

(1995) 11 KAR CK 0025
In the Karnataka High Court
Case No : M.F.A. No. 2238 of 1988

Channamallikarjuna Shivacharya Guru Pawadayya Swami
Hiremath

APPELLANT

Vs

R.S. Patil

RESPONDENT

Date of Decision : 06-11-1995

Acts Referred:

Bombay Public Trust Act, 1950 — Section 22, 22 (1), 22 (2)

Citation : (1996) ILR (Kar) 678 : (1996) 1 KarLJ 352

Hon'ble Judges : Murgod, J;Eswara Prasad, J

Bench : Division Bench

Advocate : G.S. Visweswara, for Ashok Kalyanshetty, for the Appellant; B.V. Jigjinni, for R-1 and R-2, for the Respondent

Final Decision : Allowed

Judgement

Eswara Prasad, J.—The Public Trust known as "Hiremati of Nagthan" which was registered under the Bombay Public Trust Act, 1950 ("the Act" for short) earlier had Sri Channamallikarjuna Shivacharya Guru Pawadayya Swami Hiremath as its Sole Trustee. He fell seriously ill and died on 21.5.1979 after executing a Vyavastha Patra (Settlement Deed) on 17.5.1979 naming 5 persons to be the managers of the Trust after his death. He authorised the said 5 persons to nominate the successor. Accordingly entries were made in the Register showing the names of the said 5 persons as the Managers of the Trust on 20.7.1979 by the Assistant Charity Commissioner. Subsequently, four of them made a report intimating the Assistant Charity Commissioner that the first appellant herein was installed as the Matadhipathi on 30.7.1979 and requested the Assistant Charity Commissioner to make change report in the properties of the Trust.

2. Public notice was issued by the Assistant Charity Commissioner calling for objections and the respondents filed their objections to the proposed action. The Assistant Charity Commissioner rejected the report effecting changes in the Register so far as the entries relating to the Matadhipathi on 30.9.1981.

Aggrieved by the said order, the appellants preferred an appeal before the Charity Commissioner which was allowed on 13.8.1982 u/s 70 of the Act in Miscellaneous Appeal No. 13/1981. The respondents made an application u/s 72 before the Additional District Judge, Bijapur in Miscellaneous Application No. 97/1982 against the order of the Charity Commissioner. The learned Judge set aside the order of the Charity Commissioner, observing that it is open to the parties to get the question of succession to the Math agitated before the Competent Civil Court, which is now in question in this Appeal before this Court.

3. Sri Visweswara, learned Counsel for the appellant contended that the entries regarding the 5 persons in the management of the Trust became final as it was not questioned by any one, and as the persons in the management, they were entitled to report the change of the Matadhipathi u/s 22 of the Act and the Charity Commissioner was justified in making the changes in the register after following the due procedure laid down u/s 22 of the Act. He contends that the scope of enquiry u/s 22 is limited and it is not open to the authorities under the Act to go into the legality of the installation of the Matadhipathi and therefore the learned Judge was in error in setting aside the order of the Charity Commissioner and driving the appellants to the civil suit.

4. The learned Counsel for the respondents contended that unless the installation of the first appellant as Matadhipathi was made in accordance with law, the entry in the Register could not have been made even u/s 22 of the Act and therefore the learned Judge was justified in setting aside the order of the Charity Commissioner. He contends that it is for the first appellant to file a suit and contend his right as Matadhipathi by a competent Civil Court.

5. In view of the rival contentions of the parties, the Question for Consideration is whether the direction of the Charity Commissioner to effect change in the register by mentioning the first appellant as the sole trustee was permissible u/s 22 of the Act.

6. Section 22(1) of the Act reads as follows:-

" 22(1) - Where any change occurs in any of the entries recorded in the register kept u/s 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept, Such report shall be made in the prescribed form".

From a reading of the above provision, it is to be seen that wherever any change occurs in any of the entries recorded in the Register, the Trustee shall within 90 days of the date of occurrence of the case report such change to the Deputy Commissioner or Assistant Commissioner incharge of Public Trust Register Office and the report shall be made in the prescribed Form. "Trustee" is defined under Sub-section (18) of Section 2 of the Act as meaning a person in whom either

alone or in association with the other persons, the trust property is vested and includes a manager. "Manager" is defined under Sub-section (8) of Section 2 of the Act as meaning any person (other than a trustee) who for the time being either along or in association with some other person or persons administers the trust property of any public trust and includes the Head of the Math, a Mutawalli of a Wakf or a governing body in the case of a society registered under the Societies Registration Act. It is therefore to be seen that a Trustee including a Manager of a Trust is obliged to report the occurrence of any change in the entries relating to a trust for being entered in the register.

The scope of enquiry u/s 22 fell for consideration before the Full Bench of this Court in SRI SATCHIDANANDA ABHINAVA VIDYA SHANKAR BHARATHI v. ASSISTANT CHARITY COMMISSIONER, in W.P.No. 7535/1969 dated 1.9.1971 1. 1974 (2) KLJ 53, in which it was held as follows :-

"There is no provision in the Act by which any dispute relating to succession to the office of the Matadhipati is required to be decided by any officer or authority under the Act. Such a dispute concerns the civil rights of the rival claimants. Unless the jurisdiction of the Civil Court is expressly barred, it cannot be taken away by implication. The enquiry contemplated u/s 22, in our opinion does not comprehend by implication the power of adjudication of the disputed question of succession. Sub-section (1) of Section 22 imposes an obligation on the trustee to make a report within 90 days from the date of the occurrence of any change in any of the entries recorded in the register kept u/s 17 to the Deputy or Assistant Charity Commissioner in charge of the Public Trust Registration office where the register is kept".

It is therefore clear that the scope of enquiry u/s 22 is limited and Section 22 does not comprehend the power of adjudication on the disputed question of succession which is left to the decision of the Civil Court. What the authority under the Act can decide is whether the change is reported by the Trustee, who includes the Manager, as to the existing state of affairs after holding a due enquiry under Sub-section (2) of Section 22. Once such an enquiry is held and it is found after considering the objections if any, that a change has occurred, and that it is reported by the Trustee or a Manager, the same shall be recorded in the Register with the reasons thereof to that effect.

7. The learned Counsel for the respondents placed reliance on the Decision of this Court in NEELAKANTASHIVACHARYA v. VIRUPAKSHAYYA AND ORS. 1976 KLJ 464 and Ratnakar B. Kailaje Vs. Ramrao Narasingrao Divigi, , in support of his contention that it is for the Civil Court to decide as to who is entitled to be the Matadhipathi as legally constituted and no change can be made in the register u/s 22. The aforesaid Decisions arose out of civil suits where the right of the person claiming to be the Matadhipathi was dealt with. There is no reference to Section 22 of the Act in the said Decisions. As such, the Decisions relied on by the learned Counsel have no bearing on the question involved in this Appeal in which Section 22 of the Act is under consideration.

8. Sri Jigajinni next placed reliance on the Decision of the Division Bench" of this Court reported in SHIVAMURTHAYYA GURU APPAYASWAMY v. MADIWALAPPA 1982(1) KLJ 41, in contending that there is no question of registering the name of the successor u/s 22 of the Act when there is no successor properly and legally installed. He elaborated his submission by contending that unless a person is lawfully installed as successor after the death of the Matadhipathi, the name of the successor cannot be entered and the Assistant Charity Commissioner is bound to hold an enquiry as to the legality of the claim of the successor. The Division Bench has referred to the Decision of a Full Bench of this Court in Gurupadayya Charantayya Adavimath etc. Vs. Chikkayya etc., in holding that the authorities under the Act have no jurisdiction to decide the dispute as to succession of the headship of a math and the mode of succession thereof. There is no reference to the latter portion of the Decision of the Full Bench of this Court in Gurupadayya Charantayya Adavimath etc. Vs. Chikkayya etc., In that view of the matter, the latter portion of the observation of the Division Bench in Shivamurthayya Guru Appayaswamy v. Madiwalappa (supra) was made per incur and is not binding.

9. The learned Counsel nextly relied on SHANTHILAL KHIMCHAND v. MULCHAND DALICHAND Vol - GLR 117 in contending that the change contemplated by Section 22 postulates firstly a lawful cessation of the old position and secondly thereafter a lawful creation of a new one. It is to be noted that the learned Judges observed as follows:-

"The real question in such cases, would be whether a change in fact has occurred in the legal status and therefore would fall within the field of inquiry u/s 22 and whenever questions or disputes such as are indicated above arise, it would be necessary to enquire into such disputes and to decide them. In the present case, the inquiry into the change in the constitution of the trustees must, therefore, include the question whether the persons who were appointed were, in fact, appointed as persons to hold the status of trustees".

With great respect we are unable to agree with the view taken by the learned Judges in view of the Decision of the Full Bench.

10. From the facts narrated above, it is to be seen that the five persons whose names were entered in the register as being in the management were competent and were under an obligation to report to the Assistant Charity Commissioner any change which has to be effected in the Register. As a fact, the installation of the first appellant took place on 30.7.1979 as seen from Exhibit P.6- the invitation card. Such an intimation was given by way of a Report in Exhibit P.8. Due enquiry was held by the Assistant Charity Commissioner and objections were called for and after considering the objections, the Assistant Charity Commissioner rejected the Report whereas the Charity Commissioner thought fit to accept the Report and to direct the necessary changes in the Register. When the persons competent have made a Report u/s 22 it was obligatory on the part of the authority to effect the necessary changes in the Register. The legality or

correctness of the claim of the first appellant can be questioned in appropriate forum in a Civil Court, by the persons disputing the claim. In that view of the matter, the learned Judge was in error in setting aside the order of the Charity Commissioner. The learned Judge was also in error in driving the first appellant to Trial Court to establish his right.

11. We make it clear that we have not expressed any opinion on the question as to the rights of the first appellant, who claims to be the successor of the deceased Matadhipathi. The said question is left open.

12. For all the aforesaid reasons, we do not agree with the conclusion and the directions issued by the learned Judge. It is accordingly set aside and the order of the Charity Commissioner is restored and the necessary changes shall be made in the Register. It is open to the respondents to question the right of the first appellant to continue as a Matadhipathi in a properly constituted proceeding. The Appeal is accordingly allowed.