

Bombay High Court

5] Vijay Balaji Murkute vs Bhagwan on 4 February, 2011

Bench: R. M. Savant

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IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT NAGPUR

Second Appeal No.483/2010

1] Murlidhar Haribhau Nimje,  
Aged about 45 years,

R/o Bhisli Takali, Chimur,  
district Chandrapur.

2] Ramchandra Bapurao Adhal,

Aged about 52 years, R/o Chikli,  
Tahsil Chimur, District Chandrapur.

(Both filed Scheme No. 126/2007 before the  
Assitt. Charity Commissioner).

3] Natu Mahadeo Gongal,  
Aged about 57 years,  
R/o Sale Bhatti, Tahsil

Bhivapur, District Nagpur.

4] Pratap Trimbakrao Badkas,  
Aged about 62 years,  
R/o Pande Layout, Khamla,  
Nagpur.

5] Vijay Balaji Murkute,  
Aged about 50 years,  
R/o Bhis, Tahsil Chimur,  
District Chandrapur.

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Appellants.

Versus

1. Bhagwan s/o Dinbaji Jambhule,  
Aged about 50 years, R/o Dongrala,  
Tahsil Chimur, District Chandrapur.

2. Dilip Maroti Gujbhe,  
Aged about 42 years,  
R/o Dongrala, Tahsil Chimur,

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District Chandrapur.

Nos. 1 and 2 filed Scheme No. 63/2007  
and MCA Nos. 7/2010, 8/2010 and 9/2010)

3. Shyamrao Keshavrao Nagpure,  
Aged about 56 years, R/o Bhis,  
Tahsil Chimur, District Chandrapur.

(Filed MCA no.16/2010)

4. Uttam Rane,  
R/o Dhenge Plot, Gurudeo Ward,

Behind Dr. Milmile's Clinic,  
Bhadrawati, Tq. Bhadrawati,

District Chandrpaur.

5. Anil Nathuji Dekate,

r/o Bhisi, Tah. Chimur,  
district Chandrapur.

6. Prakash Ramji Nannaware,

r/o Majra Bhadki, Post Khadsangi,  
Tq. Chimur, Dist. Chandrapur. .

Respondents.

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Mr. P. C. Madkholkar, Advocate for the appellants.

Mr. S. D. Abhaynkar, Advocate for respondents 1 and 5.

Mr. S. P. Bhandarkar, Advocate for respondent no.3.

Mr. S. V. Manohar, Advocate for respondents 2 and 6.

Mr. A. Naik, Advocate for respondent no.4.

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CORAM : R.M. SAVANT, J.

DATED :4/2/2011 ORAL JUDGMENT :

1] This Second Appeal takes exception to the judgment and order dated 23.8.2010 passed in Misc. Civil Application Nos.7/2010, 8/2010, 9/2010 and 16/2010. By the said order, Misc. Civil Appeal No. 7/2010 was allowed. The order of the Assistant Charity Commissioner dated 14th February 2010 of partly allowing scheme application No. 126/2007 came to be set aside and the scheme application no.243/2009 came to be partly modified so as to include three persons in place of one Nathu Mahadeo Ghughal, Timmbak Badkar and Vijay Murkute as adhoc trustees.

2] The genesis of the dispute involved in the above proceedings lie in the application filed under Section 41D of the Bombay Public Trusts Act, 1950. The said application was filed by one Nimje which came to be allowed by the Assistant Charity Commissioner and the Board of Trustees, which was in charge of the public trust known as "Bhartiya Shikshan Sanstha, Bhisi" came to be removed and an adhoc body of seven persons along with the Assistant Charity Commissioner came to be appointed as Ad hoc trustees to administer the said trust.

3] Some of the intervening facts are not relevant for the purposes of the present matter suffice is to say that thereafter the matter was carried in appeal to the Joint Charity Commissioner, who issued a direction to the Assistant Charity Commissioner to register a Suo Motu scheme proceeding for determining a scheme for the administration of the trust. The further direction was to dispose of the same within six months from the communication of the order to him along with the other scheme proceedings pertaining to the trust if filed by the parties. Accordingly, the scheme proceedings which were filed and came to be filed were considered by the Assistant Charity Commissioner. The suo motu scheme proceeding was numbered as 243/2009 whereas the scheme proceedings which was filed by one Bhagwan Jambhule was numbered as 63/2007 and one filed by Murlidhar Nimje was numbered as 126/2007. The Assistant Charity Commissioner approved the scheme in question by taking into consideration parts of all the schemes which had been submitted.

However, insofar as the present proceedings are concerned, the Assistant Charity Commissioner appointed three trustees to be the Adhoc trustees namely Pratap Badkas, Nathu Ghughal and Prakash Bargad along with the other seven adhoc trustees. The Trust Management, therefore, comprised of 10 Ad hoc trustees as per the order of the Assistant Charity Commissioner. The matter was thereafter carried in appeal and ultimately came before the District Court by way of Misc. Civil Application Nos. 7/2010, 8/2010, 9/2010 and 16/2010 impugning the various facets of the orders passed by the Assistant Charity Commissioner. The First Appellate Court i. e.

learned District Judge on consideration of the scheme vis-a-vis the directions issued by the Joint Charity Commissioner as also considering the credentials of the said three persons Pratap Badkas, Nathu Ghughal and Prakash Bargad reached a conclusion that they are not fit persons for being appointed as the trustees of the trust in question. The learned District Judge was firstly of the view that the said scheme application No. 126/2007 being filed beyond the time stipulated by the Joint Charity Commissioner could not have been taken cognizance of by the Assistant Charity Commissioner. As regards the three persons namely Pratap Badkas, Nathu Ghughal and Prakash Bargad, the learned District Judge was of the view that since two persons out of three persons were

part of the old Board of Trustees which was removed under Section 41D and the third person being removed on account of the order passed by this Court, therefore, could not have been appointed as Adhoc trustees. The learned District Judge placed reliance upon two judgments of this Court reported in 2005 (3) Mh.L.J. 729 in the matter of Ramkrushan-Appa s/o Vishweshwar-Appa and others Vs. Krushna s/o Udayabhanji Ingale and others and similarly in 2010 (4) Mh.L.J. 729 (Avinath Ganpatrao Shegaonkar Vs. Jayawant Babasaheb Uttarwar). By the said judgments, the Assistant Charity Commissioner while exercising powers under Section 50A is obligated to see that only fit persons with honesty and integrity are appointed as trustees. The learned District Judge therefore by the impugned judgment and order substituted the said three trustees namely Pratap Badkas, Nathu Ghughal and Prakash Bargad by appointing three other persons namely Uttam Rane, Anil Dekate and Prakash Nannaware, who were part of the scheme application being 63/2007.

The above Second Appeal raises the following substantial question of law:-

"Whether the appointment of the three trustees, namely Uttam Rane, Anil Dekate and Prakash Nannaware is in accordance with the law applicable?"

4] In the course of the hearing of the above Second Appeal, submissions and contra submissions as regards the credentials of the said three persons have been advanced. While on behalf of the appellants, the appointment of the said three persons is questioned on the ground that the law laid down by this Court was not followed in making their appointments.

5] Per contra, on behalf of the respondents the said appointments are sought to be justified on the touchstone that the said persons form part of the scheme bearing No.63/2007 and part of the record which was before the Assistant Charity Commissioner and, therefore, the appellants could not make a grievance or are estopped from making a grievance of the same.

6] A reading of the impugned order discloses that insofar as the said three persons are concerned, the learned District Judge has only taken into consideration the fact that the adhoc body of seven persons had passed a Resolution in favour of the said three persons being appointed as trustees. It has to be borne in mind that the said body of Adhoc trustees was appointed by the Assistant Charity Commissioner to conduct the affairs of the Trust in the aftermath of the application filed under Section 41D which came to be allowed.

7] In my view, therefore, the learned District Judge could not have merely gone by Resolution passed by Adhoc body but ought to have followed the law laid down by this Court in the matter of checking their credentials as it requires no debate that the interest of the trust in such matters is the paramount consideration. The impugned order merely states that there is a resolution passed in favour of the said three persons but does not disclose as to why they are chosen for being appointed as trustees. It was incumbent upon the learned District Judge when he had thought fit to remove the said three persons for the reasons mentioned in the order, to also cite the reasons as to why the said three persons are fit persons for being appointed by discussing their credentials. In my view, the learned District Judge having not done so, on the said limited aspect as regards the appointment of the said three persons namesly Uttam Rane, Anik Dekate and Prakash Nannaware that the

impugned order is required to be set aside and the matter is required to be relegated back to the learned District Judge, Warora for a denovo consideration as regards the appointment of the said three new persons appointed by the impugned order in the light of the law laid down by this Court in the judgments (supra). The question of law is answered accordingly. The impugned order is accordingly required to be set aside to the said extent and the matter is remanded back to the learned District Judge, Warora for a denovo consideration. On such remand, the learned District Judge to decide the same within a period of three months from the receipt of writ of this Court. The learned District Judge would consider the credentials of the said three persons and thereafter either appoint them or appointment any other person/persons whom he deems fit. It is clarified that the impugned order is set aside to the said limited extent. The above Second Appeal resultantly is allowed to the aforesaid extent.

8] In the meanwhile, the present trustees would continue to function but would not take any major policy decision pending the decision of the learned District Judge on remand.

JUDGE Ambulkar