

(2011) 05 GUJ CK 0015
In the Gujarat High Court

Case No : First Appeal No. 394 of 2011 and Civil Application No. 1852 of 2011 in First Appeal No. 394 of 2011

Chairman

APPELLANT

Vs

Prasannvadanbhai M. Mehta and Others

RESPONDENT

Date of Decision : 09-05-2011

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 2(10), 2(18), 21, 47, 47(2)

Citation : (2011) 05 GUJ CK 0015

Hon'ble Judges : J.C. Upadhyaya, J

Bench : Single Bench

Advocate : V.M. Dhotre, for the Appellant; Harshitstolia, for Defendants 1 and 1.2.2, Parthstolia, for Defendants 1.2.2 and Shachi Mathur, Asst. Government Pleader for Defendants 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Upadhyaya, J.—The challenge in this appeal is to the judgment and order dated 2.12.2010 rendered by learned Addl. District Judge, Bhavnagar in Civil Misc. Application No. 235 of 2008 and other allied civil applications. The learned Addl. District Judge, Bhavnagar by virtue of the impugned judgment and order allowed the said Civil Misc. Application No. 235 of 2008 filed by the Respondents No. 1/1 to 1/3 herein, u/s 47 of the Bombay Public Trust Act ("the Act", for short). The Appellant herein was opponent No. 3 in said matter and in the instant appeal, the order passed by the learned Addl. District Judge, Bhavnagar, granting Civil Misc. Application No. 235 of 2008 is only challenged.

2. The Respondents No. 1/1 to 1/3 had preferred Civil Misc. Application No. 235 of 2008 u/s 47 of the Act in the Court of learned Principal District Judge, Bhavnagar for appointment of five persons as trustees in the trust called Shri Dakshinamurthi Vidhyarthi Bhavan Trust. The said application came to be opposed by the Appellant herein, who was original opponent No. 3 in the said matter, on various grounds, but the principal contention, which came to be raised

by the Appellant was that the applicants therein (Respondents No. 1/1 to 1/3) were not competent to apply u/s 47 of the Act. In the impugned judgment and order, the learned Judge turned down the said contention and Civil Misc. Application No. 235 of 2008 came to be allowed.

3. Mr. V.M. Dhotre, Id. advocate for the Appellant (original opponent No. 3) submitted that the moot issue, which is involved in this appeal, is to decide as to whether the applicants of Civil Misc. Application No. 235 of 2008 were competent to make an application as contemplated u/s 47 of the Act, more so when they were not validly appointed trustees of the trust in question, and ceased to be trustees in the face of order dated 30.1.1997 passed in MCA No. 40 of 1987 by the District Court, Bhavnagar. Mr. Dhotre, Id advocate for the Appellant submitted that so called trustees, namely, Respondents No. 1/1 to 1/3 herein filed said application u/s 47 of the Act, and out of them, so far as the Respondent No. 1/3 Vinodbhai J. Parikh was concerned, he has already resigned as trustee of the trust. So far as Respondent No. 1/1, namely, P.M. Mehta is concerned, vide interim order dated 29.6.1991 passed in MCA No. 40 of 1987, he was considered as "de-facto trustee" till the pendency of the said application. It is submitted that the said application was moved by one Mrs. V.N. Badheka before the District Court, Bhavnagar u/s 47 of the Act, requesting the appointment of Respondents No. 1/1 to 1/3 herein as trustees in the trust. However, vide order dated 29.6.1991, they were appointed as "de-facto trustees" till the pendency of said application. Mr. Dhotre, Id. advocate for the Appellant submitted that on 30.1.1997, Petitioner of said application, namely, Mrs. V.N. Badheka, withdrew said application being MCA No. 40 of 1987 and said application stood disposed of as withdrawn. It is, therefore, submitted by Mr. Dhotre, Id. advocate for the Appellant that once MCA No. 40 of 1987 came to be withdrawn, any interim order passed in said matter, did not survive. It is, therefore, submitted that neither the Respondents No. 1/1 to 1/3 can be said to be validly appointed trustees nor even on or after 30.1.1997, they can be considered as "de-facto trustees". That, therefore, the Respondents No. 1/1 to 1/3 had no authority or they were not competent to file application being Civil Misc. Application No. 235 of 2008 on 22.08.2008 u/s 47 of the Act.

3.1 Mr. Dhotre, Id. advocate for the Appellant further submitted that the proceedings regarding Change Report No. 187 of 1999 was initiated by Mrs. V.N. Badheka before Asst. Charity Commissioner, suggesting certain changes in the trust and vide order dated 18.2.2000, passed by Asst. Charity Commissioner, said application was partly allowed. It is submitted that pursuant to said order, so far as Respondent No. 1/2 Dr. Kane is concerned, who was applicant No. 2 in Civil Misc. Application No. 235 of 2008, came to be appointed as one of the trustees in the trust. However, Mr. Dhotre, Id. advocate for the Appellant submitted that Charity Commissioner took up the matter suo motu and in Suo Motu Application No. 1 of 2001, vide order dated 18.12.2002, Charity Commissioner quashed and set-aside the order dated 18.2.2000 passed by the Asst. Charity Commissioner in Change Report No. 187 of 1999. It is, therefore,

submitted that whatever action was taken pursuant to the earlier interim order dated 18.2.2000 passed by the Asst. Charity Commissioner, cannot be considered as valid and legal action, since said order was set-aside by the Charity Commissioner, holding that the order passed by the Asst. Charity Commissioner was void ab initio. It is, therefore, submitted that so far as the Respondent No. 1/2 Dr. Kane was concerned, he was neither legally appointed as trustee nor after 18.12.2002, when the Charity Commissioner in suo motu revision quashed and set-aside the order of the Asst. Charity Commissioner, could have acted as trustee in the trust and was not competent to file Civil Misc. Application No. 235 of 2008 on 22.08.2008.

3.2 Mr. Dhotre, Id.advocate for the Appellant submitted that even if it is considered that as per Section 47 of the Act, any person interested in the trust can apply for appointment of a new trustee, then also the Respondents No. 1/1 to 1/3 did not fall within the category of "any person interested". It is submitted that considering Section 2(10) of the Act, person having interest is defined, and as per Sub-section (e), in case of other public trust, other than temple, mathth, WAKF or registered society, the person having interest is considered to be the beneficiary. It is submitted that, admittedly, the Respondents No. 1/1 to 1/3 were not the beneficiaries of the trust. It is, therefore, submitted that Section 47 cannot be said to have been complied with.

3.3 Mr. Dhotre, Id.advocate for the Appellant, relying upon Sub-clause 2 of Section 47 of the Act, submitted that the application for appointment of new trustee is maintainable only if the number of trustees in a public trust is reduced than the minimum number of trustees. It is submitted that as in the instant case, even considering the extract of P.T. Register produced by the Respondent, there does not appear that there was reduction in minimum number of trustees in the trust. It is submitted that as per the constitution, the minimum number of trustees was five trustees. It is, therefore, submitted that even if the matter is viewed from this angle, the application u/s 47 was not maintainable, and the application was not even otherwise warranted.

3.4 Mr. Dhotre, Id.advocate for the Appellant submitted that as per Clause 4 in the P.T. Register, in case of vacancy of any trustee, the said vacancy was required to be filled in by an application to be made by the remaining trustees to the District Court, Bhavnagar. That, therefore, when the mode of succession is determined in the constitution of the trust itself, only the trustee can apply for appointment of new trustee.

3.5 In view of the above submissions, Mr. Dhotre, Id.advocate for the Appellant submitted that the appeal may be allowed and the impugned judgment and order rendered by learned Addl. District Judge, Bhavnagar allowing the Civil Misc. Application No. 235 of 2008 be quashed and set-aside.

4. Mr. Tolia, Id.advocate for the Respondents No. 1, 1/1 to 1/3 supported the impugned judgment and order rendered by the District Court and submitted that

there is no reason whatsoever for this Court to interfere with the impugned judgment and order challenged in this appeal. It is submitted that in the P.T. Register, the names of the applicants, who filed the Civil Misc. Appln. No. 235 of 2008 have been referred as trustees of the trust. They were legally appointed trustees. Mr. Tolia drew my attention to certain orders passed by this Court, namely, order dated 15.9.2008 passed in SCA No. 11465 of 2008 and the order of this Court dated 23.2.2010 passed in SCA No. 1293 of 2010 and submitted that so far as the Respondent No. 1/1 Mr. P.M. Mehta is concerned, he was permitted to act as trustee and that his removal order passed by the Asst. Charity Commissioner, Bhavnagar, came to be withdrawn and, thus, he continued to be the trustee of the trust. It is, therefore, submitted that in the impugned judgment and order, District Court rightly took into consideration the relevant material and rightly held that the applicants of Civil Misc. Appln. No. 235 of 2008 were trustees of the trust and were competent to apply u/s 47 of the Act.

4.1 Mr. Tolia, Id.advocate for the Respondents submitted that considering the scheme of Section 47 of the Act, it is not necessary that the person, who makes such application should invariably be a trustee of the trust, as any person interested can move the application. It is submitted that the meaning of "person having interest" defined u/s 2(10) of the Act is not an exhaustive definition and it includes any beneficiary. So far as the three applicants of said application u/s 47 of the Act are concerned, over and above the fact that in the P.T. Register their names are shown as trustees, but even otherwise they were associated with the trust since pretty long time and they played predominant role in the management and administration of the trust. It is, therefore, submitted that in every respect, the applicants were competent to make application for appointment of other trustees u/s 47 of the Act.

4.2 Mr. Tolia, Id.advocate for the Respondents submitted that except the competency of the three applicants to make application u/s 47 of the Act, on behalf of the Appellant, nothing is shown anything personal against these three applicants or even against the names suggested by them for appointment of trustees. That in the impugned judgment and order, even the learned Judge has clearly observed that against the names of the proposed trustees referred in said application, the Appellant herein had no grievance about their competency, integrity and fitness as trustees.

4.3 Mr. Tolia, Id.advocate for the Respondents submitted that neither before the District Court nor in the memo of appeal, the Appellant has raised any contention that as per the constitution of the trust particular number of trustees were considered as minimum number of trustees and that there was no need in the trust to add any more number of trustees. It is submitted that for the first time during the course of arguments on behalf of the Appellant this contention was raised relying upon Sub-section (2) of Section 47 of the Act. However, Mr. Tolia submitted that in the extract of P.T. Register, nowhere there is reference to minimum number of trustees. It is submitted that in past it was decided that the

maximum number of trustees may be 7 and the minimum may be 5. The said suggestion was not approved by the Charity Commissioner. It is, therefore, submitted that as per the present status, there is nothing about the minimum number of trustees. Therefore, it is submitted that the new contention being the pure question of fact raised in this appeal on behalf of the Appellant may not be considered and even on merits the said contention does not survive.

4.4 Mr. Tolia, Id.advocate for the Respondents, therefore, submitted that the appeal may be dismissed.

5. Ms. Shachi Mathur, learned AGP representing the Respondents No. 2 and 3 and Mr. C.B. Upadhyaya for the Respondent No. 4 supported the impugned judgment and order rendered by the District Court.

6. At the outset, first and foremost question, which is required to be decided in this appeal is as to whether the Respondents No. 1/1 to 1/3 were competent to make application u/s 47 of the Act or not. About the mode of succession of the trustees, there is no dispute and both the sides submitted that pursuant to earlier order passed by District Court, Bhavnagar itself, only the District Court, Bhavnagar was competent to appoint trustees in this trust. Considering the copy of the P.T. Register Annexure -A1 and more particularly Clause 4, it is stated that to fill in the vacancy of any trustee, the remaining trustees may make application before the Court for appointment of new trustee. It further transpires that Mrs. V.N. Badheka, one of the trustees of the trust had filed an application being Civil Misc. Appln. No. 40 of 1987 u/s 47 of the Act suggesting to appoint the Respondents No. 1/1 to 1/3 herein as trustees of the trust. Said application was filed in District Court, Bhavnagar and vide order dated 29.6.1991, the Respondents No. 1/1 to 1/3 were directed to act as de-facto trustees. There is also no dispute that said order was interim order and, subsequently, on 30.1.1997, Mrs. V.N. Badheka withdrew the said application on the ground that some proceeding was pending before the Charity Commissioner. The relevant copies are annexed with this appeal at Annexure - A/2. It further transpires that Mrs. V.N. Badheka had filed a Change Report Application No. 187 of 1999 before the Charity Commissioner for appointment of trustees as well as suggesting certain changes. Vide order dated 18.2.2000, said application was partly allowed. Pursuant to said order, in a meeting dated 7.3.2000, the Respondent No. 1/2 Dr. Kane came to be appointed as trustee. There is also no dispute that the said order dated 18.2.2000 was taken up in Suo Motu Revision Application No. 1 of 2001 by the Charity Commissioner and vide order dated 18.12.2002, the earlier order dated 18.2.2000 passed in Change Report Application No. 187 of 1999 came to be set-aside. It is pertinent to note that Respondent No. 1/1 Mr. Mehta and Respondent No. 1/2 Dr. Kane came to be appointed as trustees on the basis of judicial orders passed by the District Court and by the Asst. Charity Commissioner respectively. Subsequently, Civil Misc. Appln. No. 40 of 1987 came to be withdrawn and order passed in Change Report No. 187 of 1999, subsequently came to be set-aside. However, pursuant to the withdrawal of Civil

Misc. Appln. No. 40 of 1987 or pursuant to the order passed in Suo Motu Revision, nothing transpires on record that any effect to said orders were given. To put it differently, considering the copy of P.T. Register, they still continued to be trustees of the trust. Considering Section 21 of the Act, relevant provisions are made regarding the entries in the P.T. Register and it has been provided that the entries so made in the register shall be final, subject to the provisions of this Act. In Section 2(18) of the Act, the trustee is defined and the trustee means person in whom either alone or in association with other persons, the trust property is vested and includes a manager. Now, in this respect, on behalf of the Respondent, a copy of order dated 15.9.2008 passed by this Court in SCA No. 11465 of 2008 is produced. Perusing the said order, it transpires that certain directions issued by learned District Judge, Bhavnagar in Civil Misc. Appln. No. 226 of 2008 came to be challenged by the Charity Commissioner. Pursuant to the order dated 15.9.2008, the trustees were, by way of interim arrangement, permitted to manage day to day activities of the trust except to take decision regarding any policy matter without the prior approval of the competent Court. Perusing the order dated 23.2.2010 passed in SCA No. 1293 of 2010 by this Court, it transpires that in the said matter, the order dated 2.2.2010 passed by Assistant Charity Commissioner, Bhavnagar in Application No. 1 of 2010 removing the name of Respondent No. 1/1 Mr. P.M. Mehta, as trustee came to be challenged. It transpires that his name was ordered to be removed as trustee from the register of trustees. However, on 23.2.2010, when said matter was taken up for hearing, on behalf of the Charity Commissioner, said order dated 2.2.2010 regarding the removal of Mr. Mehta as trustee came to be withdrawn. Under such circumstances, the order passed by Assistant Charity Commissioner to remove the name of Mr. Mehta from the register of trustee came to be withdrawn and resultantly, he continued to be the trustee of the trust.

7. In the above view of the matter, the contention raised on behalf of the Appellant regarding incompetency of Respondents to apply u/s 47 of the Act deserves to be rejected. Alternatively, considering Section 47 of the Act, it is not necessary that only a trustee can make application for appointment of new trustee in the trust. Any person interested in the trust can make such application. It is true that in Section 2(10), person having interest is defined, but said definition is not exhaustive, but is inclusive. On behalf of the Appellant it is submitted that since none of the Respondents No. 1/1 to 1/3 fell within the category of beneficiary of the trust, they cannot be treated as person having interest in the trust. However, as stated above, the concerned Respondents are associated with the trust since pretty long time. They took part in the management and administration of the trust. Even otherwise, their names appear as trustees in the P.T. Register. When such is the situation, they can be said to be the persons interested in the trust. Under such circumstances, even considering the provision contained under provision of Section 47 of the Act, they can move the application for appointment of trustees. It is pertinent to note that neither before the District Court nor before this Court, any grievance is ventilated

on behalf of the Appellant against the proposed names of the trustees in their personal capacities, suggested by the Respondents No. 1/1 to 1/3. In this view of the matter, even considering the provisions contained u/s 47 of the Act, the Respondents No. 1/1 to 1/3 were competent to apply for appointment of new trustees. Ultimately, the policy decision was required to be taken by the competent Court either to allow or to reject said application u/s 47 of the Act.

8. At the time of arguments, on behalf of the Appellant, contention was raised keeping in focus Sub-clause 2 of Section 47 of the Act, namely, that there was no need to appoint more trustees as the minimum number of trustees were already there in the trust. At the first place, there is no dispute that such contention was not raised before the District Court in Civil Misc. Appln. No. 235 of 2008 filed by the Respondents No. 1/1 to 1/3 u/s 47 of the Act. This contention is raised for the first time in this appeal. To substantiate such contention, nothing is produced on behalf of the Appellant. Moreover, again considering the copy of the P.T. Register annexed with this appeal, nothing reveals about the minimum number of trustees. It transpires that in past, some change was suggested for maximum number of trustees and minimum number of trustees, but said change was not approved. When such is the situation, the new contention being pure question of fact, raised for the first time in this appeal and that too at the stage of arguments, deserves to be rejected.

9. The learned District Judge in the impugned judgment and order has elaborately dealt with relevant aspect of the matter and allowed the application filed by the Respondents No. 1/1 to 1/3 herein u/s 47 of the Act, and there is no reason whatsoever for this Appellate Court to interfere with the impugned judgment and order challenged in this appeal. The appeal is, therefore, devoid of any merits and deserves dismissal.

10. The appeal stands dismissed. There shall be no order as to costs.

11. In view of the dismissal of the first appeal, the pending civil application also does not survive, hence, the same shall stand disposed of accordingly.