

COMMON ORDER BELOW EXH.32 & 46 IN
R.C.S.No.05 of 2021
(I A No. 01/2022)
(IA No.2/2022)

The application vide Exh.32 is to restrain defendants from disturbing peaceful possession of the plaintiff over the suit property. While the application vide Exh.46 is on behalf of the defendant No.1 to restrain the plaintiff from obstructing them to run the hostel in the suit property .

2] In nut shell, it is the case of the plaintiff that Deshbhakta Kakasaheb Barve Magasvargiya Vidayarti Vastigrah, Mangalwedha, Vastigrah is having the property at mouje Mangalweda city with city survey No.2363, admeasuring 760.60 sq.mtr. (here-in-after mentioned as 'suit property'). It has boundaries – on the East -C.T.S.No.2364, 2365,2360, on the West-city survey No.2362, 2361, on the North-road and on the South-road. The plaintiff is institution a registered society under the Societies Act 1860. It is registered in the year 1955-56 with No.3374. One deceased Babasaheb Dhula Sale was the chairman of the society. After his death, the plaintiff, namely Sachin Shrirang Shinde has been appointed as a chairman. He is looking after all the proceedings of the society.

3] The suit property has been allotted by the Government to the plaintiff society. There is construction of hostel over the suit property. On 22.11.2017, the defendant No.2 declared himself as a chairman of the society illegally. He submitted a proposal to the defendant No.3 to transfer the suit property to another institution. The bogus proposal filed by the defendant No.2 in collusion with defendant No.1 has been allowed by the defendant No.3. The suit property is sought to be transferred in favour of defendant No.1 by said proposal. There is no legal need to transfer the suit property. But, in order to misappropriate it, the present proposal has been filed. If the suit property is transferred, the students residing therein will be affected.

4] During pendency of the suit, the suit property has been transferred in favour of the defendant No.1 by a sale deed. The plaintiff has claimed that said sale deed is illegal. So also, now temporary injunction is filed that on the basis of said sale deed, the possession of the plaintiff over the suit property should not be disturbed.

5] Defendants No.1 and 2 appeared and filed say to Exh.5 vide Exh.17. It is submitted that application is false and not maintainable. The plaintiff Sachin Shrirang Shinde is not the chairman of the society. Babasaheb Dhula Sale was the chairman and after his death, all the members of society selected the defendant No.2 as the chairman on 20.11.2017. The plaintiff was misusing his position as a member in the society. Hence, his membership has been cancelled. He is not related with the society in any manner. The so called appointment of the plaintiff is shown to be made by the employee of the society. When Babasaheb Dhula Sale was the chairman, the proposal was moved by him to transfer the suit property. The plaintiff knows it. The Collector duly approved the proposal and even 50% amount has been deposited as directed. The plaintiff is only misappropriating the amounts provided by the Government for the hostel. The hostel is not running condition and its electricity connection is also cut since 2017. In order to get and misappropriate the funds given by the Government, the plaintiff has filed this suit. Hence, the application be rejected.

6] The defendant No.1 has prayed that plaintiff is obstructing to run the hostel and misappropriating the funds of the Government. Hence, there is transfer of the suit property and the purpose to use the same i.e. hostel of children. Hence, the plaintiff should not disturb the defendant No.1 from using it.

7] Considering above facts, following points arise for determination and findings are recorded on them for the reasons stated below it.

<u>Points</u>	<u>Findings</u>
1. Whether the plaintiffs or defendants have made out prima facie case ?	In favour of defendants.
2. Whether balance of convenience lies in favour of the plaintiffs or defendants ?	In favour of defendants
3. Whether the plaintiff or defendants will suffer an irreparable loss, if injunction is refused ?	In favour of defendants
4. What order?	As per final order.

= R E A S O N S =

As to Points No.1 to 4:

8] Heard learned Advocate for the plaintiff as well as defendants No.1 and 2. The learned advocate for the plaintiff submitted that the defendant No.2 is not chairman and on the basis of false resolution, he is shown as a chairman. He further submitted that from the documents of the defendant, the hostel is still in running condition. Hence, the temporary injunction application be allowed. While learned advocate for the defendants No.1 and 2 vehemently submitted that the plaintiff has no authority to file the suit. There is no resolution of his appointment as a chairman. He has suppressed the fact that original chairman Babasaheb Dhula Sale has submitted the proposal for transfer. The plaintiff knew it. Hence, his application be rejected. The application of defendants be allowed.

9] The admitted facts should be considered before considering the prima facie case. Admittedly, Deshbhakta Kakasaheb Barve Magasvargiya Vidayarti Vastigrah situated at Mangalwedha was belonging to the society under Chairmanship of dead Mr.Sale. Admittedly, said society is registered. Admittedly, its first chairman was Babasaheb Dhula Sale, who died on 10.11.2017. It is not disputed that the plaintiff Sachin Shrirang Shinde as well as defendant No.2 Ravi Khadtare are the grand sons of said Babasaheb Dhula

Sale. It is also not disputed that the Collector has allowed the application to transfer the suit property and even part amount has been deposited as per order of the Government. It is also not disputed that the suit property was originally used for the hostel of students.

10] The plaintiff has filed copy of saving pass book showing that he was handling the proceedings of the hostel. In order to show that he is the chairman, he has filed copy of appointment letter. By said letter, he is appointed by the superintendent (अधिक्षक) of said hostel, as a chairman of the society. He has filed one copy of an affidavit of one Taslimaarif Alisaheb Aankunji, who has stated that the power to deal with the proceedings of society has been given to the plaintiff Sachin Shrirang Shinde after the death of Babasaheb Dhula Sale. He is the same superintendent who has issued appointment letter. The copy of his appointment as a superintendent is also filed.

11] The plaintiff has also filed copy of his objection raised before sub-registrar so as not to transfer the suit property. The copy of property extract, certificate of registration etc are filed. Those are admitted facts as to ownership.

12] Defendants No.1 and 2 have also filed documents along with list Exh.18. The copy of resolution dt.20.11.2017 by which the defendant No.2 is appointed as the chairman by members of the society with consent of all is filed on the record. The copy of another resolution dt.21.11.2017 so as to prosecute further, the proposal to transfer the suit property and rights are given to the defendant No.2 to do the needful. Defendants have filed copies of tax receipts about payment of municipal taxes in the year 2017-18, 2020-21 as to the society. They have also filed the copies of payment of water taxes. Defendants have filed copy of whole proposal and proceedings, order of the collector as to transfer of the suit property. The original proposal for transfer is

filed on 24.04.2017 by first chairman Shri.Babasaheb Dhula Sale. The proposal to transfer the same to defendant No.1 has been signed by the Babasaheb Dhula Sale and the 'Suchak' (proposer) for the same was the Sachin Shrirang Shinde. Hence, the plaintiff know about said proposal from the inception & it is not the proposal given by defendants. But, the original & admitted Chairman i.e. grand-father of the plaintiff & defendant No.2 submitted the proposal. There is suppression of said material facts in the plaint.

13] The report submitted by D.I.L.R., Solapur to Hon'ble District Collector that proposal of transfer should be allowed is there in the proceedings filed by the defendants. The Sub-registrar No.1 even furnished the valuation of the suit property as Rs.11,32,800/-in course of said proceedings. The copy of statement of deceased original chairman Babasaheb Dhula Sale is also filed in said proceedings. In his statement he has claimed the permission to transfer the suit property on 10.06.2017. The panchnama in course of said proceedings about the inspection of suit property is also prepared on 10.06.2017. The District Collector, Solapur sent proposal to commissioner, Pune division about transfer of said suit property. Then on 11.10.2019 the Divisional Commissioner office of Pune granted said permission to transfer it subject to use of the suit property only for the original purpose i.e. hostel of students. Lastly, after spot inspection etc the District Collector granted permission to proposal of the transfer subject to depositing of Rs.5,66,400/- to the Government. Hence, prima facie these are detail and regular proceedings carried out duly.

14] The learned advocate for the plaintiff has relied upon the statements in the affidavit of the defendant in the proceedings for permission before Hon'ble District Collector. In the said affidavit of defendant No.2, it is stated that the hostel is in working condition. Same is stated in sale deed. The affidavit is furnished for permission to transfer the hostel in favour of the

defendant No.1 educational society which shall also use it for hostel purpose. So also, learned advocate for the plaintiff has relied strongly upon the affidavit of Taslimaarif Alisaheb Aankunji who is shown as 'Suchak' (proposer) on the resolution to appoint the defendant No.2. By his affidavit, he has stated that the resolution is false and he was not proposer as he has no connection with the society after his retirement in year 2008. He has stated that he has not signed on said resolution. The copy of applications to Zilla Samaj Kendra that there are admissions in the hostel in the year 2018-19 and application for claiming funds regarding the same are filed on the record. The copy of Government order that transfer of hostel premises should be on certain conditions is also filed on the record. Prima facie those documents basically do not show that the plaintiff is running the hostel. His prima facie interest is not supported by them.

15] Defendants have filed copy of M.S.E.B permanent disconnection report which prima facie shows that the electricity connection for the Deshbhakta Kakasaheb Barve Magasvargiya Vidayarti Vastigrah, Mangalwedha was permanent disconnected. The copy of registration of Deshbhakta Kakasaheb Barve Magasvargiya Vidayarti Vastigrah, Mangalwedha in schedule B verified by Assistant Charity commissioner, Solapur is filed on the record. Prima facie defendant No.2 is President and names of other members as Vice President, Secretary, Joint secretary, Treasurer etc. are shown along with the address.

16] Plaintiff has filed documents along with list vide Exh.55. He has filed copy of rules regarding administration of such hostels. It is submitted that as per said rules and G.R. of Government all the transfers of properties of such Vastigrah are stayed by the Government. But, it is directed to obtain permission in that regard. In surprise visit dated 07.03.2020 the Gat Shikshan Adhikari, Mangalwedha found 24 students in the said Deshbhakta Kakasaheb

Barve Magasvargiya Vidayarti Vastigrah, Mangalwedha. The District Samajkalyan Officer issued letter that the powers to grant permission to transfer the property of such Vastigrah are vested with the Government. Upper District Collector, Solapur by its letter to D.I.L.R , Solpaur has initiated inquiry on 10.02.2021 regarding complaint filed by the plaintiff. The report has been called. On the same day, the Upper District Collector, Solapur issued letter to sub-registrar, Mangalweda so as not to register sale deed of the suit property, till said inquiry is completed. Prima facie after this order on 15.02.2021 i.e. after 5 days, sale deed is admittedly executed. In view of said subsequent development mutations of said sale deed are rejected by T.I.L.R. Mangalweda. It is mainly in view of order of Upper District Collector, Solapur dated 10.02.2021. The copy of M.S.E.B. bill dated 25.02.2022 of Rs.170/- is filed by the plaintiff to show that there is electricity connection for the hostel.

17] Prima facie it is clear from the resolution filed by the plaintiff that he was proposer for proposal that suit property to be transferred in favour of the defendant No.1. It was resolved on 20.04.2015 itself. Hence, prima facie the plaintiff had knowledge about said proposal of transfer rather he was proposer for said resolution. Hence, prima facie he is estopped to challenge said proposal of transfer as illegal. Prima facie for the transfer of the suit property on 09.01.2020 itself, the Collector & Commissioner have granted permission. Hence, said same order prima facie cannot be reviewed by the collector. It should be challenged before higher authority of the collector. If said order filed by the plaintiff on the record is perused, only inquiry is initiated by the Collector as complaint has been filed by the plaintiff. Only due to said complaint, the Collector has passed the order to stay execution of sale deed. It is issued to sub-registrar only. Prima facie say of the defendant is not obtained. Prima facie said order does not appear to be communicated to the sub-registrar, Mangalwedha. Otherwise he would not have registered sale deed on 15.02.2021. Even, it is clear that Collector has not recorded the finding as

to legality of said proposal, but only inquiry has initiated. So also, even after execution of such sale deed on 15.02.2021, the Collector has not ordered to cancel it in view of order dated 10.02.2021. Hence, prima facie the defendant No.1 is a bonafide purchaser as per procedure of law. Sale deed has been carried out by obtaining due permission from the Government authority i.e. Collector. Prima facie the proposal to transfer the suit property was made by the original chairman Balasaheb Sale and not by the defendant No.2. This fact is also material to prima facie to hold that the sale deed has been duly carried out on behalf of Deshbhakta Kakasaheb Barve Magasvargiya Vidayarti Vastigrah, Mangalwedha.

18] Prima facie the superintendent of said Deshbhakta Kakasaheb Barve Magasvargiya Vidayarti Vastigrah, Mangalwedha appointed the plaintiff as a chairman on 07.12.2017. This is not at all excepted as per law to change the chairman, or any member of such institution. The resolution should be taken by the whole body by holding the general meeting. Prima facie the plaintiff has not produced any document which shows that he was appointed as a chairman by any meeting of the institution. Prima facie an employee i.e. superintendent of institution has no authority to appoint the chairman. It is beyond comprehension that how an employee can appoint the chairman of the institution. On the contrary, the defendant No.2 is duly appointed as a chairman by holding the meeting of the institution. The resolutions regarding same of 20.11.2017 and 21.11.2017 are filed on the record. Prima facie the documents filed by the defendants show that they paid the water charges and taxes regarding suit property. Hence, prima facie considering documents filed by the plaintiff, he has basically no locus to file the suit itself. Prima facie he is not appointed as a chairman by any resolution. It is pertinent to note that who are his other members like treasurer, secretary etc. is also not explained by the plaintiff. There is no document to show the same. On the contrary, the defendant No.2 has filed documents pertaining to it.

19] One Taslimaarif Alisaheb Aankunji has filed the affidavit that he was never proposer for the appointment of the defendant No.2 as chairman and he has not signed the resolutions. But, this affidavit in Court is dated 09.02.2021. He has filed an affidavit in year 2018 before Tehsildar Mangalwedha. In that affidavit he is only supporting appointment of the plaintiff as a chairman. He has not denied his signs on the resolution in year 2018. In his current affidavit in the year 2021, he prima facie states that he has no nexus with the institution after the year 2008. If same is accepted as true, then it cannot be comprehended that how he can file an affidavit in year 2018 before Tehsildar in support of the appointment of the plaintiff as a chairman of the institution.

20] Defendants have filed copy of sale deed, which prima facie substantiate their control over the suit property. Being prima facie appointed as per law as chairman, defendant No.2 should be deemed to be in control of the suit property and not the plaintiff. Even permanent disconnection report of M.S.E.B. prima facie substantiate that there was no electricity connection to the suit property. In view of W.S. had there been students and intact electricity connection, the plaintiff should have filed all the relevant bills for last two to three years. But, he has filed only one electricity bill for the month of February-March 2022. It is also bill of only Rs.170/-. Prima facie if 24 students are residing in said hostel, it cannot be accepted that electricity bill would have been Rs.170/- only. Even the electricity meter number on said bill is different from permanent disconnection report, which prima facie shows that it might be a new meter. Hence, in such circumstances, it is the students who will suffer ultimately, if hostel is not run properly by the person authorized to run it.

21] The defendant No.1 has obtained the hostel for the same purpose for which it was used previously by the institution. The sale deed of defendants is intact and it is not set aside by any authority. The resolutions to appoint the

defendant No.2 as chairman is not challenged by the plaintiff before Charity Commissioner. In such circumstances, the plaintiff is having prima facie no locus standi to file the suit. There is no prima facie case in favour of the plaintiff. He will not suffer any irreparable loss, nor balance of convenience is in his favour. If injunction is not granted in favour of defendants, the property of hostel would be damaged or rendered useless, which would ultimately cause loss not only to defendants, but to poor students. Hence, prima facie case, balance of convenience lies in favour of defendants. They will suffer irreparable loss, if the plaintiff without any right obstructs the working of hostel. In view of O-39, Rule(1) (a) any party can claim temporary injunction, if suit property is being wasted, or damaged etc. Hence, the application of the defendants is maintainable.

22] Therefore, points no.1 to 3 are answered in favour of defendants and in answer to point No.4, following order is passed.

ORDER

1. The application vide Exh.32 is rejected.
2. The application vide Exh.46 is allowed.
3. The plaintiff or his agents are temporarily restrained from obstructing running of hostel by defendant No.1 within the suit property, till decision of the suit.

Pandharpur
Date:-07/04/2022

Civil Judge Senior Division,
Pandharpur

CERTIFICATE

I affirm that, the contents of the this P.D.F file Order/Judgment are same word to word, as per the original order/ judgment

Name of Stenographer : B.R.Kondekar
Court Name : Civil Court Senior Division, Pandharpur
Date : 07-04-2021

Order/Judgment signed
by the Presiding Officer on : 07-04-2021

Order uploaded on : 08-04-2021