(2013) 04 BOM CK 0057

In the Bombay High Court

Case No : Second Appeal No. 94 of 2011

Anil APPELLANT

Vs

Babanrao Ganpatrao Wadaskar and Others RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 2(18), 22, 50, 50A, 50A(1)

Citation : (2013) 4 ALLMR 655 : (2013) 5 BomCR 163 : (2013) 3 MhLj 849

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : R.L. Khapre, for the Appellant; Anoop Gilda, Holding for Shri J.T. Gilda, Advocates for Respondents Nos. 1 to 9, for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J.—Admit. Heard finally by consent of the learned counsels appearing for the parties. The learned Deputy Charity Commissioner, Amravati, by the judgment and order dated 14-8-2000 passed in Application No. 31 of 2000, filed by the respondent Nos. 1 to 9 under sub-section (1) of Section 50A of the Bombay Public Trusts Act, 1950 (for short, "the BPT Act"), framed a Scheme in respect of "Shri Hanuman Mandir, Wedapur, Tq. Warud, Distt. Amravati" (for short, "the said Trust"), bearing PTR No. A-1287 (Amravati), as per Annexure-A appended to the said judgment and order. This was the subject-matter of challenge by the appellant in Misc. Civil Appeal No. 168 of 2009, which has been dismissed by the learned District Judge-2, Amravati, by his judgment and order dated 14-9-2010. Hence, this second appeal.

2. The learned Deputy Charity Commissioner, by his judgment and order dated 14-8-2000, settled a Scheme in respect of the said Trust under sub-section (1) of Section 50A of the BPT Act, as per Annexure-A to the said judgment and order. He accepted that the said Trust has neither any Constitution nor any rules or regulations to suggest the manner in which the affairs of the said Trust are to be governed, which is likely to give rise to a chaotic situation in smooth running of

the affairs of the said Trust. Accepting that the respondents Nos. 1 to 9 were appointed by the villagers/devotees in a meeting held on 21-5-2000 (Exhibit 3), they were appointed as the first Board of Trustees for a period of two months to hold the meeting and to elect themselves the President, Vice-President, Secretary, Joint Secretary and Treasurer for a period of five years. After every five years, the provision is to elect the office bearers of the said Trust by the Board of Trustees by majority of votes, and accordingly, the Change Reports are required to be filed. It is observed that the settled mode of succession is hereditary. The proposal of the respondents Nos. 1 to 9 that the Trustees shall be permanent and any vacancy caused shall be filled in by the remaining Trustees, is accepted. The tenure of the Trustees is held to be life long and the mode of succession shall be that any vacancy arising due to death, resignation, incapability of the Trustee to work or any other reason, as mentioned in Clause No. 11 of the Scheme, shall be filled in by the remaining or surviving Trustees by majority of votes within three months from the date of occurrence of such vacancy. In para 9 of the judgment and order of the learned Deputy Charity Commissioner, it is laid down that all movable and immovable properties of the said Trust shall be vested in the Board of Trustees appointed under the Scheme and it shall be in their possession, which shall be looked after and managed by the Trustees.

3. In Misc. Civil Appeal No. 168 of 2009 preferred by the appellant u/s 72 of the BPT Act before the learned District Judge-2, Amravati, it was urged that after the death of his father, he automatically became a Trustee of the said Trust, in view of the fact that the Trusteeship devolved upon him by survivorship. A specific question was raised that the provision of sub-section (1) of Section 50A of the BPT Act read with Rules 7 and 7A of the Bombay Public Trusts Rules, 1951 (for short, "the BPT Rules") requires a personal notice as well as a public notice to be issued to the Trustees while framing a Scheme. Undisputedly, no such notice was issued and, therefore, the order framing a Scheme stands vitiated. The learned District judge has held that no personal notice or public notice was required to be issued, while framing a Scheme u/s 50A of the BPT Act read with Rules 7 and 7A of the BPT Rules. It is further held that after the demise of the original Trustee, there was no Trustee and no Change Report u/s 22 of the BPT Act was filed by the appellant. Hence, the appellant cannot be said to be a Trustee of the said Trust, entitled to issue of such notice under sub-section (1) of Section 50A of the said Act read with Rules 7 and 7A of the BPT Rules.

4. In the light of the aforesaid undisputed factual position and the findings recorded by the learned District Judge, the substantial question of law in this matter was framed as under:

Whether failure to report change u/s 22 of the Bombay Public Trusts Act, 1950 deprives the appellant, who claims to be the hereditary Trustee of the said Trust, a due opportunity to be heard in the matter under sub-section (1) of Section 50A of the BPT Act ?

5. The provision of sub-section (1) of Section 50A of the BPT Act being relevant, is reproduced below:

50A. Power of Charity Commissioner to frame, amalgamate, or modify schemes.- (1) Notwithstanding anything contained in section 50, where the Charity Commissioner has reason to believe that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, the Charity Commissioner may, if, after giving the trustees of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust.

The jurisdiction to settle a Scheme under sub-section (1) of Section 50A of the BPT Act, reproduced above, can be invoked by the Charity Commissioner either suo motu, where he has reason to believe that, in the interest of the proper management or administration of a Public Trust, a Scheme should be settled for it, or where two or more persons having interest in a Public Trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a Public Trust, a Scheme should be settled for it. If the Charity Commissioner is satisfied that it is necessary and expedient to do so, he may frame a Scheme for the management or administration of such Public Trust. The settlement of the Scheme, either suo motu or on application, has to be after giving "the Trustee" of such Trust, due opportunity to be heard. It is not the argument advanced by any of the counsels that the requirement of providing due opportunity to be heard to the Trustee, under sub-section (1) of Section 50A of the BPT Act, is not mandatory.

6. Section 2(18) of the BPT Act defines "trustee" as under:

2(18) "trustee" means a person in whom either alone or in association with other persons, the trust property is vested and includes a manager.

The question is whether the appellant is a ''Trustee'' within the meaning of Section 2(18) above. It is not in dispute that Shri Govind Balkrishna Shirkhedkar, the father of the appellant, was the original Trustee, whose name was entered in the Public Trust Register maintained by the Office of Assistant/Deputy Charity Commissioner. The entries in the Public Trust Register reveal that prior to framing of Scheme, the mode of succession to the Office of Trustee was by way of survivorship, i.e. hereditary, and the property of the said Trust vested in Shri Govind Balkrishna Shirkhedkar. After his death, the appellant being his son, becomes a Trustee of the said Trust by mode of survivorship and the property of the said Trust stands vested in him. In order to divest him of such vesting under the Scheme settled, he was entitled to be heard, in the proceedings under sub-section (1) of Section 50A of the BPT Act. Undisputedly, the opportunity to be heard was not provided to the appellant, before settlement of Scheme under sub-section (1) of Section 50A of the BPT Act. The decision of this Court in the case of Abaji Daulata Yadav, since deceased by his heirs and Others Vs. Dhondiram Jagedevrao Yadav and Others, , relied upon by Shri Anoop Gilda, the learned counsel appearing for respondents Nos. 1 to 9, lays down that Section 2(18) of the BPT Act makes no distinction between an ordinary Trustee and a hereditary Trustee. Hence, whosoever becomes a Trustee, is entitled to be heard under sub-section (1) of Section 50A of the BPT Act. Thus, the judgment and order passed by the learned Deputy Charity Commissioner stands vitiated, and, therefore, it cannot be sustained on this ground.

7. It is an undisputed position upon the death of the original Trustee Shri Govind Balkrishna Shirkhedkar in the year 1979, no change was reported to the Office of Assistant/Deputy Charity Commissioner, as required u/s 22 of the BPT Act. If the appellant claims to be the hereditary Trustee, then it was his obligation to report such a change to the said office, within a stipulated period. The question is whether failure to discharge such an obligation deprives the appellant of an opportunity to be heard in the matter under sub-section (1) of Section 50A of the BPT Act. It is a fact that a change occurred on account of death of Shri Govind Balkrishna Shirkhedkar in the year 1979. The only consequence of not reporting such change by the Trustee provided u/s 66 of the BPT Act, is of imposition of fine to the extent of Rs. 10,000/-. It cannot, therefore, be said that failure to discharge the obligation of reporting a change u/s 22 of the BPT Act deprives the appellant of an opportunity to be heard in the matter.

8. The learned District Judge, dealing with an appeal u/s 72 of the BPT Act, ought to have seen that when Rule 7 of the BPT Rules contemplates the manner of inquiry u/s 50A of the BPT Act, it includes an inquiry to find out as to whether any hereditary Trustee existed upon the death of the original Trustee Shri Govind Balkrishna Shirkhedkar. Such an inquiry out to have been made by the learned Deputy Charity Commissioner. Perusal of the judgment and order passed by the learned Deputy Charity Commissioner does not reveal any such inquiry made in the matter before settling a Scheme. Hence, the judgment and order passed by the learned District Judge suffers from an error apparent on the fact of record, holding that there was no Trustee after the demise of Shri Govind Balkrishna Shirkhedkar and that no notice was required to be issued to the appellant.

9. In view of above, the substantial question of law framed, is answered, holding that failure to discharge an obligation of reporting change u/s 22 of the Bombay Public Trusts Act, 1950, would not deprive the appellant claiming to be hereditary Trustee, a due opportunity to be heard in the matter under sub-section (1) of Section 50A of the BPT Act. In the result, the second appeal is allowed. The judgment and order dated 14-8-2000 passed by the learned Deputy Charity Commissioner, Amravati, in Application No. 31 of 2000, as well as the judgment and order dated 14-9-2010 passed by the learned District Judge-2, Amravati, are hereby quashed and set aside. The matter is remitted back to the learned

Deputy Charity Commissioner, Amravati, to provide an opportunity to the appellant of being heard in the matter before settling a Scheme u/s 50A(1) of the BPT Act. The parties to appear before the learned Deputy Charity Commissioner, Amravati, on 6-5-2013. No fresh notice shall be issued to the parties, and the learned Deputy Charity Commissioner shall decide the matter in accordance with law. No order as to costs.