

(2020) 01 BOM CK 0001

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 4011 Of 2019

Saroj Ashok Sontakke

APPELLANT

Vs

Isaac Baburao
Manwatkar And Ors

RESPONDENT

Date of Decision: Jan. 4, 2020

Acts Referred:

- Maharashtra Public Trusts Act, 1950 - Section 22, 36, 50A, 73
- Provincial Small Causes Courts Act, 1887 - Section 17
- Code Of Civil Procedure, 1908 - Section 7, 7(b)(iv), 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 114, 115, Order 9 Rule 13, Order 47 Rule 1, Order 47 Rule 2, Order 47 Rule 3, Order 47 Rule 4, Order 47 Rule 5, Order 47 Rule 6, Order 47 Rule 7, Order 50 Rule 1
- Maharashtra Public Trusts Rules, 1951 - Rule 7

Hon'ble Judges: A.S. Chandurkar, J

Bench: Single Bench

Advocate: Karan Gour, S.D. Abhyankar, S.B. Bissa

Final Decision: Allowed

Judgement

1. The question that arises for consideration in this writ petition is whether the power of review can be exercised by the Deputy Charity Commissioner

while holding an enquiry under Section 22 of the Maharashtra Public Trusts Act, 1950 (for short, the Act of 1950).

Rule. Heard finally by making the Rule returnable forthwith.

2. The facts giving rise to this writ petition are that the petitioner is the reporting trustee who has filed Change Report No.1110/2004 seeking to report

a change that had occurred in respect of a public Trust duly registered under the provisions of the Act of 1950. In those proceedings the reporting

trustee filed an application seeking delivery of interrogatories. A reply was filed by the respondents and on 28/04/2015 the learned Deputy Charity

Commissioner rejected that application. The reporting trustee thereafter filed an application for a review of that order alongwith an application for

condonation of delay. The learned Deputy Charity Commissioner by the impugned order was pleased to reject the application for review on the ground

that there was no provision in the Act of 1950 conferring the power of review for being exercised. Being aggrieved the said order has been challenged

by the reporting trustee.

3. Shri K. Gour, learned counsel for the petitioner submitted that the learned Deputy Charity Commissioner committed an error in holding that the

power of review was not conferred under provisions of the Act of 1950. According to him while adjudicating the proceedings under Section 22 of the

Act 1950, the Deputy Charity Commissioner exercises judicial powers as conferred by Section 73 of the Act of 1950. The same powers as are vested

in Courts while trying a suit are conferred on the Officer holding such enquiry. Referring to provisions of Rule 7 of the Maharashtra Public Trusts

Rules, 1951 (for short, the said Rules) it was submitted that while holding such enquiry under Section 22 of the Act of 1950, the procedure prescribed

for the trial of suits under the Provincial Small Causes Courts Act, 1887 (for short, the Act of 1887) is required to be followed. Under the Act of 1887

the provisions of Section 17 prescribe applicability of the Code of Civil Procedure, 1908 (for short, the Code). Since the procedure prescribed in the

Code is the procedure to be followed in a Court of Small Causes in all suits cognizable by it, it was clear that the power of review was available with

the Deputy Charity Commissioner for being exercised in an enquiry under Section 22 of the Act of 1950. He also referred to Circular No.242 issued

by the learned Charity Commissioner in the form of instructions to be followed while holding an enquiry under the Act of 1950. To support his

contentions the learned counsel relied upon the decisions in Vithoba Babaji Ghodke vs. Balkrishna Ganesh Bhalerao 1967 Mh.L.J 22,4 Balaji s/o

Bhikaji Kapale and anr. vs. Punjaji s/o Balaji Tayade and ors. 2001 (4) Mh.L.J. 821, Arjun Kisan Bhagat and ors. vs. Nana Laxman Tapkire and ors.

and thus submitted that in the light of the ratio of the aforesaid decisions the power of review was available with the Deputy Charity Commissioner for

being exercised while conducting an enquiry under Section 22 of the said Act.

4. Per contra, Shri S. D. Abhyankar, learned counsel for the respondent Nos.1, 2 and 4 supported the impugned order and submitted that the power of

review was not available with the Deputy Charity Commissioner for being exercised in such enquiry. Placing reliance on the decision in Saiyad

Mohammad Bakar El-Edros (dead) by LRs vs. Abdulhabib Hasan Arab and ors. AIR 1998 SC 162 4it was submitted that the Honourable Supreme

Court in the said decision has held that the provisions of the Code were not applicable to proceedings for framing a scheme under Section 50-A of the

Act of 1950. He also referred to the decision in Anna s/o Shriram Fate vs. The Joint Charity Commissioner, Nagpur and Anr. 2005(2) Mh.L.J. 298

wherein the validity of Rule 7 of the said Rules was upheld. Since the power of review was not an inherent power and as it was not specifically

granted under the Act of 1950 that power could not have been exercised. Reference was made to the decision in Patel Narshi Thakershi and ors. vs.

Pradhymansinghji Arjunsinghji AIR 1970 SC 1273 as well as to the decision in Vithoba Balaji Ghodke and ors. vs. Balkrishna Ganesh Bhalerao and

ors. 1967 Mh.L.J 224. It was thus submitted that the impugned order did not warrant any interference and the writ petition was liable to be dismissed.

5. I have heard the learned counsel for the parties at length and I have given due consideration to their respective submissions. To examine the

question that arises for adjudication it would be necessary to first refer to the relevant provisions that are required to be taken into account for that

purpose. The present proceedings arise out of a Change Report that has been filed by the petitioner under Section 22 of the Act of 1950. Under

Section 73 of the Act of 1950, an Officer holding such enquiry under the Act of 1950 has the same powers that are vested in Courts in respect of the

proof of facts by affidavits, summoning and enforcing the attendance of any person and examining him on oath, ordering discovery and inspection as

well as compelling the production of documents and issuing of commissions. Rule 7 of the Rules of 1951 thereafter stipulates that while holding an

enquiry under Section 22 of the Act of 1950 the procedure prescribed for the trial of suits under the Act of 1887 would be followed. Section 17 of the

Act of 1887 recognises the procedure prescribed in the Code as the procedure to be followed by a Court of Small Causes in all suits cognizable by it.

The proviso thereafter contemplates the manner in which review of a judgment may be sought.

6. The question as regards applicability of some of the provisions of the Code has been a matter of adjudication in some of the decisions relied upon by

the learned counsel for the parties. In Vithoba Balaji Ghodke and ors. (supra) which is one of the earliest decisions in time, the provisions of Rule 7 of

the said Rules as well as Section 17 of the Act of 1887 were considered. It was observed that under Rule 7 the provisions of the Code as far as

possible would be applicable to such enquiry and the provisions of Order-I Rule 8 of the Code could be invoked to the extent as possible. In Balaji

Bhikaji Kaple (supra) the question considered was whether the Assistant Charity Commissioner had the jurisdiction to entertain an application to set

aside an ex-parte order passed by him in an enquiry under Section 22 of the Act of 1950. The provisions referred to herein above were considered by

the learned Single Judge. A submission that the provisions of Rule 7 of the said Rules and Section 17 of the Act of 1887 were required to be read in

the context of the provisions of Section 73 of the Act of 1950 was made but the same was not accepted. It was held that by virtue of Section 17 of

the Act 1887 the provisions of the Code as incorporated in Rule 7 of the said Rules were made applicable and hence in view of application of the

provisions of the Code the Assistant Charity Commissioner had the jurisdiction and authority to entertain an application for setting aside an ex-parte

order by invoking the jurisdiction under Order-IX Rule 13 of the Code. The validity of Rule 7 of the said Rules was challenged in Anna Shriram Fate

(supra). After referring to the earlier decision in Vithoba Balaji Ghodke and ors. it was observed that applicability of the provisions of the Code in an

enquiry under Section 22 is restricted to the procedure of enquiry and all other substantive provisions contained in the Code have no application to the

proceedings under Section 22 of the Act of 1950. The procedure to be followed even in the context of the provisions of the Act of 1887 being the

same as prescribed under the Code, the Division Bench observed that it was not necessary to formally strike down Rule 7 of the said Rules and that it

would be enough to hold that the provisions of the Code would be applicable to an enquiry under Section 22 of the Act of 1950 for limited purposes of

the procedure of enquiry, recording of evidence and matters related thereto as read and interpreted by the Court in Vithoba Balaji Ghodke and ors.

(supra). The Full Bench of this Court in Sailesh Developers and ors. (supra) has held that an enquiry contemplated under Section 36 of the Act of

1950 is a judicial enquiry and the provisions of the Code would be applicable to such enquiry as far as possible. The aforesaid are the decisions of this

Court holding the field in that regard.

7. From the aforesaid decisions it can be gathered that an enquiry under Section 22 of the Act of 1950 is treated as a judicial enquiry and the

procedure to be followed in the light of Rule 7 of the said Rules requires such enquiry to be conducted by following the procedure prescribed for the

trial of suits by the Act of 1887 in the present case. The Act of 1887 in turn through Section 17 makes the procedure prescribed by the Code to be the

procedure that has to be followed in a Court of Small Causes in the suits cognizable by it. As noted above the provisions of Section 73 of the Act of

1950 have been held not to be restrictive in nature with regard to the matters under the Code being made applicable while holding enquiries. In other

words, the provisions of the Code as applicable in an enquiry would not be restricted to the matters stated in Section 73 of the Act of 1950.

8. At this stage it would be necessary to also refer to certain provisions of the Code. Under Section 7 of the Code certain provisions thereof have

been held not to be applicable to the Courts constituted under the Act of 1887. Under Section 7(b) (iv) while Sections 96 to 112 and Section 115 have

been mentioned as not being applicable, there is no reference to Section 114 of the Code which provides for review being made inapplicable.

Thereafter the provisions of Order-L enumerate certain provisions of the Code which would not extend to Courts constituted under the Act of 1887.

The provisions excluded are Order-XLVII Rules 2,3,5 to 7. It is to be noted that the provisions of Order-XLVII Rule 1 whose applicability has not

been excluded provide for review of a judgment/order while Order-XLVII Rule 4 which also has not been excluded indicates the consequence of

rejection of an application for review or of such application for review being granted. Thus it becomes clear that the provisions of Section 114 along

with Order-XLVII Rules 1 and 4 of the Code have not been excluded from their applicability in view of the provisions of Section 7 and Order-L Rule

1 of the Code to Courts constituted under the Act of 1887. On consideration of the aforesaid provisions it is clear that in a judicial enquiry conducted

by the Assistant/Deputy Charity Commissioner under Section 22 of the Act of 1950, the procedure which is prescribed for the trial of suits under the

Act of 1887 is required to be followed in view of Rule 7 of the said Rules. By virtue of Section 17 of the Act of 1887 the procedure prescribed under

the Code is required to be followed by the Court of Small Causes and since the Code does not exclude the applicability of Section 114 along with

Order- XLVII Rules 1 and 4 of the Code to Courts constituted under the Act of 1887 it becomes crystal clear that the power of review would be

available while holding an enquiry under Section 22 of the said Act. Such power of review stands conferred by virtue of provisions of the Code

referred to herein above which apply to Courts under the Act of 1887 and therefore in my view the Assistant/Deputy Charity Commissioner in an

enquiry under Section 22 of the Act of 1950 has the jurisdiction to exercise the power of review. Needless to state that this power is liable to be

exercised on satisfaction of the settled parameters with regard to review jurisdiction.

9. Thus in the light of the aforesaid conclusion the impugned order dated 18/12/2018 passed below Exhibit-79 holding that there was no power of

review with the learned Deputy Charity Commissioner as a result of which the application in that regard came to be dismissed is liable to be set aside.

That order is accordingly set aside. The application below Exhibit-79 be considered afresh in the light of the conclusion that the power of review is

available for being exercised.

The Writ Petition is allowed in aforesaid terms. Rule is made absolute leaving the parties to bear their own costs.