

(1999) 09 SC CK 0057

In the Supreme Court Of India

Case No : C.A. No. 5682 of 1999 (Arising out of SLP (C) No. 7393 of 1994)

Abid Hatim Merchant

APPELLANT

Vs

Janeb Salebhai Saheb Saifuddin and Others

RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 41AA

Citation : (2000) 1 SCALE 407

Hon'ble Judges : Umesh C. Banerjee, J;S. B. Majmudar, J;A.P. Mishra, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. The appeal arising out of SLP being SLP (C) No. 7393 of 1994 to stand disposed of by consent of parties in the manner following:

1. The orders of the City Civil Court at Bombay in Charity Application No. 18 of 1976 dated 5.8.1991 and 22.10.1991 as modified by the order of the Bombay High Court dated 15th July, 1993 in Letters Patent Appeal No. 103 of 1991 stand confirmed subject to the following:

2. (a) Twenty three (23) beds in the proposed Saifee Hospital shall be reserved for the Dawoodi Bohra Community (inclusive of beds provided under the orders mentioned in para (1) above.

(b) Seven (7) beds in the proposed Saifee Hospital shall be reserved for those persons who claim to be Dawoodi Bohras but have not given Misaq to the Head Priest of the Dawoodi Bohra Community. (Dai-ul-Mustaq).

(c) The persons covered under (a) and (b) above, shall be entitled to free beds facilities on the same lines as being provided by the State Government in terms of Section 41AA of the Bombay Public Trust Act, 1959.

For those, however, who do not fulfill the criteria prescribed by the State Government u/s 41AA of the said Act. their entitlement pertaining to concession if any, shall be determined by the Trustees of the Saiffee Hospital Trust.

(d) The directions as above and incorporated in these consent terms are in the peculiar facts of the matter in issue and the same shall not be treated as a precedent on any count whatsoever in any other case or cases.

(3) No portion of the Adamji Peerbhoy Sanatorium Trust (for short 'APST') property shall be demolished until a sum of Rs. 1 crore (Rupees one crore) [inclusive of Rs. 50,00,000/- (rupees fifty lacs) as directed to be deposited by the City Civil Court at Bombay] is deposited by the trustees of Saiffee Hospital Trust in a separate bank account to be opened for this purpose. Necessary intimation in regard thereto shall be furnished to the APS Trust and a copy thereof be also sent to the learned Advocate-on-Record by the Appellant herein forthwith. The utilisation of the said sum of Rs. 1 crore however shall be in accordance with the orders referred to in para (1) above.

(4) The trustees of Saiffee Hospital Trust are directed to complete the construction of the Sanatorium Wing of the proposed building having a total built-up area of 16,000 square feet within five years from the date of commencement of demolition of Wings A and B of the APST property.

(5) The area adjacent to the Mosque and Dargah in the APST property which is shown in green colour in the plan annexed to the affidavit of respondent No. 11 dated 8th October, 1997 filed in this appeal, shall be kept open and shall always be available to the Mosque for the use of the devotees.

(6) Upon completion of the project, the trustees of the hospital shall fix gates on the eastern and western side of the newly constructed property, for the purposes of separating the area of the Sanatorium. Mosque and Dargah from the area of the hospital. These gates shall ordinarily be kept under lock and key and shall be designed and placed in a manner so as to facilitate opening of the same without any obstruction to the entry, exit, passage and movement around the property of fire brigade vehicles, ambulances and hearses.

(7) The gates and entrances of the Sanatorium and Mosque portions of the building shall bear only the name of Sir Adamji Peerbhoy Sanatorium and/or Sir Adamji Peerbhoy Sanatorium Trust. The gates and entrances of the hospital portion of the building will bear the name of Saiffee Hospital and/or Saiffee Hospital Trust on the gate post and the name of Sir Adamji Peerbhoy Sanatorium Trust on the opposite gate post in letters of equal size and prominence and on the same level.

(8) The Trustees of the Saiffee Hospital Trust are directed to pay the entire ground rent of APST property for and on behalf of APST. It is placed on record that the learned senior counsel appearing for the Saiffee Hospital Trust by usual fairness and upon instructions has also agreed to pay the same on behalf of APST.

(9) It is also placed on record that the Saifee Hospital Trust has agreed to fully furnished the Sanatorium, so as to make it usable for the occupants of the building in order to justify the purpose for which it has been erected. The Saifee Hospital Trust shall also pay a sum of Rs. 20,000/- (Rupees Twenty Thousand only) per month to APST as and by way of maintenance charges of the Sanatorium. The furnishing of the building spoken of in the earlier portion of this clause shall be completed within a period of six months from the date of completion of the building. Needless to record that as regards the plumbing electricity, overhead water tanks etc. required for proper utilisation of the building, the same shall be provided by the Hospital Trust.

(10) The sub-lease Deed bearing dated 13th March, 1978 shall stand superseded from date and the parties are directed to execute in terms of this order a fresh Deed of sub-lease for the portion of the land on which the hospital is to be located upon completion of all required formalities as regards the renewal of lease deed dated 18th May, 1886.

(11) The question of renewal of lease and grant of sub-lease on appropriate conditions shall be finalised in the presence of the State of Maharashtra on the next date of hearing.

(12) Save and except the modifications in the scheme of the APST as granted by the City Civil Court at Bombay in its order dated 5th August, 1991 and by the present order, the original scheme of the Trust as settled by the Bombay High Court in H.C. suit No. 1960 of 1931 and bearing date 16th June, 1931 shall remain unamended effective, binding and in force in all other respects. In the event however, any portion of the order or of the scheme as referred above, is contrary to or inconsistent with the order passed today, it is expressly clarified that the order of this Court shall be operative and that of the High Court or of the City Civil shall be deemed to have been set aside by the order of this Court as of date.

(13) Final orders to be passed in the presence of the State of Maharashtra on the next date of hearing.

(14) The Civil Appeal to be disposed of accordingly. No costs.