

(1999) 02 BOM CK 0093

Bombay High Court (Aurangabad Bench)

Case No: Civil Revision Application No. 4 of 1999

Suresh Mantri and
another

APPELLANT

Vs

Mohd. Iftequaroddin

RESPONDENT

Date of Decision: Feb. 26, 1999

Acts Referred:

- Bombay Public Trusts Act, 1950 - Section 18, 19, 2(13), 20, 80
- Bombay Public Trusts Rules, 1951 - Rule 8
- Civil Procedure Code, 1908 (CPC) - Section 9

Citation: (1999) 3 ALLMR 566 : (1999) 2 BomCR 752 : (1999) 2 MhLj 131

Hon'ble Judges: B.H. Marlappale, J

Bench: Single Bench

Advocate: S.R. Barlinge, for the Appellant; B.P. Agrawal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B.H. Marlapalle, J.

Heard, Rule. Taken up for final hearing with the consent of the parties.

2. The respondent has filed R.C.S No. 337/1998 for perpetual injunction, restraining the petitioners - defendants from making use of the name of the plaintiff - Society and carry on any activity pertaining to the dealers dealing in Drugs & Medicine in the State of Maharashtra and for perpetual injunction restraining the defendants from operating the Current Account No. 2322 of the plaintiff Society with the State Bank of Hyderabad, Main Branch at Jalna, and in any other Bank. Along with the suit, an application for temporary injunction at Exh. 5 has also been filed. The defendants filed an application at Exh. 17 u/s 9-A of the CPC and contended that the plaintiff is a Public . Trust, as defined under the Bombay Public Trusts Act, 1950 {hereinafter referred to as the said Act for short} and in view of the bar of section 80 of the Trusts Act, the suit was not tenable and hence, they prayed for framing a preliminary issue

regarding the jurisdiction of the Civil Court to try and decide the suit. After hearing both the parties, the application at Exh. 17 came to be allowed by an Order dated 7-10-1998 by the learned Jt. Civil Judge, Jr. Division, at Jalna and the preliminary issue regarding jurisdiction came to be framed. By further Order dated 14-12-98, the learned Jt. Civil Judge, Jr. Division held that the Civil Court has the jurisdiction to try and entertain the suit along with the injunction application and the preliminary issue framed by earlier Order dated 7-10-1998 was answered in affirmative. This Order dated 14-12-1998 has been impugned in this petition.

3. The learned Counsel for the petitioners referred to the definition of the term "Public Trust", as set out in section 2(13) of the Trusts Act and submitted that so long as the plaintiff was registered under the Societies Registration Act and it was formed either for religious or charitable purposes or for both, it is a Public Trust and therefore, in view of the specific bar of section 80 of the Trusts Act, the civil suit filed before the Civil Court was not tenable. The learned Counsel for the petitioners, in support of his contentions, has placed reliance on the judgments of this Court in the case of :-

[1] Jankibai Prahaladrai Brijlal Seksaria v. Kashinath Raghunath Kelkar, 1972 Mh.L.J 92.

[2] Shri Dnayaneshwar Madhuradwait Sampradayik Mundal, Amravati v. Charity Commissioner, Bombay & another, 1981 Mh.L.J. 35.

AND

a Judgment of the Karnataka High Court in the case of

[3] [Kalikadevi and Others Vs. Shivasaharanand Sadhu Maharaj and Others, .](#)

4. The learned Counsel for the respondent has supported the impugned order, passed by the learned trial judge and in support of his contentions, has relied upon the judgments of this Court in the case of:-

[1] Shri Chatrapati Charitable Devasthan Trust v. Parisaappa Bhoske & others, 1979 Mh.L.J. 163.

[2] [M/s. Southern Automatic Industries Pvt. Ltd. and another Vs. Mrs. N.S. Talpade and another, .](#)

5. In the case of Shri Chatrapati Charitable Devasthan Trust {supra}, the Public Trust had filed a suit for possession of certain agricultural lands on the ground of trespass and these lands belonged to Shri Chatrapati of Kolhapur, who had created the trust and the property was donated to the trust. The trust was created on 18th January, 1956 and was registered on 31st May, 1959. Subsequently, an application came to be filed u/s 18 of the Trusts Act and that application was pending when the suit was filed. This Court, therefore, held that only because the application was presented for registration u/s 18 of the Trusts Act, it did not follow that the trust was automatically

registered and after filing of the application for registration an enquiry was contemplated u/s 19 and u/s 20 of the Trusts Act, reasons are to be recorded by the Deputy or Assistant Charity Commissioner. This Court, therefore, held that unless an order is passed u/s 20 - after completion of an enquiry u/s 19 of the Trusts Act and a certificate is issued under Rule 8 of the Bombay Public Trusts Rules, 1951 - it cannot be said that the trust is registered as a Public Trust.

In the case of Southern Automatic Pvt. Ltd. (supra), this Court, after referring to a catena of decisions, held that for deciding the question of jurisdiction, one must look to the averments in the plaint and it is not permissible to look to the written statement and the jurisdiction of a Court must be determined only on the basis of averments in the plaint and not on the basis of the defence written statement or on the basis of the arguments raised.

6. In the case at hand, admittedly, an application u/s 18 of the Trusts Act has been submitted by the plaintiff and the said application has been registered as Inquiry No. 230/098. The enquiry as required u/s 19 of the Trusts Act, has not yet been completed and further order, as required u/s 20 of the said Act, has not yet been passed. Section 18 provides for the procedure to apply for registration of a Public Trust and section 19 provides for enquiry being carried out for registration. The relevant portion of section 19 reads as under:

"19. Inquiry for registration:

On the receipt of an application u/s 18, or, upon an application made by any person having interest in a public trust or on his own motion, the Deputy or Assistant Charity Commissioner shall make an inquiry in the prescribed manner for the purpose of ascertaining:

[i] Whether a trust exists and whether such trust is a public trust....."

7. It is also relevant to reproduce provisions of section 2(13) which define the term "Public Trust", and which read as under:-

"Public Trust means an express or constructive Trust for either a public, religious or charitable purposes or both and inclusive of a Temple, Math, Wakf, Synagogue, Augury or other places of public/religious worship or Dharmasthan or any other religious or charitable endowment and a society formed either for religious or charitable purposes or for both purpose and registered under the Societies Registration Act, 1860."

8. It is thus clear that a society registered under the Societies Registration Act, 1860 is not to be held a Public Trust suo moto even though the same has been formed either for religious or charitable purposes or for both. Even on perusal/consideration of the Bye-laws of a particular society, registered under the Societies Registration Act, the Trial Court comes to a conclusion that the society has been formed either for religious or charitable purposes or for both, the society

would not be deemed to be a Public Trust and it cannot fall within the meaning of section 2(13) of the Trusts Act. An enquiry as to whether the trust is formed either for religious or charitable purposes or for both, is required to be conducted u/s 19, by the Deputy or Assistant Charity Commissioner on an application submitted u/s 18 and on his satisfaction, after conducting such an enquiry, he records his findings, as required u/s 20 of the Trusts Act. Thus enquiry - that a society is formed either for religious or charitable purposes or for both - has to be conducted only by the Deputy or Assistant Charity Commissioner u/s 19 of the Trusts Act and no other authority is empowered to conduct such an enquiry. When a special statute stipulates that a particular act has to be done in a prescribed manner and in a particular process, it ought to be done in that manner alone. When the Trusts Act provides that the enquiry is required to be conducted in the prescribed manner by the designated authority, the enquiry is required to be done only in that manner and by that authority and none else. Therefore, such an enquiry cannot be conducted by a Civil Court.

9. The application submitted by the plaintiff - trust u/s 18 is still awaiting enquiry u/s 19 and the findings, as required u/s 20 of the Trusts Act, have yet to be recorded. Unless this procedure is completed and a certificate under Rule 8 of the Bombay Public Trusts Rules, 1951 is issued, after completion of such an enquiry, it cannot be held that the society is formed either for religious or charitable purposes or for both for the purposes of the Trusts Act. It is, therefore, clear that a society registered under the Societies Registration Act will come within the ambit of the term "Public Trust" only after it has received a certificate of registration under Rule 8 of the Bombay Public Trusts Rules, 1951, on completion of the enquiry u/s 19 and an order is passed u/s 20 of the Trusts Act. This is yet to be done in the instant case and therefore, submissions of the learned Counsel for the petitioners that the plaintiff society is a Public Trust, as defined u/s 2(13), is devoid of merits.

10. In the case of Shri Dnyaneshwar Madhuradwait Sampradayik Mandal (supra), it was observed by this Court that the Deputy Charity Commissioner had conducted an enquiry and found that the society registered under the Societies Registration Act was a Public Trust within the meaning of section 2(13) of the Trusts Act. The authorities cited by the learned Counsel for the petitioner, therefore, do not come to his rescue.

11. The bar of section 80 of the Trusts Act will come into play only when the dispute is in respect of the property or affairs or management of a Public Trust. As observed in the foregoing paragraphs, the plaintiff is not yet a Public Trust, as defined u/s 2(13) of the Trusts Act, the Bar of section 80 of the Trusts Act will not operate. The impugned order, therefore, cannot be faulted with and there is no case made out to interfere with the said order. In the premises, the civil revision application is rejected and Rule is discharged with no orders as to cost.

12. Civil revision dismissed.