

Mallikarjun Devasthan Shelgi vs Subash Mallikarjun Birajdar on 25 April, 2024

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Bench: Sanjay Kumar, A.S. Bopanna

2024 INSC 339

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Civil Appeal Nos. - of 2024
(@ Special Leave Petition (C) Nos. 15621-15622 of 2021)

Shri Mallikarjun Devasthan, Shelgi

... Appellant

Versus

Subhash Mallikarjun Birajdar and others

... Respondents

JUDGMENT

SANJAY KUMAR, J

1. Leave granted.

2. Acceptance of Change Reports in relation to the Vahiwardar (Administrator) and Trustees of Shri Mallikarjun Devasthan, Shelgi, a Public Trust, is in issue. A learned Judge of the High Court of Judicature at Bombay invalidated such acceptance and remanded the matters to the Deputy Charity Commissioner, Solapur Region, Solapur, for consideration afresh. Hence, these appeals.

3. informed that the orders of remand have not been acted upon owing to the pendency of these cases. Further, in terms of the High Court's directions, the Vahiwardar and the Trustees, whose names were already entered in the records, are continuing to administer the Trust as on date.

4. Facts, to the extent relevant, played out thus: By application dated 26.05.1952, Mallikarjun Mahalingappa Patil applied for registration of Shri Mallikarjun Devasthan, Shelgi, as a Public Trust, under Section 18 of the Bombay Public Trusts Act, 1950, now known as Maharashtra Public Trusts Act, 1950 (for brevity, 'the Act of 1950'). The object of this Trust was the upkeep and maintenance of Shri Mallikarjun Temple at Shelgi, North Solapur Taluka. Shri Mallikarjun Devasthan, Shelgi, was accordingly registered as a Public Trust. The mode of succession of managership and trusteeship, as provided in the application, was that Mallikarjun Mahalingappa Patil was to be the Vahiwardar of the Trust and the eldest male member of his family was to succeed him. Further, the Vahiwardar

was also empowered to co-opt others, if and when necessary. Mallikarjun Mahalingappa Patil passed away in the year 1992 and his eldest son, Ashok Mallikarjun Patil, became the Vahiwardar of the Trust. Thereafter, Ashok Mallikarjun Patil died on 16.02.1997 and his brother, Jagdishchandra Mallikarjun Patil, took over. Jagdishchandra was the third son of Mallikarjun Mahalingappa Pati, but his elder brother, Satish Patil, the second son of Mallikarjun Mahalingappa Pati, had no interest in taking over as the Vahiwardar of the Trust. Thus, Jagdishchandra assumed the role of Vahiwardar though he was not the eldest male member in the family.

5. It would be apposite at this stage to note the statutory scheme obtaining under the Act of 1950. Section 17 thereof mandates that, in every Public Trusts Registration Office or Joint Public Trusts Registration Office, the Deputy or Assistant Charity Commissioner concerned should keep and maintain such books, indices and other registers, as may be prescribed, which shall contain such particulars as may also be prescribed. Section 18 of the Act of 1950 provides for registration of Public Trusts upon application and prescribes the procedure therefor. Section 19 empowers the Deputy or Assistant Charity Commissioner concerned to make an inquiry upon receipt of an application for registration of a Public Trust under Section 18. Section 20 of the Act of 1950 states that, upon completion of such inquiry, the Deputy or Assistant Charity Commissioner shall record his finding with reasons therefor and make an order for the payment of the registration fee, if he is satisfied. Section 21(1) requires the Deputy or Assistant Charity Commissioner to then make necessary entries in the register maintained under Section 17. Section 21(2) provides that the entries so made shall, subject to the provisions of the Act of 1950 and subject to any change recorded as per the provisions thereof, be final and conclusive.

6. Section 22(1) of the Act of 1950, as it stood prior to 2017, stated that where any change occurs in any of the entries recorded in the register maintained under Section 17, the Trustee shall, within 90 days from the date of occurrence of such change, report the same to the Deputy or Assistant Charity Commissioner in charge of the Registration Office where the register is kept. Section 22(2) empowers the Deputy or Assistant Charity Commissioner to hold an inquiry for the purpose of verifying the correctness of the entries or for ascertaining whether any change has occurred in any of the particulars, recorded in the register kept under Section 17. The first proviso to Section 22(2) states that, in case of change in the names and addresses of the Trustees and Managers etc., the Deputy or Assistant Charity Commissioner may provisionally accept the change and issue a notice inviting objections to such change within thirty days from the date of publication of such notice. The second proviso states that if no objections are received within that time, the order provisionally accepting the change shall become final and entry thereof shall be taken in the register kept under Section 17. The third proviso states that if objections are received within thirty days, the Deputy or Assistant Charity Commissioner may hold an inquiry in the prescribed manner and record a finding within three months from the date of filing objections.

7. Section 22(3) of the Act of 1950 speaks of how the Deputy or Assistant Charity Commissioner is to record a finding after completing the aforesaid inquiry, which may include a decision to remove the name of the Trust from the register by reason of the change. Further, it provides that the finding recorded shall be appealable to the Charity Commissioner. It then states that the Deputy or Assistant Charity Commissioner shall amend or delete the entries in the register in accordance with

his finding, and if appeals or applications were made against such finding, in accordance with the final decision of the competent authority, and the amendment in the entries so made, subject to any further amendment on occurrence of a change or any cancellation of entries, shall be final and conclusive. Section 41D provides for the suspension, removal or dismissal of Trustees by the Charity Commissioner, if any of the grounds mentioned therein is satisfied. Such power can be exercised either on application of a Trustee or any person interested in the Trust and one of the grounds for such action being taken against the Trustee is continuous neglect of his duty or a breach of trust in respect of the Trust.

8. Section 70 provides for appeals to the Charity Commissioner against the findings or orders of the Deputy or Assistant Charity Commissioner in the cases enumerated under Section 70(1)(a) to 70(1)(e). Section 70(1)(b) relates to findings under Section 22. Further, Section 70A(1) of the Act of 1950 empowers the Charity Commissioner to call for and examine, either suo motu or on an application, the record and proceedings of any of the cases before any Deputy or Assistant Charity Commissioner, mentioned in Section 70 thereof, for the purpose of satisfying himself as to the correctness of any finding or order recorded or passed by the Deputy or Assistant Charity Commissioner. Notably, the Act of 1950 was amended in the year 2017, whereby a proviso was added in Section 22(1). This proviso states that the Deputy or Assistant Charity Commissioner may extend the period of 90 days for reporting the change, on being satisfied that there was a sufficient cause for not reporting the change within the stipulated period, subject to payment of costs by the reporting Trustee to the Public Trust Administration Fund.

9. Given the above statutory milieu, it was incumbent upon Jagdishchandra to submit a Change Report within the stipulated 90 days but he did so, long thereafter, on 21.10.2015. He also filed a delay condonation application therewith, stating that he did not file the Change Report earlier by mistake as he was not aware about it. His report was taken on file as Change Report No. 899 of 2015. Judgment dated 15.03.2016 was passed therein by the Deputy Charity Commissioner, Solapur. Thereby, the Change Report was held to be legal and valid, taking note of the fact that no one had taken an objection thereto. In consequence, Schedule 1, pertaining to the Trust, was directed to be amended after expiry of the appeal period. However, no appeal was filed against this judgment within such period.

10. Thereafter, Jagdishchandra appointed four other persons, viz., Kedar Patil, Shailesh Patil, Vishwajit Virajkumar Nandimath and Balasaheb Yelshetty as Trustees, by co-opting them on 28.03.2017. He filed Change Report No. 1177 of 2017 to record their names in the register maintained under Section 17 of the Act of 1950.

11. While so, five persons, viz., Subhash Mallikarjun Birajdar, Abhijeet Prakash Birajdar, Kalyani Mallappa Birajdar, Sachin Shivanand Birajdar and Kedar Shivanna Birajdar, claiming to be the devotees of Shri Mallikarjun Temple at Shelgi filed an application under Section 70A of the Act of 1950 before the Joint Charity Commissioner, Pune, against the judgment dated 15.03.2016 passed by the Deputy Charity Commissioner, Solapur, accepting Change Report No. 899 of 2015. The same was taken on file as Revision Application No. 61 of 2017. Therein, these five devotees questioned the eligibility of Jagdishchandra to be the Vahiwardar of the subject Trust, alleging that he had

‘unlawfully, without having any kind of relation, by cheating and misleading villagers, society as well as the Hon’ble Court, filed the Change Report No. 899 of 2015 and obtained approval’. They further alleged that the Deputy Charity Commissioner had not made a proper inquiry on the Change Report. According to them, after the death of Ashok Mallikarjun Patil, the functioning of the Trust was being handled by the villagers and they had been looking after the worship and other programs and Jagdishchandra was just overseeing the Temple. They, however, did not make the delay on his part a ground of challenge.

12. However, Jagdishchandra filed an application in the revision pointing out that he had filed a delay condonation application in relation to the filing of Change Report No. 899 of 2015 and that pendency of the same may adversely affect his legal rights. He prayed that a finding be called for from the Deputy Charity Commissioner, Solapur, about the said application pending the revision. By order dated 29.01.2019, the Joint Charity Commissioner, Pune, held that the Change Report had been accepted, which meant that the delay stood condoned, and it was not necessary to call for a finding on the delay condonation application.

13. Thereafter, the Joint Charity Commissioner, Pune, dismissed Revision Application No. 61 of 2017 filed by the five devotees, vide judgment dated 09.07.2019. Therein, the Joint Charity Commissioner observed that Jagdishchandra was the son of Mallikarjun Mahalingappa Patil, at whose behest the Public Trust had been registered. He noted that Jagdishchandra was the third son and that the other four sons, including Satish, who was older than Jagdishchandra, had filed affidavits stating that they consented to his appointment as Trustee. The Joint Charity Commissioner also noted that the revision applicants were not members of the family of Mallikarjun Mahalingappa Patil and that their other revision, being Revision Application No. 60 of 2017, challenging the order dated 17.06.1954 passed in Inquiry Application No. 25 of 1952, pertaining to the registration of the subject Trust, had already been dismissed on 10.10.2017.

14. In the meanwhile, as regards Change Report No. 1177 of 2017 pertaining to the co-option of four Trustees by Jagdishchandra, the Assistant Charity Commissioner, Solapur, delivered judgment dated 18.04.2018. Therein, while noting that some of the devotees of the Temple had filed objections to the said report, he ultimately held that the Change Report was legal and acceptable. The opponents to the Change Report had contended that Jagdishchandra was not the eldest son of Mallikarjun Mahalingappa Patil, but the Assistant Charity Commissioner noted that Ashok Mallikarjun Patil, the eldest son, had died issueless and the second son, Satish, claimed no interest in the Trust. Further, the Assistant Charity Commissioner took note of the fact that the revision filed against the registration of the subject Trust had been dismissed by the Joint Charity Commissioner, Pune. The Assistant Charity Commissioner, accordingly, concluded that the Change Report was acceptable, subject to the decision in the revision filed against the judgment in relation to Change Report No. 899 of 2015 pending before the Joint Charity Commissioner, Pune.

15. Aggrieved by this judgment, two of the devotees, Shivshankar Revansidha Birajdar and Prakash Sangappa Birajdar, filed Appeal No. 79 of 2018 before the Joint Charity Commissioner, Pune, under Section 70 of the Act of 1950. The said appeal was dismissed by the Joint Charity Commissioner, Pune, vide judgment dated 09.07.2019. Therein, the Joint Charity Commissioner held that as

Revision Application No. 61 of 2017 pertaining to Change Report No. 899 of 2015 was dismissed by a separate judgment on that day, Jagdishchandra stood confirmed as the Vahiwardar of the subject Trust and, therefore, he had a right to co-opt Trustees.

16. Assailing the dismissal of their Revision Application No. 61 of 2017, vide judgment dated 09.07.2019, confirming the judgment dated 15.03.2016 passed by the learned Deputy Charity Commissioner, Solapur, in respect of Change Report No. 899 of 2015, the five devotees filed W.P. No. 8570 of 2019 before the High Court of Judicature at Bombay. Therein, for the very first time, they raised the ground of delay of more than 17 years on the part of Jagdishchandra in filing a Change Report after the death of Ashok Mallikarjun Patil on 16.02.1997.

17. Challenging the dismissal of their Appeal No. 79 of 2018, vide judgment dated 09.07.2019 passed by the Joint Charity Commissioner, Pune, confirming the judgment dated 18.04.2018 passed by the Assistant Charity Commissioner, Solapur, in respect of Change Report No. 1177 of 2017, the two devotees filed W.P. No. 8571 of 2019 before the High Court of Judicature at Bombay.

18. By common judgment dated 27.08.2019, a learned Judge of the High Court of Judicature at Bombay allowed both the writ petitions. The point that weighed with the learned Judge was that there was no separate order passed by the Deputy Charity Commissioner, Solapur, condoning the delay of over 17 years in the filing of the first Change Report. This, according to the learned Judge, was contrary to Section 22 of the Act of 1950. He accordingly held that acceptance of Jagdishchandra as the Vahiwardar under Change Report No. 899 of 2015 could not be sustained and, in consequence, his Change Report No. 1177 of 2017 could also not be sustained. It is on this sole ground that the learned Judge restored the proceedings in relation to both the Change Reports to the file and directed the Deputy Charity Commissioner, Solapur, to decide them afresh. The learned Judge further directed that the position existing as on that date should be maintained, i.e., Jagdishchandra and his nominated Trustees, who were administering the Trust, were permitted to continue to administer the Trust in accordance with law.

19. Before we proceed to consider the matter on merits, we may again note the fact that the Act of 1950 was amended in 2017, whereby a proviso was added in Section 22(1), providing for condonation of delay in the filing of a Change Report, if sufficient cause is shown therefor. It may be noted that no such proviso was in existence at the time Change Report No. 899 of 2015 was submitted by Jagdishchandra. Despite the same, he had filed a delay condonation application therewith praying for condonation of the delay on his part in filing the report. It is well settled that it is not mandatory that a written application be filed seeking condonation of delay and relief can be granted in that regard even upon an oral request, provided sufficient cause is shown for such delay [See Bhagmal and others vs. Kunwar Lal and others¹ and Sesh Nath Singh and another vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. and another ²]. (2010) 12 SCC 159 (2021) 7 SCC 313

20. The proviso added in Section 22(1) in the year 2017 is merely clarificatory in nature as is evident from the fact that it was 'added' in Section 22(1) and it did not bring about any substantive change. Even in the absence thereof, the wording of Section 22(1) of the Act of 1950, as it stood earlier, did not negate the applicability of Section 29(2) of the Limitation Act, 1963, and in consequence, Section

5 of the Limitation Act, 1963, could be invoked for condonation of the delay in the submission of a Change Report. Significantly, the High Court did not call for the original file to verify whether the Deputy Charity Commissioner, Solapur, had passed a separate order on the delay condonation application, condoning the delay in exercise of such power. In any event, the Joint Charity Commissioner, Pune, proceeded on the understanding that the delay had already been condoned. He passed an order to that effect on 29.01.2019 and that order was never challenged by the applicants in Revision Application No.61 of 2017, viz., the Birajdar family. Once that order attained finality, it is not open to them to ignore the same and reopen the issue of delay before the High Court. All the more so, when the issue of delay was never raised by them in Revision Application No. 61 of 2017 and was raised for the very first time only in the writ petition filed against the judgment passed therein.

21. Further, what is of greater import is as to what would be the consequence of a Change Report being submitted belatedly. In the event a new Vahiwardar takes over a Trust and, be it for whatever reason, he fails to submit a Change Report within the stipulated period of 90 days, what would be the fallout thereof? The provisions of the Act of 1950 do not contemplate automatic invalidation of his assumption of office as the Vahiwardar of the Trust in such a situation. Once a Trust is registered as a Public Trust under Section 18 of the Act of 1950, it becomes the statutory duty of the authorities concerned to maintain proper records in relation to such Trust, including the particulars of its Administrators and Trustees. The Change Report in that regard has to be filed before the authorities concerned to facilitate timely updating of records after hearing all the parties concerned, as the statute provides for objections being raised against a Change Report. Delay or failure in doing so would mean that the records would not stand updated promptly. Objectors to the changes in the Trust, if any, can always take recourse to the remedies provided under the Act of 1950, complaining of the failure or delay in the filing of a Change Report and the adverse consequences of such changes, if any.

22. Notably, as per the statutory scheme, failure to file Change Reports would invite penal consequences under Section 66 of the Act of 1950, which provides that whoever contravenes Section 22 and fails to report a change would be liable to pay a fine of 10,000/-. Continued failure to do so may invite more adverse consequences, as provided in the Act of 1950, but such consequences would flow from the orders passed by the authorities concerned under the relevant provisions and would not stem from such failure automatically. Therefore, when failure to file a Change Report would not be fatal in itself, the delay in filing a Change Report cannot automatically impact the assumption of office by a Vahiwardar of a Trust. The very fact that a proviso was added in Section 22(1) of the Act of 1950, enabling the authority concerned to condone the delay in the filing of the Change Report, if sufficient cause is made out, clearly indicates that such delay is curable and the delay in filing a Change Report would not, by itself, entail non-acceptance or nullification of the changes in the Trust which are sought to be informed to the authorities with delay. In *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others*³, this Court observed that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay as Courts are not supposed to legalize injustice but are obliged to remove injustice.

(2013) 12 SCC 649

23. That apart, it appears that the devotees, all bearing the same family name 'Birajdar', who are raising objections seem to have a grievance with the very registration of the subject Trust, but their revision in that regard stood dismissed and appears to have attained finality. After such dismissal, in the capacity of being devotees of the Temple, they can have no legitimate grievance with regard to the succession to the post of Vahiwatdar of the subject Trust. More so, when the eldest male member in the founder's family has no issue with it.

24. Though it has been contended before us on behalf of the devotees that the Trust is not taking proper care of the Temple, we are of the opinion that such an issue cannot be a ground for them to challenge the Change Reports relating to the Vahiwatdar and the Trustees of the subject Trust. Separate machinery is provided in the Act of 1950 to address such issues and it is for them to take recourse to such statutory remedies, if so advised. Their repeated attempts to attack the Change Reports relating to assumption of office by the new administration of the Trust only indicates their inimical attitude thereto and to the family of the founder, Mallikarjun Mahalingappa Patil. All in all, much ado about nothing!

25. Viewed thus, we are of the opinion that the learned Judge of the High Court of Judicature at Bombay adopted a rather hypertechnical approach by attaching so much importance to the delay in the submission of the first Change Report. Much did not turn upon the same as it was a curable defect. In any event, it had no impact on the change that had been brought about in the subject Trust but which was informed to the authorities belatedly.

26. The common judgment dated 27.08.2019 passed by the High Court of Judicature at Bombay in Writ Petition Nos. 8570 and 8571 of 2019, therefore, cannot be sustained and is accordingly set aside.

In consequence, acceptance of Change Report Nos. 899 of 2015 and 1177 of 2017 is confirmed.

Both the civil appeals are allowed.

Pending applications, if any, shall stand closed.

Parties shall bear their own costs.

.....,J (A.S. BOPANNA)J (SANJAY KUMAR) April 25, 2024;

New Delhi.