
(1994) 04 GUJ CK 0010
In the Gujarat High Court

Charity Commissioner

APPELLANT

Vs

Nagarbhal Madhavdas and Others

RESPONDENT

Date of Decision : 30-04-1994

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 50A, 56(A)(1)

Citation : (1994) 2 GLR 1089

Hon'ble Judges : M.S. Parikh, J

Bench : Single Bench

Judgement

M.S. Parikh, J.—The petitioner has challenged a in Misc. Civil Application No. 30 of 1992 u/s 56(A)(1) of the Bombay Public Trusts Act.

2. The Trust known as "Sidheshwar Mahadev" at village Pirojpur is a public trust registered under the provisions of the Bombay Public Trusts Act, 1950 (for short "the Act"). Mr. Mohanlal Pranshanker Vyas, Mr. Kuberal Jetharam Vyas and Mr. Ramnarayan Maganlal Vyas were appointed trustees of the said Trust. They submitted their resignations as trustees and thereafter village people appointed new trustees. It has also been decided by the village people to appoint new trustees by the village people themselves. The change report was submitted before the Charity Commissioner and by order dated 23-4-1992 the Charity Commissioner directed the trust to obtain approval from the Court. In view of such a direction, the trust moved an application being Misc. Civil Application No. 30 of 1992 before the learned District Judge at Mehsana, who transferred the matter to learned Assistant Judge, Mehsana. No written objections were filed by the learned Charity Commissioner. One witness Mr. Nagarbhal Madhavdas was examined at Exh. 12 before the learned Assistant Judge. In his evidence he has stated that village people appointed new trustees in place of trustees who resigned, by changing the method for appointing trustees as well as Pujari and that a change report to that effect was submitted to the office of Charity Commissioner. The learned Assistant Judge found that when the village people unanimously decided to change the method of appointing trustees and Pujari

there was no impediment in allowing the application. He, therefore, allowed the application, approving the change report. The learned Charity Commissioner has challenged said order in this revision application.

3. I have heard Mr. Arun T. Thakore, learned Advocate for the petitioner-Charity Commissioner and Mr. N.K. Pahwa, learned Advocate for Mr. P.M. Thakkar, learned Advocate for the respondents. A very important and salient feature about the appointment of trustees has been brought to the notice of this Court and that has not been in dispute. As per the registration of the trust, the mode of succession to the trusteeship was by way of inheritance. It is not the case of any of the parties that there is no one available from the side of the trustee/s who was/were appointed as such by way of inheritance mode of succession to the trusteeship. It is, therefore, clear that if hereditary mode of succession to the trusteeship, which is only mode of succession, is required to be changed, that prima facie would not amount to a change in the names of the trustees simpliciter, which can be recorded by way of granting change report. If the mode of succession to the trusteeship is required to be altered, it is plain to find that that could not be done by recourse to Section 56(A)(1) of the Act, which reads:

(I) Save as hereinbefore provided in this Act, any trustee of public trust may apply to the Court, within the local limits of whose jurisdiction the whole or part of the subject-matter of trust is situate, for the opinion, advice or direction of the Court on any question affecting the management or administration of the trust property or income thereof, and the Court shall give its opinion, advice or direction, as the case may be thereon:

Provided that the Court shall not be bound to give such opinion advice or direction on any question which it considers to be a question not proper for summary disposal.

On a plain reading of the above provision, it can be seen that it would not apply to alteration in the mode of succession to the trusteeship.

4. In fact on a bare look at Annexure "C" which is the order of the learned Assistant Charity Commissioner, Mehsana, passed on 6-3-1992, it can be seen that what the learned Assistant Charity Commissioner has directed is to approach the learned Charity Commissioner for framing of a scheme u/s 50A of the Act or to obtain appropriate direction, order or approval with regard to alteration in the mode of succession to the trusteeship. The result is that the impugned order shall have to be quashed and set aside.

5. Following order is, therefore, passed:

This revision application is allowed. The impugned order passed by the learned Assistant Judge, Mehsana on 8-1-1993 in Misc. Civil. Application No. 30 of 1992 is hereby quashed and set aside. It would be open to the village people, or any person interested in the trust in question or even the trustees appointed by original mode of succession, to apply before the Charity Commissioner for

framing scheme u/s 50A of the Act. Rule made absolute accordingly with no order as to cost.