Lau Ah Lang and Others v Chan Huang Seng and Others
[2001] SGHC 178

Case Number : Suit 452/2000

Decision Date : 10 July 2001

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : K Shanmugam SC, Christopher Daniel and Sanjiv Rajan (Allen & Gledhill) for the plaintiffs; Edwin Tay and Claire Nazar (Edwin Tay & Co) for the defendants

Parties : Lau Ah Lang — Chan Huang Seng

Unincorporated Associations and Trade Unions – Friendly societies – Meetings – Notice of extraordinary general meeting given to all members including plaintiffs – Removal of management committee and election of replacement committee – No mention of such actions in notice – Sufficiency of notice – Validity of actions taken at meeting.

Judgment

GROUNDS OF DECISION

1. All the parties are members of the Zu-Lin Temple Association (the Association) and this action reflects the existence of factions among the members that are struggling for control of the Association.

2. The action started as a claim by the three plaintiffs against the 21 defendants for a declaration that the appointment of the 21 defendants as the seventh management committee of the Association was null and void and that the sixth management committee was still the duly elected and effective management committee of the Association. The defendants filed a defence and also a counterclaim. The counterclaim was not only against the three plaintiffs. It was also against two additional members who became two of the five defendants to the counterclaim. Many affidavits were filed and the action was fixed for hearing over 10 days.

3. When the hearing started before me on 2 May 2001, Mr Shanmugam, counsel for the plaintiffs, put forward two preliminary points. The first point was that no defence to the plaintiffs' claim had been disclosed either in the pleadings or in the affidavits filed by the defendants and therefore judgment should be entered for the plaintiffs without a trial. The second point was that in respect of the counterclaim there was no cause of action disclosed against the original plaintiffs who were the first, second and third defendants to the counterclaim and that the counterclaim could not therefore properly subsist against only the fourth and fifth defendants to the counterclaim who were not parties to the original action.

4. I heard submissions from both parties on the first preliminary point. I decided that it was well founded and that judgment should and would be given for the plaintiffs without the necessity of a full hearing. I then proceeded to hear submissions on the second point. Partway through those submissions I was informed that the defendants wished to discontinue the counterclaim without prejudice to their right to start a new action and with no order as to costs on the counterclaim. Mr Shanmugam's clients accepted those terms and I accordingly granted leave to the defendants to discontinue the counterclaim. The defendants have now appealed against the decision in favour of the plaintiffs on the first preliminary point and the consequent declarations that I made in respect of the nullity of the seventh management committee and the continued existence of the sixth management committee.

Pleadings

5. The amended statement of claim started by averring that all the plaintiffs were members of the Association and that the second plaintiff was a committee member. It then went on to give a history of the Association. Paragraph 6 of the statement of claim gave the names of all 25 members of the 6th management committee of the Association. It named the second plaintiff and the third plaintiff as committee members. In paragraph 7, the statement of claim, rather confusingly, asserted that the first and second plaintiffs were two of the members of the duly elected and current management committee. It stated that this committee was elected at the annual general meeting held on 6 June

1999 and that the tenure of the 6th management committee was due for expiry on 6 June 2001.

6. Paragraph 8 recited the effect of various relevant provisions of the constitution of the Association and this was elaborated on until paragraph 11. In paragraph 12, the plaintiffs contended that in view of the constitutional provisions, the terms of the 6th management committee was only due to expire on 6 June 2001 and the defendants were prohibited from appointing a new management committee before then.

7. By paragraph 13 of the statement of claim, it was stated that on 20 May 2000, a notice of an extraordinary general meeting (EOGM) of the Association was given to all members including the plaintiffs. The EOGM was scheduled for 28 May 2000 at 8pm. It was specifically pleaded that the notice and the agenda of the EOGM did not state that the sixth management committee would be dissolved and that an election would be conducted to elect a replacement management committee.

8. By paragraph 14, the plaintiffs averred that they did not attend the EOGM and came to know on 29 May that members attending the EOGM had, contrary to the agenda of the EOGM and the constitution of the Association, purportedly voted to dissolve the existing and duly constituted sixth management committee and purported to appoint the defendants as the new management committee (the seventh management committee). In paragraph 15, it was stated that the members had also purported to appoint new trustees.

9. In paragraph 16, the plaintiffs contended that the election of the defendants as the seventh management committee and of the new trustees was null and void for various reasons. The first of these was that the purported dissolution of the sixth management committee had not been provided for nor tabled as a resolution in the agenda for the EOGM and neither was it any part of the agenda for the EOGM. Further in breach of the constitution, no notice of any proposal to remove the trustees from their trusteeship or to appoint new trustees was given. The next paragraph pleaded that the plaintiffs had been denied their right to propose and/or second and/or elect and/or vote at the EOGM on 28 May.

10. Paragraphs 18 and 19 of the amended statement of claim dealt with other matters which were not relevant to the preliminary point. Among the reliefs thereafter sought by the plaintiffs were declarations that the appointment of the defendants as the seventh management committee was null and void and that the sixth management committee remained the management committee of the Association.

11. In their amended defence, the defendants admitted that the plaintiffs were members of the Association and that the sixth management committee had been elected on 6 June 1999. This was in paragraph 1. The rest of that paragraph and paragraphs 2, 3, 4, 5, 6, 7 and 8 dealt with the history and practice of the Association. In paragraph 9 the defendants did not admit that the second plaintiff was a committee member and in paragraph 10 the defendants denied that the first plaintiff was ever a committee member of the Association. The defendants did not in any of their paragraphs deny that the third plaintiff was a committee member.

12. In paragraph 11 the defendants averred that the tenure of the sixth management committee had been effectively, validly and constitutionally terminated by a majority vote which had been taken to dissolve this committee at the EOGM of 28 May 2000.

13. Paragraphs 8 to 16 are not relevant for the present purpose. In paragraph 17, the defendants denied paragraph 12 of the amended statement of claim and contended that the ordinary members retained the right to elect a new management committee when the sixth management committee had resigned and vacated office.

14. In paragraph 18, the defendants referred to the agenda for the EOGM and stated that it had been specifically convened to discuss and address the problems facing the sixth management committee. Paragraph 19 averred that at the meeting the chairman, vice-chairman, secretary and assistant secretary offered to resign and vacate their offices. These resignations were accepted by the general meeting. In paragraph 20, the defendants did not admit paragraph 14 of the statement of claim. Paragraphs 20 and 21 dealt with the appointment of the trustees and in paragraph 22, the defendants went on to aver that upon acceptance of the resignation and vacation of key office bearers, the sixth management committee had exercised its discretion to dissolve itself by virtue of clause 24 of the constitution which provided that in the event of any question or matter arising out of any point which was not expressly provided for in the rules, the committee would have the power to use its own discretion. Paragraph 23 went on to say that after the sixth management committee had been dissolved, the members had proceeded to vote for and elect new office bearers. The remaining paragraphs of the defence did not bear on the issue argued.

Relevant facts

15. The arguments turned on the sufficiency of the notice calling the EOGM. This notice was issued pursuant to a requisition sent to the chairman of the sixth management committee on 18 May 2000 by some 28 members of the Association. As translated into English, the requisition read:

> 'With reference to the opening ceremony of the temple and other subsequent development matters, as well as problems among councillors, I sincerely request that the management committee immediately call an "Urgent Member Meeting" for discussion.'

Consequently, on 20 May the EOGM was called. The English translation of the notice of the EOGM read:

> 'To: all members of the temple
>
> Notice of Extraordinary General Meeting
>
> On the request of 28 members, the temple will be holding an extraordinary general meeting at the meeting room of the temple at 8.00 p.m. on 28/5/2000 (twenty-fifth of the fourth month of the lunar calendar). We hereby invite all members to be punctual for the discussions.
>
> Meeting Agenda
>
> 1) Chairman's explanation on the reason for the meeting
>
> 2) Future development of the temple
>
> 3) Problems between councillors
>
> 4) Hiring professionals/manager for the temple
>
> 5) Report of executive committee meeting (29/4/2000)
>
> 6) Meeting ends
>
> Zu-Lin management committee
>
> ……
>
> General Affairs Officer, Tang Kok Eng
>
> 20th May 2000'

16. What happened at the meeting in relation to the position of the sixth management committee was set out succinctly in the minutes of the EOGM recorded by Mr Neo Yek Boon (the eighth defendant) from the tape recording of the meeting. The first matter discussed was the issue of the board of trustees. After some discussion, four trustees verbally offered to withdraw from the trusteeship to pave way for a proper election of trustees by the members. Mr Chan Huang Seng (the first defendant), a withdrawing trustee, then proposed to the members that the board of trustees be dissolved and that the meeting elect new trustees. This proposal was seconded by Mr Lim Seng Hoo (the second defendant), another withdrawing trustee. The election was, however, delayed as the fifth trustee was apparently on her way to the meeting.

17. The next event was a discussion of the investment of funds of the Association in certain insurance policies. It was agreed at the meeting that the investment must be withdrawn as the money had been donated towards the building of the temple and not for investment. This discussion was followed by the significant events. As recorded by paragraphs 1.4 to 1.6 of the minutes, what took place was:

> '1.4 Mr Neo Yit Sui [12th defendant] said that because of these issues, members have lost confidence with the current 6th in-take of committee members. Mr Toh Tong Tiong asked the members present whether they sincerely work for and pray for guidance from our Goddess of Mercy and requested them to raise their hand if they do. It was a unanimous "YES". Mr Toh Tong Tiong than read out the advice that the current 6th in-take of committee members be dissolved, the board of trustees be dissolved and the election of the new 7th in-take of committee members and new board of trustees.
>
> 1.5 Mr Chan Huang Seng proposed and Mr Lim Seng Hoo [2nd defendant] seconded that the current 6th in-take of committee members be dissolved. The dissolution was unanimously accepted by the members and Chairman Mr Lim Seng Hock officially announced the dissolution of the current 6th in-take of committee members and the current board of trustees.'

Subsequently, the meeting proceeded with the election of a new board of trustees and a new management committee. It should be noted that whilst Mr Lim Seng Hoo, the second defendant, was also a member of the sixth management committee, the proposer of the motion to dissolve that committee, Mr Chan, the first defendant, was not a member of it. He therefore acted as a member of the Association rather than as a member of the committee.

18. Basically the stand taken by the defendants in their affidavits as to what had happened at the EOGM was somewhat contradictory. On the one hand they relied on the minutes of the EOGM as recorded and translated by Mr Neo Yek Boon. Those clearly state that the sixth management committee was dissolved by a resolution passed by the meeting at the instigation of the first and second defendants. On the other hand, various deponents stated that during the meeting members of the sixth management committee resigned voluntarily and as a result there was a vacuum and the sixth management committee was dissolved. This allegation that the dissolution of the sixth management committee was prompted by an en-masse resignation was not part of the defence. As can be seen from the recital above, the assertion in the defence was that four key office bearers had resigned and the management committee had then used its own discretion to dissolve itself. This assertion was not substantiated by the facts put forward by the defendants themselves and therefore could not compensate for any inadequacy in the notice calling for the meeting.

19. Since the minutes were prepared by one of the defendants based on tape recordings and were relied on by the other defendants as an account of what had happened, they had to be taken as the best record of what had actually occurred at the EOGM. These minutes show that the sixth management committee was dissolved by a general resolution of the meeting and not by any action on the part of the committee itself. Further, since at least one committee member (ie the plaintiff) was absent, there could not have been a complete vacation of office by the committee members.

20. The defendants' pleadings did not admit that the plaintiffs were absent from the meeting. It appeared from their affidavits, however, that they were not able to deny the plaintiffs' absence. One of the exhibits to the affidavit filed by the third defendant attached the minutes of the EOGM and the attendance list bearing the names of all the members of the Association. Those present at the EOGM signed against their names. The plaintiffs' signatures were absent. The plaintiffs themselves specifically attested that they were absent. On the other hand, none of the deponents from the defendants specifically attested to the presence of the plaintiffs at the EOGM. At the beginning of the trial therefore, the plaintiffs' absence from the meeting was, in effect, uncontroverted.

The law

21. The law is clear that meetings would be invalid at the behest of non-attending members if the notices convening them do not specify,

with sufficient particularity, the matters to be discussed and resolved at the meetings. See *Shackleton on the Law and Practice of Meetings* (9th Ed, 1997) pp 39-43. There are also case authorities to similar effect.

22. *Young v Ladies' Imperial Club, Limited* [1920] 2 KB 523 involved a situation that was very similar to the one before me. There a notice was issued convening a meeting of the executive committee of a club. The stated object of the meeting was 'to report on and discuss the matter concerning [the plaintiff] and Mrs Lawrence'. The plaintiff had made some derogatory comments about Mrs Lawrence, a fellow member, which she had later withdrawn having realised that the comments were unfounded. She had not apologised, however, and Mrs Lawrence had complained to the executive committee. When the committee sat it decided that the plaintiff's conduct was injurious to the character and interests of the club and recommended that she resign. When the plaintiff failed to resign, the committee erased her name from the membership rolls. The rule under which the committee acted provided that no member could be recommended to resign unless a resolution to that effect had been passed at a meeting specially convened for the purpose. The plaintiff's action to be reinstated was allowed by the Court of Appeal. The main ground of decision was that notice of the committee meeting had not been given to every member of the committee. Two members of the court also observed that the notice was not a sufficient notice because it had not specified that its purpose was to consider whether or not the plaintiff should be recommended to resign.

23. Another case where the sufficiency of a notice was considered was *Kaye v Croydon Tramways Company* [1898] 1 Ch D 358. There, a notice convening a meeting of shareholders of the selling company to consider an agreement made by the selling company to sell its undertaking to another company omitted reference to a fact that a substantial sum would be payable to the directors of the selling company as compensation for loss of office. It was held that the notice did not fairly disclose the purpose for which the meeting was convened and did not comply with s 71 of the then current UK Companies Act. The company was restrained from carrying the agreement into effect until it had been sanctioned by the shareholders at a meeting duly convened for the purpose.

The decision

24. In the present case, there was nothing in the notice that indicated the purpose of the meeting was to remove and replace trustees and/or committee members. If that was what was intended by item 1 of the agenda, ie 'Chairman's explanation of the meeting' or by item 3 'Problem between Councillors' as averred in the defence, the intention was not effectively conveyed. The phraseology of the two items was too vague and general to bring home to the mind of each and every member that what was being aimed at was a complete re-structuring of the administration of the Association.

25. The plaintiffs did not attend the meeting. Their evidence was that they did not think that anything momentous was to be discussed and therefore did not attend. It is not necessary, however, to rely on such evidence to find the notice to be inadequate. A discussion of problems amongst councillors does not necessarily imply a wholesale removal of all members of the committee concerned. For that matter it does not even imply the removal of those members who are having problems inter se.

26. As far as the defendants were concerned, neither their pleadings nor their evidence properly addressed the issue of the sufficiency of the notice. Their comments in their affidavits to the effect that the plaintiffs were not interested in the Association's affairs could not be regarded as an answer to the allegation of insufficiency of notice. Their allegation of a mass resignation was contradicted by their own minutes. In any case as the third plaintiff was absent, he had not resigned and his removal could only have been effected by the resolution passed for the dissolution of the sixth management committee so that allegation was unfounded and could not serve as a defence to the plaintiffs' claim.

27. The plaintiffs were entitled to be told exactly what business was to be transacted at the meeting. If they had known that the intention was to remove the trustees and the sixth management committee (including the two plaintiffs who sat on it), they would have been able to make an informed decision as to whether or not they would attend the meeting. Since no indication of such a purpose was disclosed on the notice, the plaintiffs were deprived of their right to attend and contribute to the discussion and participate in the voting that took place.

28. In this regard, the following passage from *Shackleton* is helpful:

> 'Whether a notice is sufficient must be decided on the facts of each case. A crucial test is whether it contains enough information to enable the recipient to decide for himself whether he should attend, or appoint a proxy on his behalf, or whether he

> is content to let matters take their course at the meeting: to enable him "to decide for himself whether he should do any more."' (at p 41)

29. In my judgment, the notice calling the EOGM plainly failed the crucial test. It gave no hint to the plaintiffs or anyone else not in the know that there would be a motion to remove the sixth management committee and to replace it with a new committee. It also did not allow the plaintiffs to decide whether they should attend or whether they were content to let matters take their course. Even if they were not adverse to the removal of the sixth management committee, the plaintiffs or any of them might have wanted to stand for election as members of the replacement committee or as new trustees. They did not have the opportunity to decide whether they should attend the meeting for this purpose. In my judgment, therefore, the notice was bad and the actions taken could not be validated notwithstanding that a majority of the members of the Association had voted in favour of them. I therefore gave the plaintiffs the declarations asked for.

Sgd:

JUDITH PRAKASH

JUDGE

SINGAPORE