

(1975) 01 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 948 of 1974

Ajam Mohammad Hatia and Another

APPELLANT

Vs

Yusuf Mohammad Bharucha and Others

RESPONDENT

Date of Decision : 10-01-1975

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 47, 47(1)

Citation : AIR 1976 Guj 132 : (1976) GLR 56

Hon'ble Judges : P.D. Desai, J

Bench : Single Bench

Advocate : G.N. Desai and S.H. Sanjanwala, for the Appellant; K.A. Mehta, for A.H. Mehta, K.G. Shetb, for S.B. Majumdar, B.J. Sbelat and S.R. Diveeba, for the Respondent

Judgement

1. This writ application arises out of an application under Sections 47 and 47AA of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the Act) made by the petitioners to the District Court for the removal of the first respondent and one Kasam Mabmad Ajam Ismail (since deceased) as trustees and appointment of new trustees of a public trust which is registered under the Act as "Sheth Azam Aref Bham 1/3 Wakf, Bander". Since the other trustee whose removal was sought by the applicants died pending the application, the only question which survived for consideration of the District Court was whether any ground for the removal of the first opponent as a trustee was made out and the learned Assistant judge found that no such ground was made out u/s 47 and that an application for removal of the first opponent as a trustee u/s 47-AA was not maintainable at the instance of the petitioners. It is this decision which is under challenge in the present petition.

2. Now, the application for removal of the first opponent as a trustee was made on two grounds: first, that the said opponent was physically incapable to manage the trust on account of his old age and affliction by paralysis and, secondly, that the said opponent was convicted for an offence punishable under the Act.

Paragraphs 4 and 5 of the application make it clear that for the purposes of the first ground of removal Section 47 was invoked and for the second ground Section 47-NA was invoked. As regards the first ground the learned Extra Assistant judge recorded the following finding:

"The opponent No. I by appearing before the Court to give evidence has displayed his physical capacity. He has also displayed his mental ability by his forthright manner of giving the evidence before the Court. Not a single instance has been cited by the applicant No. I wherein the work of the trust might have suffered because of the physical or mental inability of the opponent No. I I have seen him in the witness box giving evidence with sufficient physical and mental ability I am inclined to believe him that he is physically capable of managing the affairs of the trust."

In view of this finding, the learned Extra Assistant judge held that the first ground for removal was not made out. As regards the second ground, the learned Extra Assistant judge found that an application for removal of a trustee on the ground that he was convicted for an offence punishable under the Act was maintainable u/s 47-AA at the instance of the Charity Commissioner alone and that the petitioners, who claim to be the beneficiaries of the trust, could not invoke the aid of the said section and seek removal of the first opponent on such a ground.

3. So far as the question of removal on the ground: of physical inability is concerned, there is a clear finding of fact recorded by the learned Extra Assistant judge and I am unable to see my way to interfere with the same. In fact, Mr. Sanjanwala, learned Advocate appearing on behalf of the petitioners, fairly stated that in view of the said finding, it was not possible for him to assail the impugned decision so far as it related to the first ground.

4. As regards the second ground, it is not in dispute that the first opponent was convicted for an offence punishable under the Act in his capacity as a trustee of another public trust. The question which arises for consideration, however, is whether it is open to the petitioners to seek the removal of the said respondent on that ground and to apply for the appointment of a new trustee u/s 47-AA. A bare reading of the said section makes it clear that such a relief cannot be obtained by the petitioners and that an application under the said section is maintainable only at the instance of the Charity Commissioner. Section 47-AA reads as under:-

"47-AA. Where a trustee of any public trust is convicted of an offence punishable under this Act or any amount is surcharged on him under sub-section (1) of Section 41, the Charity Commissioner may apply to the Court for the appointment of a new trustee, and thereupon the provisions. of sub-sections (3), (4), (5) and (6) of Section 471 shall apply as they apply to an application made under subsection (1) of that section."

The provisions of the section are clear and specific and it is for the Charity

Commissioner to move the Court for the appointment of a new trustee there under. No application for appointment of a new trustee on the ground that the trustee has been convicted of an offence punishable under the Act would, therefore, be maintainable, at the instance of a beneficiary. This provision has obviously been made with a definite object in mind, namely that proceedings for removal of a trustee and appointment of a new trustee on the ground of conviction of the trustee for an offence punishable under the Act should be allowed to be initiated by the Charity Commissioner alone since the Act creates offences and prescribes penalties for many kinds of defaults on the parts of trustees all of which may not warrant their removal from the office of a trustee. The Charity commissioner, who is the super visor of all public charities, would be the best person to judge whether or not the removal of a trustee who has been convicted for an offence under the Act is warranted in the facts of a given case. It is, therefore, left to him to move the Court so that a trustee may not be unnecessarily dragged to a Court of law at the instance of any other person even if the conviction has been for a default which may not be serious. In my opinion, therefore, the learned Extra Assistant judge was right in taking the view that an application for removal of the first opponent on the ground that he was convicted for an offence under the Act was not maintainable at the instance of the petitioners.

5. Mr. Sanjanwala, however, urged that even apart from Sec. 47-AA, an application for removal of the first opponent on the said ground was maintainable u/s 47(1)(g) and that the learned Extra Assistant judge ought to have considered the matter from that aspect. Now, I do not think that the removal of a trustee on the ground that he has been convicted for an offence under the Act can be sought u/s 47(1)(g) as contended on behalf of the petitioners. The relevant provision reads as under:-

"47 (1) Any person interested in a public trust or the Charity Commissioner may apply to the Court for the appointment of a new trustee, when a trustee of such trust

(a) Xx

(b) xx

(g) becomes in the opinion of the court unfit or physically incapable to act in the trust or accepts a position which is inconsistent with the trust; or

xx xx xx

The argument of Mr. Sanjanwala was that the word "unfit" is a word of wide import and it would include unfitness arising on account of conviction for an offence under the Act and that, therefore, it was competent to maintain an application for removal of the first opponent on that ground under the aforesaid provision. I am unable to agree. In the first place, as observed earlier, the legislative object appears to be clear to reserve the right to move the court for

removal of a trustee on the ground of conviction under the Act to the Charity Commissioner alone. In the next place, the argument ignores Section 47-AA and in order to accede to this contention it would be necessary to ascribe to the legislature tautology or superfluity. It is well-known that the construction of a statute is best made *ex visceribus*, that is, by taking all parts of the statute together and not by looking at one part itself. Now, the opening part of Section 47 makes it clear that both the Charity Commissioner as well as the beneficiary are entitled to apply to the Court for the appointment of a new trustee. Therefore, on the ground of unfitness, both the Charity Commissioner as well as the beneficiary could move the Court u/s 47. If that be the true legal position and about that there is no doubt in my mind and if the word "unfit" embraced within its fold unfitness arising on account of conviction under the Act, the Charity Commissioner would have been entitled to approach the Court u/s 47 itself for the removal of a trustee who has been so convicted. We have, however, a separate Section which takes care of such a situation and that provision is S. 47-AA which has been reproduced earlier. S. 47-AA was introduced by Bombay Act (Act VI of 1960) that is, it is a later addition to the Act. This gives a clear indication that it was not contemplated that the word "unfit" would include unfitness arising on account of conviction for an offence under the Act. That apart, in my opinion, to accede to the argument of the petitioners would, as stated earlier, amount to imputing to the legislature tautology or superfluity since it would mean that both Ss. 47(1)(g) and 47AA operate on the same field and take care of the same situation. The Court would be loath to put such a construction, for it would render S. 47-AA which was introduced by way of amendment, superfluous. If the Charity Commissioner already had the right to move the Court for appointment of a new trustee on the ground that the present trustee has been convicted for an offence under the Act, there was no need to enact section 47AA and confer such right separately upon him under a special provision. In my opinion, therefore, the contention urged on behalf of the petitioners based upon the word "unfit" occurring in Section 47(1)(g) is unsound and it must be rejected.

6. No other ground was urged and since otherwise there is no merit in this petition, it is rejected. Rule discharged with costs. The costs of the Charity Commissioner to be paid by the petitioners.

7. Rule discharged.