

Gerald Shirley and Others Vs. Dipesh Mehta and Others

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Court : Mumbai

Decided On : May-07-2014

Judge : The Honourable Mrs. Justice Roshan Dalvi

Appeal No. : Suit No. 111 of 2014 Along With Suit (L) No. 215 of 2014

Appellant : Gerald Shirley and Others

Respondent : Dipesh Mehta and Others

Judgement :

1. The plaintiffs, who are trust members have been suspended from their membership, which suspension they have challenged in the first suit. The plaintiffs, who are ordinary trustees of plaintiff No.1 trust in the second suit pursuant to they being trust members have, under an Extraordinary General Meeting (EGM) constituted by them under the provisions of the constitution of plaintiff No.1 trust in the second suit removed the defendants as members of the Managing Committee of the suit trust and suspended them as members of the trust and appointed the plaintiffs in the second suit as members of the managing committee which the plaintiffs in the second suit seek to enforce by an injunction against the defendants from trespassing on the property of the trust as managing committee members, holding themselves as members of the managing committee/trustees of the trust and preventing the plaintiffs from carrying out their duties and from acting as the managing committee of the first plaintiff trust in the second suit.

2. Aside from challenging their suspension in the first suit and applying for the aforesaid injunctions in the second suit the plaintiffs have sued for damages in both the suits. The plaintiffs claim compensatory damages for mental and physical harassment in the first suit and the plaintiff trust has claimed damages for the loss caused to the trust upon the defendants illegally acting as the managing committee of the trust in the second suit.

3. The plaintiffs took out notices of motion in both the suits for interim reliefs. In the first suit the notice of motion is for restraining the defendants from acting upon the suspension order upon the grounds that the suspension order is illegal and void it having been passed by the managing committee which was itself not validly constituted and also upon the ground that the suspension was in contravention of principles of natural justice and against the constitution and the byelaws of the suit trust. In the notice of motion taken out in the second suit the plaintiffs have applied for various interim reliefs of mandatory as also prohibitory injunctions upon the premise that the defendants were ineligible to be members of the managing committee, they being only ordinary members and not trust members who alone could form a managing committee and for specific directions against the defendants in such capacity as also restraining them from obstructing the plaintiffs from carrying on their functions on the new managing committee pursuant to being appointed as members of the managing committee in the EGM convened and held by the requisite number of members including the plaintiffs.

4. The defendants have raised the plea of the lack of this Court's inherent jurisdiction upon it being impliedly barred under Section 80 of the Bombay Public Trusts Act, 1950 (BPT Act) and also on the ground that the first suit is filed for declaration and the second suit for injunction by the public trust or the plaintiffs as ordinary trustees against the defendants who also claim to be ordinary trustees for reliefs under clauses (b), (c), (d) and (p) of Section 50 (iv) of the BPT Act without consent of the Charity Commissioner as mandated under Section 51 of the BPT Act. The defendants also contend that the Bombay City Civil Court alone would have jurisdiction to entertain the suit pertaining to the BPT Act.

5. In the first suit under the order dated 17th January, 2014 of this Court the preliminary issue came to be framed. An identical issue is required to be framed in the second suit.

6. The preliminary issue in both the suits is framed and answered as follows:

1. Whether the suit, as framed, is barred by reason of the provisions of Section 2(4), 50, 51 and 80 of the BPT Act, 1950.

7. By the ad-interim order dated 17th January, 2014 the suspension of the plaintiffs in the first suit has been stayed pending the hearing of the notice of motion. The plaintiffs are permitted to use the club facilities and directed to be abide by the byelaws and the constitution of the trust. The defendants are allowed to conduct an inquiry into the conduct of the plaintiffs upon giving adequate notice and a fair opportunity of hearing to the plaintiffs. The inquiry report is directed not to be acted upon without the permission of the Court.

8. There has been no interim order passed in the second suit. Upon taking instructions from the attorneys, Counsel on behalf of the plaintiffs has requested the Court to decide the aforesaid preliminary issue.

9. The issue being an issue of law relating to the bar of the inherent jurisdiction of this Court upon a specific statutory provision, both parties have sought not to lead any oral evidence.

10. It is argued on behalf of the plaintiffs that the reliefs prayed for in the suit can be granted only by the Civil Court. No authority under the BPT Act can grant the same reliefs. Hence the Civil Court's jurisdiction cannot be taken to be impliedly barred.

11. It is contended on behalf of the defendants that the reliefs prayed for specifically relate to the change reports required to be and which are filed before the Charity Commissioner and the decision of the Charity Commissioner upon the inquiry held by the Charity Commissioner with regard to the change reports sought to be filed by both the plaintiffs as also the defendants would determine all the reliefs prayed for by the plaintiffs. The decision of the Charity Commissioner is to

be final and binding under the specific statutory mandate. Consequently the Civil Court's jurisdiction would stand barred for grant of any of the reliefs prayed for in either of the suits.

12. It may be mentioned that this argument has been made not only with regard to the reliefs of declaration and injunction which would be the reliefs upon the change report and its acceptance by the Charity Commissioner pursuant to the mandated statutory inquiry under the BPT Act, but also the relief of damages is claimed in both the suits.

13. It would be appropriate to first deal with the statutory provisions ousting the Civil Court's inherent jurisdiction under the BPT Act. It would then be relevant to consider the precedents cited by both the parties to see the ambit of the suit and the reliefs claimed thereunder and whether such reliefs can be granted by the Bombay Civil Court in view of the bar contained in the BPT Act which otherwise would be granted only by the Civil Court. It would then be appropriate to see the reliefs claimed by the plaintiffs and whether they fall within the mischief of the bar under the law and the precedents.

14. Provisions of the BPT Act:

(i) Under Section 2(4) Court means the Bombay City Civil Court in Mumbai.

(ii) Under Section 2(10)(e) a person having interest would include the trustees or the beneficiary (member).

(iii) Under Section 17 the Charity Commissioner's office is required to maintain books, indices and registers as prescribed under the Act with the prescribed particulars therein.

(iv) Under Section 21(1) the Charity Commissioner is required to make entries in the register kept under Section 17 in accordance with findings recorded by him made under Section 20 or as decided in appeal therefrom.

(v) Under Section 21(2) the entries recorded by the Charity Commissioner would be final and conclusive subject to any further change.

- (vi)** Under Section 22(1) when any change occurs in the entries recorded in the register the trust is enjoined to report it to the Charity Commissioner's office.
- (vii)** Under Section 22(2) the Charity Commissioner's office is to hold an inquiry for verifying the correctness of the entries kept in the register.
- (viii)** Under Section 22(3) if the Charity Commissioner's office is satisfied (upon inquiry) that a change has occurred in the entries in the register he would record a finding with reasons therefor. Upon the Charity Commissioner's satisfaction the entries in the register would be amended or deleted. Such order is appealable under the Act and subject to such appeal the change would be final and conclusive.
- (ix)** Under Section 70(b) the finding under Section 22 is appealable.
- (x)** Under Section 72 a person aggrieved by the decision in appeal under Section 70 may apply to the Court to set aside the decision. This application would be made to the Bombay City Civil Court in Mumbai as it is the Court under the Act.
- (xi)** Under Section 80 no Civil Court would have jurisdiction to decide or deal with the question which under the BPT Act would have to be decided or dealt with by any officer or authority under the Act and in respect of which the decision or the order is made final and conclusive. The decision of the Charity Commissioner's office under Section 22 relating to change reports upon the inquiry being held is, therefore, made final and conclusive.
- (xii)** Under Section 41(A) the Charity Commissioner is entitled to issue directions to any trustees or any person connected with any trust to ensure its proper administration, accounting of its income, for application of the objects of the trust and also if the trust property is in danger of being damaged, alienated, wrongfully sold, removed or disposed off.
- (xiii)** Under Section 41(D) the Charity Commissioner is entitled to suspend, remove or dismiss a trustee upon the events enumerated in the Section. These are the powers of the Charity Commissioner exercised suo motu, upon charges being framed and tried, upon evidence and upon an opportunity of hearing being

given to the person against whom they are framed.

(xiv) Under Section 50(iv) a suit can be filed by or against a trust or the trustee inter alia for declaration or injunction in favour of or against a public trust or the trustees or beneficiary of the trust. Such a suit may be for various reliefs enumerated therein and can be filed upon consent in writing of the Charity Commissioner obtained as provided in Section 51 of the BPT Act.

(xv) Under Section 51 the plaintiff is required to apply to the Charity Commissioner in writing for his consent. The Charity Commissioner may grant or refuse the consent upon his satisfaction in that behalf. The order of refusal has to be with reasons. Such order is appealable under Section 51(2) of the BPT Act.

It is upon the aforesaid provisions of law that the defendants contend that change report having been filed by both the parties consequent upon the suspension of the plaintiffs as members of the trust and as ordinary trustees and the removal of the defendants as members of the managing committee and appointing the plaintiffs as members of the managing committee and the suspension of the defendants as members of the trust, only the Charity Commissioner would require to inquire into the change reports under Section 17 for the entries sought to be changed as per the change report under Section 22 and allow or disallow the said change with reasons. Such an order is appealable under Section 70(b) and the change, if any, would become final and conclusive. The defendants, therefore, contend that consequent upon the change report being accepted or rejected by the Charity Commissioner upon such inquiry which would be upon the evidence to be led and arguments to be heard on behalf of both the plaintiffs as also the defendants, the suspension of the plaintiffs as members of the suit trust as also the removal of the defendants as members of the managing committee of the suit trust would be conclusively decided and the reliefs prayed for by the plaintiffs in both the suits would be governed by such conclusive finding.

15. Indeed it is correct that all the matters which would fall for determination of a change report under Section 22 the Civil Court's jurisdiction must be taken to be impliedly barred because the order of the Charity Commissioner's office is made final and conclusive. This is upon the law laid down in the case of **Dhulabhai** etc.

Vs. State of Madhya Pradesh AIR 1969 SC 78 in which it has been held that exclusion of the Civil Court's jurisdiction cannot be readily inferred. When the statute gives finality to the orders of the special tribunal, it constitutes adequate remedy to do what the Civil Court would do and would thus exclude its jurisdiction. When there is no express exclusion, the intent of the legislation is to be seen. When a special right or liability is created and the statute provides for determination of such right or liability, all the questions about such right or liability must be determined by the special tribunal.

16. Consequently Courts have variously held in which kinds of matters relating to public trust or disputes between trustees or trusts and beneficiaries the Civil Court's jurisdiction stands barred.

17. Precedents:

In the case of **Dinanath Ajabrao Ingole and Anr. Vs. Shetkari Shikshan Prasarak AIR 1983 Bom 404** this Court considered the plaintiffs' action in a suit claiming that the defendants, who were the elected President, and Vice President were removed and consequently be declared ineligible to work in that capacity in the administration of the public trust in which upon the allegation of removal, a change report came to be filed by both the plaintiffs as also the defendants. The injunction that was sought was for the declaration that the defendants were ineligible as the President and the Vice President of the plaintiff Society / Trust. The defendants were accepted as earlier trustees.

The case of the plaintiffs was that they were later removed and hence they ceased to be the President and the Vice President of the trust.

The Court observed that the trial Court would have to go into the question as to whether the original defendants were removed legally from the office of the President and the Vice President of the public trust and also to find out whether the plaintiffs were validly elected as President and Secretary of the public trust.

A similar inquiry would be necessitated by this Court. Since the plaintiffs contend that the defendants have been removed as members of the managing committee

pursuant to the EGM held by them in accordance with the constitution of the trust the Court would have to see whether that case of the plaintiff is indeed made out. Upon seeing such case the Court would have to grant or refuse the relief. This would apply for the other reliefs as well. This would apply to both the plaintiffs and defendants. That would be the precise inquiry that the Charity Commissioners office is required to enter upon. Under that inquiry similar evidence would have to be led and the findings of that inquiry would be similar to the findings which would be recorded by this Court upon the evidence led in the above suits. The respective change reports would, therefore, essentially have to be considered.

18. The Court considered how Section 80 of the BPT Act would come into play in para 20 of the judgment. It held that if it was seen that by or under the act the question which had to be decided by the Charity Commissioners office was made final and conclusive then the Civil Courts jurisdiction is barred.

The Court held in para 21 that for deciding whether Section 80 is attracted, the substance of the nature of the claim of the plaintiff and not merely its form would have to be seen along with the real relief sought by the plaintiffs. The test laid down by the Court is that if to grant such relief it would be necessary for the Civil Court to decide or deal with the question which the Charity Commissioners office is required to decide or deal with, the Civil Courts jurisdiction would be ousted.

This stands to reason. The entire purpose of the act would be frustrated if both the Civil Courts as also the Charity Commissioners office would require to deal with the same issue. That can never be.

The Court considered that the reliefs of declaration prayed for in that suit would be the same relief to be considered in the change reports before the Charity Commissioner which were then pending decision. The relief of injunction against interference with the administration of the trust is consequent to the relief of declaration. The Court observed that the plaintiffs' claim that they were duly elected President and Secretary showed that they indirectly claimed that the defendants were no longer President, Secretary and office bearers of the trust and hence concluded that the questions which are to be determined by the Civil Court are the very questions to be determined by the Charity Commissioner before

whom the change reports were pending for inquiry and decision. Since the Charity Commissioners finding thereupon would be final and conclusive, the Court held that the Civil Courts jurisdiction was barred.

19. In this case all will depend upon the ultimate decision of the Charity Commissioner in appeal from the order of the Assistant Commissioner or Deputy Commissioner. The reliefs prayed for by the plaintiffs can be granted only after that decision is ultimately reached. It is not for this Court to decide whether the EGM was correctly held so that the change report was correctly made as sought by the plaintiffs and consequently the defendants were correctly removed or the plaintiffs in the second suit were correctly appointed to the Managing Committee of the trust. After such a decision is reached by the Charity Commissioner, the various prohibitory and mandatory interim reliefs sought by the plaintiffs may be granted in the suit. This would apply as much to the ultimate final relief of damages.

20. It may at once be mentioned that if the change reports sought by the plaintiffs are accepted by the Charity Commissioner upon the necessary inquiry it would follow as a matter of course that the defendants cannot assume their capacity as the managing committee and then would be trespassers on to the property of the trust in their capacity as managing committee and would not be entitled to act as such by assuming the office of the managing committee and would have to allow the plaintiffs to carry out their duties as the managing committee by the three reliefs sought by the plaintiffs in the second suit. Consequently even pending this suit the plaintiffs would then only be entitled to apply for other directions by way of mandatory or prohibitory injunctions.

21. The plaintiffs having filed the suit for damages, such relief would have to be determined by the Civil Court only after and upon the final and conclusive finding of the Charity Commissioner which only the Charity Commissioner's office would be entitled as also enjoined to determine.

22. The reliefs sought by the plaintiffs in this suit and by the plaintiffs in the case of **Dinanath (Supra)** must, therefore, be copiously analysed. Whereas in that suit the plaintiffs sought precisely what was only decided in the meeting in which they

removed the defendants as the President and Vice President of the Trust and elected the plaintiffs as the President and Secretary of the trust and would, therefore, fall within the subject matter of change report wholly, in the second suit the first three reliefs under prayers (a), (b) and (c) reliefs would fall within the change report. The relief of damages under prayer (d) would be exclusively for the Civil Court to determine. No authority under the BPT Act is required to determine the question or the quantum of damages. The suit in that behalf, therefore, would have to be filed only in a Civil Court. The Civil Courts jurisdiction to that extent cannot stand barred by Section 80 of the BPT Act.

23. In the judgment in the case of **Church Of North Of India Vs. Lavajibhai Ratanjibhai and Ors (2005) 10 SCCs 762** the Supreme Court held that the bar of the Civil Courts jurisdiction must be construed taking into account the scheme, object and purpose of the Act. It must be considered having regard to the averments in the plaint, the cause of action as also the reliefs sought so that the plaint is read in its entirety to see whether the principles in **Dhulabhais (supra)** case would bar the Civil Courts jurisdiction. The Supreme Court observed that the BPT Act gave finality and conclusiveness to the order of the Charity Commissioner under Section 22(3) of the BPT Act. The change notice having been given, it would be for the authority under the Act to consider whether the change has occurred along with the reasons. The authority would consider the amendment made in the entry in the register which would be final and conclusive.

The Supreme Court observed that the declaration sought that the earlier trust ceased to exist and whether the plaintiff was the successor thereto was also for the exclusive determination of the Charity Commissioner. The Court, therefore, held that the suit of the trust necessitating the change report could not be filed in a Civil Court and came within the domain of the Charity Commissioner alone.

It may be mentioned that the kind of cases which would be excluded from the exclusion of the Civil Courts jurisdiction are also mentioned in the case of **Church Of North Of India**. There would be dispute about the title of the trust property, creation of any right by the trust in a third party etc. which would be beyond the jurisdiction of the Charity Commissioner. The other cases in which the principles

set out by the Supreme Court in the case of **Church Of North Of India** are followed for excluding or accepting the Civil Courts jurisdiction are varied and essentially relied upon by the plaintiffs. It would have to be seen whether this case is of the nature shown in the judgments relied upon on behalf of the plaintiffs.

24. The case of **Shree Gollaleshwar Dev and Ors. Vs. Gangawwa Kom Shantayya Math and Ors. (1985) 4 SCC 393** was a case to recover the property of the trust. It was held in para 14 of the judgment that a suit in the name of the idol of the temple to recover the property of the trust could be filed in the usual way? even without the permission of the Charity Commissioner in the Civil Court as it was outside the parameters of the implied exclusion of the Civil Courts jurisdiction.

Such a suit would be required to be filed in the Court having jurisdiction taking that it is a usual suit. Such a suit is not required to be filed only in the District Court or the Bombay City Civil Court in Mumbai. The Court contemplated under Section 2(4) is not the Civil Court contemplated in a suit to be filed in the usual way.

25. The case of **Khemchand Gorumal Vs. Parmanand Deepchand Hinduja, 1962 BLR Vol-LXIV 235** is where the plaintiff trust sued other trustees as also another person contending that he was illegally appointed because it was without the plaintiff's trust's consent or concurrence. The question of concurrence or consent of one of the trustees was held not contemplated by the BPT Act and could be decided by the Civil Court.

It was observed in that judgment that the plaintiff had not claimed any direction from the Court for the administration of the public trust; he only applied for a declaration that the appointment of one of the defendants was without his consent and concurrence and hence illegal.

26. The case of **Leelavati w/o. Vasantrao Pingle and Anr. Vs. Dattatraya Dhondiraji Kavishar and Ors. 1988(2) Bom.C.R. 429** was a suit on title for recovery of possession from a person holding adversely to the trust. It was also a suit for injunction against interference with the possession of the trust property. It was held that such a suit was to enforce the civil rights or the personal rights of the

trust and thus the ordinary forum is competent and the Charity Commissioners permission to sue was not required.

27. In the case of **NamgondaJingonda Patil Vs. Appasaheb Bapurao Walwekar and Ors. 2000(Supp.) Bom.C.R. 582** the question before the Court was whether the signatures of the members upon certain resolution were forged. It was held that that was a case of vindicating of civil rights of the members, since the grievance was not against the trust, but with respect to the personal conduct of the petitioner therein who had created a false record and sought to push in various relatives as members of the trust. It was observed that such a suit could be filed for vindication of civil rights in the usual way and under common law.

28. The case of **KedarShivkumar Kale Vs. Digamber Shridhar Mhapsekar and Ors 2007(4) Mh. L.J. 77** related to the removal of the plaintiff in a meeting though it was not a matter on the agenda and without the right of natural justice which was sought to be declared void. This was held to be a suit to exercise one's own right and consequently also the vindication of the civil rights of the plaintiff. Applying the case of **Namgonda**(supra) which was observed to be on all fours the facts of that case, it was held that for infraction of civil rights the suit in a Civil Court does not even require the Charity Commissioners permission/consent.

29. The cases of **Institute of Mechanical Engineering Vs. R.N. Engineer 2003(2) Bom CR 330**, **Madhukar s/o Narayanrao Agrulwar Vs. Shriram s/o Zinguji Bhalavi 2010(1) Mh L.J.775** and **Datta Devasthan Trust Vs. Milind Govind Kshirsagar and Ors. 2007(5) Bom CR 460, 2007(3) Mh LJ 148** do not decide the bar of the Civil Courts jurisdiction, but only considered the case on merits.

30. The parameters of what is allowed to be contested in a civil suit and what is barred is clarified in the case of **Gaud Saraswat Brahmin Temple Vs. Vasudeo P. Shetye @ Kamlesh 2010(3) BCR 499; 2010(3) MLJ 881; 2010(112) BLR 1715** by this Court. That was a suit filed for declaration that a resolution of the trust was arbitrary and illegal and the resignation of the plaintiff thereupon was inconsequential and the plaintiff continued to be a permanent trustee in respect of the trust and for injunction restraining the defendant from acting upon the

resolution.

Keeping in mind the principles laid down in **Dhulabhai**(Supra) and the mandate contained in the **Church Of North Of India** (supra) the Court held that if the plaintiff had prayed for a declaration simplicitor that he was of a particular caste the Civil Courts jurisdiction would not be barred. However when the plaintiff sought the reliefs also of declaration that his removal by the managing committee was bad, the plaintiffs suit was not simplicitor for declaration of civil rights. Such an issue was connected with the eligibility criteria of the membership and trusteeship under the scheme of the object of the trust.

31. Consequently all of the judgments relied upon by the plaintiffs show that for those rights claimed by the plaintiffs which cannot be decided by the Charity Commissioner, the Civil Courts jurisdiction would not be barred. The Charity Commissioner is not enabled to decide the vindication of civil rights. These would be the rights of the plaintiffs which would not be determined finally and conclusively by the Charity Commissioner. All those rights claimed by the plaintiff and reliefs sought by the plaintiff even against the trustees or beneficiary of the trust can be claimed only in a Civil Court.

This is not a suit with regard to the title of the trust property against outsiders. It is not the suit relating to the right created by the trust in a third party (both of which kind of suits are observed in the case of **Church Of North Of India** (supra). This is not a suit by the trustees to recover trust property from a person claiming adversely or from a trespasser. This is also not a suit where the plaintiff claims that his consent or concurrence to the appointment of trustees as required was not obtained or has claimed forgery or fabrication against the defendants in the resolution passed in meetings of the trust held by them.

32. It is in the light of these judgments that the plaintiffs averments in the plaint become material to consider. The mandate of the Supreme Court in the case of **Church Of North Of India** to view the plaint in its entirety must be kept in mind. This mandate has been followed in the case of **Gaud Saraswat Brahmin Temple** (supra).

It is in view of this that the averments in the plaint become material to consider.

33. Averments in the plaint:

The first suit for declaration with regard to the suspension of the plaintiffs as the members of the trust would have to be considered alongside the case of **Kedar Kale** (supra). The removal of the plaintiff in a meeting without any agenda and without following the principles of natural justice to be declared null and void as held in that case would apply to the plaintiffs who have been suspended as the trust members of the suit trust. The first suit, therefore, is not barred under Section 80 even aside from the prayer of damages claimed by the plaintiffs for mental and physical harassment of the plaintiffs. Such a suit is indeed for enforcement of the plaintiffs' Civil Rights Act and does not even require the permission of the Charity Commissioner.

The first suit is clearly outside the scope of Section 80, 50 or 51 of the BPT Act. The Civil Court's jurisdiction is not barred for grant of either of the reliefs claimed in the first suit.

34. In the second suit the plaintiff Nos. 2 to 5 have sued as trustees of plaintiff No.1 trust. The plaintiffs claim that they have been appointed by resolutions passed at the EGM dated 21/10/2013. The plaintiffs claim that they are eligible to be on the managing committee as per the constitution of the trust. They claim that the defendants have been terminated and/or removed from the managing committee of the trust at the said EGM. The plaintiffs also claim that the property of the trust has vested in them and plaintiff Nos. 2 to 5 alone have the right to run the day-to-day affairs of the trust. The plaintiffs have clarified in para 4 of the plaint that they seek to enforce their rights (as such trustees) of being on the managing committee and to restrain the defendants from usurping such rights and purporting to act as the managing committee. It is under those circumstances that the plaintiffs claim that the defendants are trespassers.

In para 5 of the plaint the plaintiffs concede that they have filed a change report to report the change in the managing committee consequent upon the EGM. They then claim that the defendants are preventing plaintiff Nos. 2 to 5 from carrying out

their functions as the managing committee and the plaintiffs seek to vindicate their common law/civil rights as trustees. Hence the suit is by trustees against trustees who are stated to be trespassers being wrongfully on the managing committee from where they are removed and upon which the change report is filed.

With reference to the trespass the plaintiffs have further averred in para 12 of the plaint that the defendants are trespassers on the office of the managing committee as also otherwise. The plaintiffs have set out how defendant No.1 is not shown to have been validly appointed on a given date. They have also set out how defendant No.3 is ineligible to be on the managing committee consequent upon a forged application form. The plaintiffs have shown that the other defendants appointed by defendant Nos. 1 and 2 consequently suffer from the vice of the illegal appointments.

35. In para 22 of the plaint the plaintiffs have averred that being on the managing committee of the trust they have a fiduciary duty towards the trust and its members which is being usurped by the defendants. The plaintiffs have set out the various illegal acts committed by the defendants as members of the managing committee.

In para 33 of the plaint the plaintiffs have averred that they have approached the Civil Court for vindication of their common law/civil rights.

36. The plaintiffs have claimed the relief of injunctions against the defendants from trespassing on the property of the trust in their illegal and assumed character as managing committee, entering the office of the managing committee, holding themselves out as members of the managing committee and preventing the plaintiffs from carrying out their duties or from acting as the managing committee of the first plaintiff trust.

37. The averments made would entitle the plaintiffs to reliefs sought only upon the plaintiffs showing the convening as also the holding of the EGM validly as per the constitution of the trust. Consequently the plaintiffs own eligibility as the managing committee would also be dependent upon the same criteria of the EGM in which the defendants were removed and the plaintiffs were appointed to the managing committee and the change was accordingly affected and a change report has

come to be filed which would be considered by the Charity Commissioner's office and which determination would be final and conclusive subject to the statutory appeal.

Of course if the plaintiffs succeed in proving the valid convening and holding of the EGM and consequently the defendants' removal and their appointment, various averments in the plaint with regard to the illegalities committed by the defendants as the managing committee members would have to be considered and undone by way of the injunctions sought against them. The illegal acts of the defendants specified in para 22(A) to (D) of the plaint more specially the illegalities under para (C) and (D) of para 22 would have to be considered only by the Civil Court. It would be no function of the Charity Commissioner to consider the grant of new membership and whether they have been actuated by the illegalities averred. Similarly the appropriation of the trust funds and the remedies for plaintiff No.1 trust would have to be considered by the Civil Court. This would be for determination of relief under prayer (d) of the plaint in the second suit. The extent of the damages that the trust may have suffered by the illegal acts, if any, of the defendants is not within the purview or function of the Charity Commissioner and the plaintiffs' suit in that regard cannot be taken to be barred by Section 80 of the BPT Act.

38. The second suit is by the plaintiffs as ordinary trustees, being trust members, against the defendants who are on the managing committee illegally for the aforesaid injunctions in favour of the first plaintiff trust and the trustees being plaintiff Nos. 2 to 5. It would have to be seen whether the second suit falls within the mischief of Section 50 of the BPT Act. It is not for removal of the trustees under clause (b), for appointment of the plaintiffs as new trustees under clause (c), for vesting of any property in a trust under clause (d) for direction to pay the trust the loss caused to it by breach of trust being negligence, misapplication, misconduct, or willful default of the trustees under clause (f) or for any declaration in favour of the plaintiff No.1 trust or the other plaintiffs as trustees under clause (p) as contended by the defendants. The suit is simplicitor for injunctions and damages. A suit for injunction does not fall under clauses (a) to (q) of Section 50(iv). Though the removal of the defendants from the managing committee and

the appointment of plaintiffs to the managing committee would require to be seen consequent upon the validity of the act of the plaintiffs at the EGM, the suit is not for the reliefs as mentioned in clauses (b) and (c). The suit for damages is also not a suit directing the trustees to pay the loss caused by the trustees as mentioned in clause (f); the damages are claimed for acting as the managing committee of the trust.

Consequently the second suit though for injunctions in favour of the first plaintiff trust and in favour of plaintiff Nos. 2 to 5 as the ordinary trustees is not for the reliefs mentioned in Section 50. It is not a suit by or against the public trust or trustees for declaration or injunction in favour of the public trust or trustees or beneficiaries for the specified reliefs under clauses (a) to (q) of Section 50 that would require the Charity Commissioner's consent under Section 51. All suits for declaration and injunction by or against public trust or trustees would not require such consent. No suit for damages for the loss caused to the trust by the defendants acting as managing committee requires such a sanction/permission or consent. No suit for injunction requires any such sanction/permission or consent. The second suit filed by the plaintiffs for the aforesaid reliefs would not be barred because the plaintiffs have not sought the consent/permission of the Charity Commissioner.

39. It is argued that the plaintiffs earlier contemplated to file a suit. The plaintiff applied for the consent of the Charity Commissioner. The consent was refused. This suit is identical and hence falls within the mischief of Section 51 of the BPT Act being a suit filed under Section 50(IV) (a) (b) (c) (d) (f) and (p) of the BPT Act.

40. This Court is not concerned with what transpired in another proceeding. This Court has to see the averments of the plaintiffs and the reliefs claimed by the plaintiffs in its entirety from the plaint. The reliefs of injunction do fall within the parameters of the change report which would be considered by the Charity Commissioner's office finally and conclusively based upon which findings the plaintiffs relief of damages and further and other reliefs as deemed fit and appropriate by the Court would be decided.

In the case of **Murlidhars/o. Janrao Kale Vs. State of Maharashtra 2011(1) Mh.L.J. 849** the Division Bench of this Court considered which group of trustees was entitled to administer a trust. Considering Section 22 of the BPT Act and the inquiry envisaged thereunder the Court held in para 6 of the judgment that the Charity Commissioners office is the authority to decide such an issue. The Court observed that there were two change reports of the two groups of trustees (as in this case) which were both pending then before the Assistant Charity Commissioner for approval. Considering the bar under Section 80 of the BPT Act the Court held that it was not only the factum of change, but the legality and validity as well which would be the extent of the jurisdiction of the Charity Commissioners office as held in the case of **JagatnarayansinghSwarupsingh Chithere and Ors. Vs. Swarupsingh Education Society and Anr. 1980 Mh.L.J. 372**. The Court also considered the powers of the Charity Commissioners office under Section 41(A) of the BPT Act to issue directions to ensure that the trust is properly administrated. Yet upon holding that the jurisdiction was with the Charity Commissioners office, the Court observed that the parties should have been directed to either get the change reports decided œone way or the other? or get directions under Section 41(A) of the BPT Act as to the persons / trustees authorized to manage the trust. Consequently the Court allowed the headmistress whose appointment was challenged to function as such till the making of any directions under Section 41(A) of the BPT Act or the decision of the change reports regarding the board of trustees.

The progress of the second suit would also be dependent upon and be guided by the Charity Commissioner's ultimate conclusive findings.

41. In the case of **CharuK. Mehta Vs. Lilavati Kirtilal Mehta Medical Trust and Ors. 2013(1) Bom.C.R. 23** which related to the change reports consequent upon meetings of the trust which came to be challenged, this Court held that the jurisdiction of the High Court on its original side as a Civil Court would be barred even in respect of an originating summons since what would be decided in originating summons would in terms be decided by the Charity Commissioners office whilst considering the change reports.

42. Hence the real test and guide to decide the bar of the Civil Court's inherent jurisdiction is whether all the reliefs prayed for in the suit would be decided by the Charity Commissioner's office under the change reports. If this answer is in the negative for even one of the reliefs claimed, the Civil Court's jurisdiction, to that extent, would not be barred and the suit would have to be tried, albeit after the final and conclusive decision of the Charity Commissioner on the issues which only the Charity Commissioner's office must decide.

43. The plaintiffs' second suit is also, therefore, not barred by Section 80 of the BPT Act. The Civil Court's inherent jurisdiction is, therefore, not barred in both the suits though the plaintiffs would not obtain any relief until after the findings of the Charity Commissioner's office in the second suit.

44. The bar claimed under Section 2(4) is ominous. It is not even seriously pressed. The 'Court' contemplated under Section 2(4) is the Court referred to in the Act. To wit: it is referred to in Section 72. The order in appeal under Section 70 of the Act from a finding under Section 22 of the Act can only be challenged in the 'Court' in Mumbai which would be the Bombay City Civil Court. The above suits are not contemplated within that expression and consequently they have to be filed in the Civil Court 'in the usual way' as held by the Supreme Court in the case of **Shree Gollaleshwar Dev (supra)**.

45. The preliminary issue framed by this Court is accordingly decided in the negative in both the above suits.

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