

(1979) 11 GUJ CK 0010
In the Gujarat High Court

Govind Krishna Abhyankar

APPELLANT

Vs

Kamalakar Vishnu Ganpule

RESPONDENT

Date of Decision : 06-11-1979

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 50, 50, 51, 51
Civil Procedure Code, 1908 (CPC) — Section 115, 92

Citation : (1979) 2 GLR 517

Hon'ble Judges : M.K. Shah, J

Bench : Single Bench

Judgement

M.K. Shah, J.—This revision application filed by the original defendants Nos. 1, 2 and 3 in regular civil suit No. 58 of 1976 of the court of the Joint Civil Judge (J.D.) at Baroda filed by the opponent-plaintiff, is directed against the order passed by the trial court on its finding on a preliminary issue with regard to jurisdiction and it raises an important question regarding the scope and ambit of Sections 50 and 51 of the Bombay Public Trusts Act, 1950 ("the Act").

2. The plaintiff is a trustee of a trust known as Brahman Sabha, Baroda, registered under the Bombay Public Trusts Act, 1950. Defendant No. 1 is also a trustee and President of the said Brahman Sabha while defendant No. 3 is the Vice-President and Chairman of the Managing Committee of the said Brahman Sabha.

3. It was the plaintiff's case that a hall which was newly constructed by putting up a storey on the original structure of a ground and first floor building of the trust property, was constructed for the purpose of its use by the members of the Sabha for performing religious and social functions. This was done after passing a resolution in a general meeting of the Sabha in the year 1969. It was the case of the plaintiff that in the year 1970, another resolution was passed by the General Sabha in defiance of the constitution, rules and regulations of the Sabha as also in defiance of the scope of the recommendations of the committee appointed by the general body in the year 1969 with regard to the purpose for

which the said hall was constructed and it was the plaintiff's contention that the former resolution of 1969 being in consonance with the rules and regulations of the Sabha cannot be set aside and superseded by another resolution passed later in the year 1970 and that therefore, the latter resolution stood suspended, so far as its operation was concerned. It was also the plaintiff's case that he learnt that the defendants were negotiating with the General Manager, Tele-Communication department of the Government, Gujarat Circle, Ahmedabad for giving on lease the newly built hall of the Sabha. As this was against the constitution, rules and regulations of the Sabha, he served a notice on the defendants, and in the general body meeting of the Sabha held on 24th August, 1975, the plaintiff tabled a resolution to the effect that the said hall newly constructed should not be let out to outsiders and should be utilised for ceremonial and other religious ceremonies of the members as per Sub-rule 4 of the Rules framed for letting out the premises of the Sabha and that the resolution passed in the prior general meeting contrary to the same be declared void. The Chairman did not allow this resolution to be tabled at the meeting stating that the negotiations with the P and T Department had practically reached the crucial stage of almost completion and the resolution, if tabled, would harm the prestige of the Sabha. The plaintiff expressed his disagreement to the proposed lease of the hall in the meeting of the trustees of the Sabha held on 14th September 1975 and he, thereafter, filed the said for a declaration as aforesaid and for a permanent injunction restraining the defendants from letting out the said premises of the Sabha as intended.

4. The defendants contested the suit inter alia on the ground that the same was not tenable as no previous permission of the Charity Commissioner as required by virtue of the provisions in Sections 50 and 51 of the Act was obtained by the plaintiff before filing the said suit and that the court of the joint Civil Judge (Junior Division) at Baroda before whom the said suit was filed had no jurisdiction to hear the same.

5. The learned Civil Judge on this contention, framed a preliminary issue in the following terms:

Whether this jurisdiction to hear the suit in view of the provisions of Sections 50 and 51 of the Bombay Public Trusts Act, 1950?

After hearing the arguments on both the sides, the learned Judge decided the said issue in the affirmative holding that the suit filed was not covered by the provisions of Sections 50 and 51 of the Act. He, therefore, passed the impugned order dated 25th July, 1977 recording his finding that the court had jurisdiction to hear the suit and ordering that the suit be proceeded ahead in accordance with law. Aggrieved by this order, the petitioner-that is-original defendants have preferred this revision application.

6. It may be noted at this stage that names of petitioners Nos. 2 and 3 have been deleted as per the order passed by this Court in civil application No. 840 of 1978 dated 5th April 1978.

7. Mr. Amin, the learned Advocate appearing for the petitioner submits that the learned Judge erred in construing the provisions contained in Sections 50 and 51 of the Act and in holding that the suit filed by the plaintiff did not come within the purview of the said sections.

8. In order to appreciate the rival contentions, it would be necessary to set out the provisions of the said two sections of the Act.

9. Section 50 reads thus:

50. In any case

(i) where it is alleged that there is a breach of a public trust;

(ii) where a direction is required to recover possession of a property belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from any person including a person holding adversely to the public trust, or

(iii) where the direction of the court is deemed necessary for the administration of any public trust, the Charity Commissioner after making such enquiry as he thinks necessary or two or more persons having an interest in the trust and having an interest in the trust and having obtained the consent in writing of the Charity Commissioner as provided in Section 51 may institute a suit whether contentions or not in the court within the local limits of whose jurisdiction the whole or part of the subject matter of the trust in situate, to obtain a decree for any of the following reliefs:

(a) an order for the recovery of the possession of such property or proceeds thereof.

(b) the removal of any trustee or manager.

(c) the appointment of a new trustee or manager. (cc) vesting any property in a trustee.

(d) a direction for taking accounts and making certain inquiries.

(e) a declaration as to what proportion of the trust property or of the interest the rein shall be allocated to any particular object of the trust,

(f) a direction authorising the whole or any part of the trust property to be let, sold, mortgages or exchanged,

(g) the settlement of a scheme or variations or alterations in a scheme already settled, or

(h) granting such further or other relief as the nature of the case may require: Provided that no suit claiming any of the reliefs in this section shall be instituted in respect of any public trust except in conformity with the provisions thereof, provided further that the Charity Commissioner may, instead of instituting a suit,

make an application to the court for a variation or alteration in a scheme already settled.

10. The relevant part of Section 51, so far as it is material for our purpose, reads as under:

51. (1) If the persons having an interest in any public trust intend to file a suit of the nature specified in Section 50, they shall apply to the Charity commissioner in writing for his consent. The Charity Commissioner, after hearing the parties and after making such inquiry as he thinks fit, may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal.

Sub-sections (2), (3) and (4) are not material for our purpose. As would be seen from the scheme as contained in Section 50, it has three facts. The first part contains what may be termed as conditions precedent to the application of the section. Any of the three conditions contained in Clauses (i), (ii) and (iii) must be present in the first instance to attract the provisions of the section. The case, therefore, in order to fall within Section 50 must, first of all, fulfil any of the three conditions mentioned in Clauses (i) to (iii).

11. Mr. Amin submits that in the instant case, the provisions contained in Clause (iii) would be operative. That means that direction of the court is deemed necessary for administration of a public trust. Now, if one looks at the case with which the plaintiff approached the court, it would be difficult to spell out therefrom that this was a case where direction of the court was deemed necessary for administration of any public trust. The plaintiff was one of the trustees of the trust. Other trustees, in pursuance of the mandate from the general body, were trying to let the newly constructed premises to an outsider in illegal suppression of a previous resolution passed by the general body and in disregard of the rules concerning the trust. In the opinion of the plaintiff, such an act would be an unauthorised act having no sanction of law behind it and he, therefore, filed the suit for the relief of declaration, as well as an injunction on restraining the defendants from committing such an unauthorised and illegal act. The case, therefore, does not fall within the purview of Clause (iii) or any of the other two clauses viz. Clauses (i) and (ii), because there is no allegation in the plaint that there is breach of the public trust, nor this is a case where a direction is required to recover possession of the property belonging to the public trust or proceeds thereof or any account of such property or proceeds. The very condition precedent, therefore, which would attract the provisions of Section 50 is absent in the instant case and I do not find any substance in Mr. Amin's submission that the case is covered by Clause (iii) of the first part of the section.

12. Now, going to the second part, it relates to the reliefs which can be claimed in a suit contemplated by the Section. 9 reliefs are enumerated in Clauses (a) to (h). Mr. Amin relies on Clause (f) in support of his contention that the relief

sought by the plaintiff is in relief sought by the plaintiff is in respect of letting out of the property to an outsider. Relief Clause (f) reads thus:

(f) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged.

I do not find any prayer in the plaintiff's case of such a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged. The relief which the plaintiff claims in the suit is in the nature of a declaration that the defendants had no right to violate the rules and regulations of the Sabha and let out the newly built hall to an outsider against the interest of the members of the Sabha as the construction was meant for the members of the Sabha for performing religious and social functions and he has also sought a permanent injunction restraining the defendants from so letting out the property. There is no direction sought by him authorising whole or any part of the trust property to let, for performing religious and social functions and he has also sought a permanent injunction restraining the defendants from so letting out the property. There is no direction sought by him authorising whole or any part of the trust property to let, sold, mortgaged or exchanged as is contemplated under the relief clause (f) in Section 50 and, therefore, the second ingredient which would attract provisions of Section 50 viz., the suit for claiming relief in terms of one or more of the nine reliefs set out in the relevant clause in the section, is not satisfied. It is only when these two conditions are satisfied that the suit would be covered by Section 50 and then, as per the third part which contains a proviso, it is to be safeguarded that such a suit claiming any of the reliefs specified in the section is instituted in respect of a public trust specifically in conformity with the provisions thereof. We are not concerned in the instant case, with the second proviso. Therefore, the nature of the suit which the plaintiff, who is a trustee of the trust, has filed, is such as would be outside the purview of Section 50 of the Act and the lower court was, therefore, perfectly justified in deciding the preliminary issue in the affirmative and in holding that it had jurisdiction to entertain and try the said suit. If the intention of the legislature was to include within the sweep of Section 50 a suit for injunction against other trustees in respect of a trust property, then, it would have found a place not in the first part of the section but also in the second part in one of the relief clauses which are set out in the section, as is done in respect of the Maharashtra Act where, specifically, in clause 4 of the first part, a case for "any declaration of injunction in favour or against a public trust or trustee or beneficiary thereof is provided, as also in the second part in one of the relief clauses, wherein it is also specifically provided for getting "relief of declaration or denying any right in favour of or against a public trust or trustee or trustees or benefit any thereof and issuing injunctions" in appropriate cases. Thus, in any view of the matter, it cannot be said that the lower court has acted in a manner in deciding the preliminary issue against the defendants, as would justify this Court to interfere in a revision keeping in view the restricted scope of such revisional jurisdiction of this Court u/s 115 of the Code of Civil Procedure.

13. Mr. Amin cited a few decisions in support of his contentions. The rail of these decisions does not apply to the facts in the instant case and, therefore, it is not necessary to discuss them beyond setting out the same. The decisions are: Malek Chittu Rasul v. Pathan Mahmedkhan Kalukhan 7 G.L.R. 1011; Rajgopal Raghunathdas Somani v. Ramchandra Hajarilal Jhavar 69 B.L.R. 472 and Chhaganlal Uderam Gour Vs. Sobharam Harishankar Gour, (This is a decision u/s 92 of the old CPC of 1908). The result of the above discussion is that there is no merit or substance in the revision application which fails with the following order:

14. Rule discharged. However, in view of the facts and circumstances of the case, the will be no order as to costs of this revision application and each party will bear its own coasts.