order of remand passed by the learned Joint Charity Commissioner.

9. Learned Advocate Ms Gauri Jadhav appearing for the appellant vehemently argued the appeal, she pointed out from the cross-examination of the witnesses before the learned Assistant Charity Commissioner that he has categorically admitted that Mr. Popatlal

1 AIR (2002) SCC page 771

2 2008 (6) ALL MR 189

3 AIR 1987 SCC 1598

Abad was not Sanatani Hindu and there is no change in the scheme and the requirement that a trustee necessarily has to be Sanatani Hindu. When such was a position the meeting cannot be said to be legal as it was attended only by 3 trustees including Mr. Popatlal Abad. Thus out of 3 trustees one could not have become the trustee and thus meeting itself was illegal. Once the meeting is illegal, no Change Report could have been filled on the basis of resolution passed in such meeting. The objections were not considered by the Assistant Charity Commissioner. The Joint Charity Commissioner had rightly therefore, remanded the Change Report for fresh consideration. Learned District Judge has committed illegality by setting aside a well reasoned order passed by the learned Joint Charity Commissioner. The Learned Joint Commissioner has rightly found that there were lacunas. This aspect is not properly considered by the learned District Judge. She further submitted that no particulars as required under Section 22 of the Maharashtra Public Trust Act were given in the Change Report. Thus she prays for allowing the First Appeal by setting side the impugned judgment and order. She further prayed that the judgment and order passed by the learned Joint Charity Commissioner be maintained and matter may be remanded back to the learned Assistant Charity Commissioner.

10. Learned Advocate Mr. Shah submitted that the learned Assistant Charity Commissioner as well as learned District Judge have rightly considered that Mr. Popatlal Abad was a trustee for 20 years. The Joint Charity Commissioner had not given any reasons for remand of the Change Report. He thus supports the impugned judgment and

order.

11. This Court has considered the rival submissions of the parties. The main objection of the appellant is that one of the trustees namely Abad was not Sanatani Hindu and therefore, he could not have been appointed as a trustee. However, the fact remaining that he is the trustee for 20 years. Though the appellant was also a trustee, he has never objected appointment of Mr. Popatlal Abad. So far as disqualification of Mr. Popatlal Abad is concerned, on the date of meeting he was not declared and disqualified. No proceedings at any point of time was taken by any of the trustees for removing of Mr. Popatlal Abad as being disqualified.

12. Learned Joint Charity Commissioner though observed that there are lacunas. However has not specifically as to which are those lacunas. Looking to the order passed by learned Assistant Charity Commissioner, this Court finds that learned Assistant Charity Commissioner had considered a Change Report and the objections raised by the objectors. Based on such evidence, he passed the order. In this Court also on asking as to what were the lacunas, only submission is the change of report was not properly filled in. No names of outgoing trustees are given in the report etc.

13. This Court finds that for passing order of remand it was necessary for learned Joint Charity Commissioner to specifically state the reasons for remand. Order 41, Rule 23 reads as below:-

“23. Remand of case by Appellate Court.- Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.”

14. Looking at the above order, it is seen that the remand order is to be passed where the suit is disposed of upon preliminary point and the decree reversed in appeal. Secondly, while remanding the order, the Court has further to direct as to what issue or issues shall be tried in the case so remanded. In this case, learned Assistant Charity Commissioner had not disposed of the C.R. on the preliminary point, there is also no findings by the learned Joint Charity Commissioner in appeal as to on what issue the trial is to be held. No finding is recorded by the learned Joint Charity Commissioner making out case for remand. This Court finds that learned District Judge has rightly passed an order reversing the judgment of the learned Joint Charity Commissioner. This Court finds no perversity in the impugned judgment and order. Thus there is no merit in the First Appeal, the First Appeal stands disposed of. Pending all Civil Applications, if any, stand disposed of in view of the disposal of the First Appeal.

(KISHORE C. SANT, J)