

**(2023) 12 GUJ CK 0064**  
**In the Gujarat High Court**

**Case No :** R/First Appeal No. 5001 Of 2023, Civil Application (For Stay) No. 2 Of 2023

Balakdas Vaishnav

APPELLANT

Vs

Shirish Jamnadas Fudhanwala

RESPONDENT

**Date of Decision :** 18-12-2023

**Acts Referred:**

Bombay Public Trusts Act, 1950 — Section 47, 50A

**Citation :** (2023) 12 GUJ CK 0064

**Hon'ble Judges :** Devan M. Desai, J

**Bench :** Single Bench

**Advocate :** Digant M Popat

**Final Decision :** Partly Allowed

## **Judgement**

Devan M. Desai, J

1. Heard learned counsel for the appellant. Perused the record.
2. Learned counsel for the appellant would rely on an order passed in similar matter by the Coordinate Bench of this Court namely; First Appeal No.2566 of 2023 dated 23.6.2023. He further requested this Court to pass a similar order in this matter too as the interest of justice would meet. The order dated 23.6.2023 reads as under:

"1.Heard learned senior advocate Mr.R.R.Marshall with learned advocate Mr.Arpit A. Kapadia for the appellants, learned advocate Mr.Jigar M. Patel for the respondent nos.1 to 3 and learned AGP Ms.Hetal Patel for the respondent no.4-Charity Commissioner.

2.The appellants have challenged the order dated 09.09.2016 passed by the 6th Additional Sessions Judge, Surat in Misc. Civil (Trust) Application No.436 of 2014 preferred by the respondent nos.1 to 3 under Section 47 of the Bombay Public Trusts Act, 1950 (for short "the Trust Act") for appointment of the trustees of the

trust namely "Ramanand Smapraday Tejanand Maharaj Temple"(for short "the trust") having registration no.A/1881/Surat.

3. The brief facts of the case are as under:

3.1. The trust is registered under the Trust Act in the nature of religious trust. The trust was registered with the Office of the Joint Charity Commissioner Surat having a sole trustee namely Mahant Ashutoshdasji who was shot dead in the year 2012.

3.2. The trust is having a temple situated in the Kharvasa gam having huge parcel of land. The land is being utilized for the agriculture purpose by the villagers/ labourers of the village and the agriculture produce is utilised for the benefit of the temple and the religious activity. The trust is also having a gaushala wherein there are twenty cows. After religious ceremony of succession (chadar vidhi) Manant Jagdishdasji was appointed however due to his ill health, he was not staying in the temple and had left the place and was residing at Gadhada and now he has expired.

3.3. After the demise of Mahand Ashutoshdasji, the trust was left with no trustees. There is no constitution of the trust therefore the villagers of the village Kharvasa gam having faith in the temple passed a resolution in an assembly on 05.04.2015 and appointed the appellants as the administrators of the trust.

3.4. As the trust does not have any written constitution, there was a necessity to follow the procedure for the maintenance and administration of the trust for calling the meeting to determine the members of the trustees, to pass resolutions, for procedure for opening bank accounts, constitution of committee for renovation of temple and for holding religious festivals. In the absence of written constitution, there was hardships for the appellants-administrators. Therefore, the appellants filed the scheme application under Section 50A of the Trust Act before the Joint Charity Commissioner, Surat. The appellants also filed an application under Section 47 of the Trust Act for their appointments as trustees before the District and Sessions Judge, Surat.

3.5. It is the case of the appellants that one another Mahant Shri Balakdas Guru Ashutoshdasji Vaishnav and others have also filed a change report before the Assistant Charity Commissioner, Surat to take place of late Mahant Trustee Ashutoshdasji. However, Shri Balakdasji was involved in the murder of Mahant Ashutoshdasji and he has been arraigned as an accused in the said case and a criminal trial is pending against him and he was incarcerated in the jail for a long time for the offence of murder of Mahant Ashutoshdasji. Mahant Jagdishdasji to whom, religious ceremony of succession (chadar vidhi) was performed had also made an application for filing a change report.

3.6. The appellants have filed scheme application no.7 of 2015 whereas Shri Balakdasji has filed scheme application no.8 of 2016 and one Shri Kantibhai Mohanbhai Lakkad has also filed scheme application no.19 of 2014 and the

respondent nos.1 to 3 have also filed scheme application nos.23 of 2014 before the Joint Charity Commissioner, Surat.

3.7. All the applicants of scheme applications have also filed applications for the interim order in the scheme applications filed by them. The Joint Charity Commissioner, Surat, by order dated 12.08.2016 passed an interim order whereby the appellants have been appointed as Caretaker Committee on totally ad-hoc basis after considering the fact that Shri Balakdasji is arraigned as an accused in the murder case of Shri Ashutoshdasji and he has also executed a lease agreement for a period of five years with respect to the property of the trust.

3.8. It is the case of the appellants that respondent nos.1 to 3 are acting at the behest of Shri Balakdasji and it is the belief of the appellants that Shri Balakdasji has projected respondent nos.1 to 3 to claim as the trustees of the trust.

3.9. The learned District Judge issued a public notice in the Miscellaneous Civil (Trust) Application no.436 of 2014 filed by the respondent nos.1 to 3 for appointment of the trustees of the trust in vernacular Gujarati Newspaper "Gujarat Guardian" which has a very limited publication/ circulation. It is therefore the case of the appellants that the publication in such vernacular newspaper was an empty formality and respondent nos.1 to 3 by suppressing the gross facts before the District Court regarding the filing of similar application by the appellants for the identical relief of their appointment as trustees and also suppressed the material fact regarding the order passed by the Joint Charity Commissioner, Surat dated 12.08.2016 whereby the appellants have been appointed as Caretaker Committee of the Trust.

3.10. The District Court therefore in view of the suppression of the facts by the respondent nos.1 to 3 passed the impugned order dated 08.09.2016 allowing the Miscellaneous Civil (Trust) Application no.436 of 2014 appointing the respondent nos.1 to 3 as trustees, after considering the affidavits filed by various persons produced at Exhibit nos.38, 39, 40, 45, 46 and 47 as well as the copies of extract from the revenue records, copies of the receipts of donation given by the respondent nos.1 to 3.

4. Considering the above facts emerging from the record and on perusal of the impugned order passed by the District Court under Section 47 of the Trust Act, it appears that the learned Judge issued notice to the Charity Commissioner who remained present in the proceedings. The Charity Commissioner filed a reply at Exhibit 9 wherein it was stated that appropriate order may be passed. It appears that the Charity Commissioner failed to point out before the District Court about the pendency of the scheme applications filed before the Office of the Charity Commissioner by the appellants, Shri Balakdasji and the respondent nos.1 to 3 and other third parties. Moreover, the order dated 12.08.2016 passed by the Charity Commissioner appointing the appellants as a Caretaker Committee was also not pointed out before the learned District Judge.

5. Therefore, it is apparent that if correct facts would have been disclosed before the learned Judge, the impugned order would not have been passed appointing respondent nos.1 to 3 as trustees of the trust under Section 47 of the Trust Act.

6. In view of the above facts emerging from the record, without considering the impugned order on merits, the same is ordered to be quashed and set aside remanding the matter back before the learned District Judge so as to enable the learned District Judge to hear the Miscellaneous Civil (Trust) Application no.436 of 2014 along with similar application filed by the appellants being Miscellaneous Civil (Trust) Application No.161 of 2015 filed on 23.04.2015.

7. The respondent no.4-Charity Commissioner is also directed to decide the scheme application no.19 of 2014, 23 of 2014, 7 of 2015 and 8 of 2016 filed by the respondent nos.1 to 3 and other persons as expeditiously as possible and within a period of three months from the date of receipt of this order.

8. The learned District Judge is also directed to hear the Miscellaneous Civil (Trust) Application No.436 of 2014 filed by the respondent nos.1 to 3 and Miscellaneous Civil (Trust) Application No.161 of 2015 filed by the Appellants within a period of three months from the date of receipt of this order after giving opportunity of hearing to all the concerned parties. The appeal therefore stands partly allowed to the aforesaid terms."

3. In view of above and considering the decisions relied upon in the First Appeal No.2566 of 2023, the following order is passed:

3.1. In view of the above facts emerging from the record, without considering the impugned order on merits, the same is ordered to be quashed and set aside remanding the matter back before the learned District Judge so as to enable the learned District Judge to hear the Miscellaneous Civil (Trust) Application no.436 of 2014 along with similar application filed by the appellants being Miscellaneous Civil (Trust) Application No.361 of 2023 filed on 18.09.2023.

3.2. The respondent no.4-Charity Commissioner is also directed to decide the scheme application no.19 of 2014, 23 of 2014, 7 of 2015 and 8 of 2016 filed by the respondent nos.1 to 3 and other persons as expeditiously as possible and within a period of three months from the date of receipt of this order.

3.3. The learned District Judge is also directed to hear the Miscellaneous Civil (Trust) Application No.436 of 2014 filed by the respondent nos.1 to

3 and Miscellaneous Civil (Trust) Application No.361 of 2023 filed by the Appellants within a period of three months from the date of receipt of this order after giving opportunity of hearing to all the concerned parties."

4. The appeal therefore is partly allowed in the aforesaid terms. No order as to costs. Direct Service is permitted.

5. In view of partly allowing of the main matter, connected Civil Application stands disposed of accordingly.