CHARITY COMMISSIONER, MAHARASHTRA. A

v.

NIRANJAN & ORS.

FEBRUARY 11, 1988

[M.P. THAKKAR AND N.D. OJHA, JJ.] B

Bombay Public Trusts Act, 1950—Quasi judicial functions of certain officials—High Court's observation casting reflections on their condition and competence—To be treated as non-existent.

A Division Bench of a High Court made certain observations casting reflections on the conduct of certain officials and their competence to decide matters in the quasi-judicial capacity. In the appeal by special leave the Charity Commissioner sought redressal in respect of such observations. A direction against Respondent No. 16 was also sought. C

Disposing of the appeal this Court, D

HELD: 1. The High Court might well have avoided casting reflections on the Deputy Charity Commissioner who was merely discharging his judicial functions under the Act. He should have been permitted to discharge his function in regard to the issues arising before him, in the light of his own independent perspective. The observations made by the E **Single Judge on merits in regard to the interpretation of the clauses of the Will could not have influenced even the trial court. Besides, an appeal was pending before the Division Bench. Taking a view different from the one reflected in the judgment of the Single Judge could not be said to have been made in scant regard of the judgment; nor can it be construed as exhibiting disrespect for the High Court. The Division** F **Bench went too far in observing to the effect that what the officer had done in discharging his quasi judicial functions would constitute contempt of Court. The official was entitled to take his own view subject to his decision being questioned in accordance with law. He had not been amiss or at fault in taking the view which commended itself to him and which he was at full liberty to take under the law. The observations** G **made against the Deputy Charity Commissioner should be treated as non-existent. So also the observations made in regard to the mode of recruitment to the office in question. [950G-H; 951A-E]**

2. The status quo in regard to the property in question shall be maintained. Respondent No. 16 shall not get executed or obtain a sale H

deed in respect of the property in his favour or in favour of his nominees or assignees till the question is finally disposed of. The Assistant Charity Commissioner before whom the matter is pending will have full liberty to decide the matter in accordance with law in the light of his own perception of the matter without being influenced one way or the other by any observation made in the judgment of the learned Single Judge or in the judgment of the Division Bench of the High Court. [951H; 952A-B]

[The Court directed the Assistant Charity Commissioner to dispose of the matter with expedition preferably within the outside limit of six months.] [952C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 707 of 1988.

From the Judgment and Order dated 13.10.87 of the Bombay High Court in A. No. 969 of 1984.

S.B. Bhasme and A.S. Bhasme for the Appellant.

Dr. Y.S. Chitale and R.S. Nariman for the Respondent No. 16.

Mrs. Karanjawala and Ms. Meenakshi Arora for the Caveator.

The following order of the Court was delivered:

ORDER

Special leave granted against Respondent No. 16 in so far as relief claimed against Respondent No. 16.

The Charity Commissioner of State of Maharashtra has approached this Court by way of Special leave in order to seek redress in respect of the observations made by the Division Bench of the High Court casting reflections on the conduct of the officials of the organization and in regard to their competence to decide matters in their quasi-judicial capacity. He has also sought a direction against Respondent No. 16 who is present by caveat. We are constrained to observe that the High Court might well have avoided casting reflections against the Deputy Charity Commissioner who was merely discharging his quasi-judicial functions under the Bombay Public Trusts Act. He should have been permitted to discharge his functions in regard to the issues arising before him in the light of his own independent perspective. The

observations made by learned Single Judge, by the very nature of things, were of a tentative nature as the learned Single Judge was deciding the matter arising out of an interlocutary proceeding. In fact, the observations made by the learned Single Judge on merits in regard to the interpretation of the clauses of the Will could not have influenced even the trial court. Besides, an appeal to the Division Bench was pending. Under the circumstances, taking a view which was different from the view reflected in the judgment of the learned Single Judge on the part of the Deputy Charity Commissioner could by no stretch of imagination be said to have been made in scant regard of the judgment of the High Court. Nor could it ever have been construed as exhibiting disrespect for the High Court. The Division Bench went far too far in observing to the effect that what the Deputy Charity Commissioner had done in discharging his quasi-judicial functions would constitute contempt of Court. Learned Deputy Charity Commissioner was entitled to take his own view subject to his decision being questioned in accordance with law before the High Court. The observations made against the Deputy Charity Commissioner were therefore altogether uncalled for and unfair. We, therefore, direct that these observations be treated as non-existent. We wish to make it clear that the Deputy Charity Commissioner has not been amiss or at fault in the smallest respect in taking the view which commended itself to him and which he was at full liberty to take under the law. We wish to place on record that nothing said in the judgment of the Division Bench in Appeal No. 969 of 1974 should be construed as a reflection on the learned Deputy Charity Commissioner. We are also of the view that the observations made in regard to the mode of recruitment to the office in question were also uncalled for and should be treated as non-existent.

In the facts and circumstances of the case the Division Bench might will have permitted the Charity Commissioner to be substituted for the appellant before the Court for he was merely making sincere endeavour in the discharge of his official duties to protect the interest of the charity as he was duty-bound to do, so as to be true to his office. We have heard the learned counsel for the Respondent No. 16 in regard to the relief claimed against him. Both counsel are agreeable to the directions which follow.

The status quo in regard to the property in question shall be maintained and Respondent No. 16 shall not get executed or obtain a sale deed in respect of the property in his favour or in favour of his nominees or assignees till the question is finally disposed of by the

A Assistant Charity Commissioner or by the Appellate Authority, if any appeal is carried. The Assistant Charity Commissioner before whom the matter is pending will have full liberty to decide the matter in accordance with law in the light of his own perception of the matter without being influenced one way or the other by any observation made in the judgment of the learned Single Judge or in the judgment B of the Division Bench of the High Court which have given rise to the present Special Leave Petition. We express no opinion on merits in regard to the effect of the relevant clauses of the Will as indeed we cannot do.

The Assistant Charity Commissioner will dispose of the matter C pending before him with expedition preferably within the outside limit of six months. The matter shall stand disposed of accordingly.

G.N. Appeal disposed of.