(1993) 06 GUJ CK 0036

In the Gujarat High Court

Case No : Letters Patent Appeal No. 487/84

Kamalsha Gulzarsha and Another APPELLANT

Vs

Charity Commissioner, Gujarat State RESPONDENT

Date of Decision : 28-06-1993

Acts Referred:
Bombay Public Trusts Act, 1950 — Section 35, 36, 36(3), 50, 50(1)

Citation : AIR 1994 Guj 127 : (1993) 2 GLR 1343

Hon'ble Judges : S. Nainar Sundaram, C.J;Sharad D. Dave, J

Bench : Division Bench

Advocate : M.I. Merchant, for N.D. Nanavati, for the Appellant; K.M. Mehta, Asst. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Dave, J.—This Letters Patent Appeal has been directed against the orders pronounced by the learned single Judge in Appeal from Order No. 99 of 1982, dated 1st February, 1984.

2. The Charity Commissioner had presented the plaint before the learned Extra Assistant Judge, Junagadh on December 18, 1982 in Trust Suit No. 1 of 1979. The prayers asked for in the said suit are as follows:--

"(a) It be declared that the sale of the suit land dated August 28, 1975 made by defendant No. 1 in favour of defendant No. 2 is void inasmuch as it is without consideration and in pursuance of the permission of the Charity Commissioner which is obtained fraudulently.

(b) Defendant No. 2 be ordered to hand over possession of the suit-land to the trust as he is not entitled to retain the same.

(c) Costs of the suit be awarded."

3. The case taken up by the Charity Commissioner in the suit is to the effect that original defendant No. 1, Kamlasha Gulzar-sha, happens to be the Sole trustee of

the Trust registered at No. B-242/Junagadh under the Bombay Public Trusts Act, 1950: The said Trust owned a piece of land, bearing Survey No. 204, situated within the city limits of Junagadh and that defendant No. 1 had submitted necessary application for the previous sanction u/s 36 of the Act for the sale of the above-said piece of land. The sanction, as prayed for, was granted subject to certain conditions and ultimately, the necessary sale deed was executed.by the defendant No. 1 in favour of defendant No. 2. It was the case of the Charity Commissioner that upon making enquiry on the basis of certain applications received by his office, it was noticed that the sanction to sell the property u/s 36 of the, Act was obtained fraudulently and that the sale was made in violation of the condition''s imposed by his office. According to him, as a matter of fact there was no existing liability against the Trust and that there was no genuine need for the disposal of the trust property for discharging the liability of the Trust arid that the public auction was also not held. It is on these broad facts that the suit of the Chanty Commissioner was based praying for the prayers already noticed. The learned Extra Assistant Judge, by his orders dated 18th December, 1981, had come to the conclusion that his Court had no jurisdiction to hear and decide the suit. Therefore, the plaint was ordered to be returned to the plaintiff-Charity Commissioner for the presentation before the proper Court. The above said orders were carried further by filing Appeal from Order No. 99 of 1982 before this Court. The learned single Judge has taken the View that the case would be covered within the purview of Section 50 of the Act and, therefore, the plaint ought not to have been returned. The above-said orders of the learned single Judge are in challenge in the present Letters Patent Appeal before us.

4. Learned counsel Mr. M.I. Merchant, who appears for Mr. N. D. Nanavati, learned counsel for the appellant, has urged that the learned single Judge has not taken into consideration the provisions contained u/s 36 of the Act. According to Mr. Merchant, previous sanction of the Charity Commissioner was already obtained and that if the Charity Commissioner was of the opinion that it was not a valid and legal previous sanction, the only course open for the Charity Commissioner was to move the Gujarat Revenue Tribunal as it is open for him to do so u/s 36(3) of the Act.

5. The recapitulation made by the learned single Judge in the orders under challenge may be extracted thus:--

"When we read all the averments made in the plaint from paragraphs 1 to 12, it is clear beyond any doubt that allegations are made regarding practising fraud on the Charity Commissioner for the purpose of obtaining permission u/s 36 of the Act and also for selling out the land of the trust without public auction and thereby openly flouting the direction given by the Charity Commissioner. It is further clear that allegations are made regarding sale of the land without payment of consideration in cash."

6. The above-said observations made by the learned single Judge would go to show that the Charity Commissioner wanted to urge before the concerned Court

that the sanction was not validly obtained and that the land belonging to the Trust was disposed of without a public auction and that there was an open violation of the directions given by the Charity Commissioner. It was also the case of the Charity Commissioner that the sale of the land was made without receipt of the ostensible consideration mentioned in the sale deed.

7. A reading of the provisions contained u/s 35 of the Act would go to show that the Charity Commissioner could have approached the Gujarat Revenue Tribunal for cancellation of the sanction already accorded by his office. But, it requires to be pertinently noticed, as has been done by the learned single Judge, that the other prayers, which are material and substantial, could not have been granted by the Gujarat Revenue Tribunal while exercising its jurisdiction u/s 36(3) of the Act.

8. Mr. Merchant urges that the property in dispute, after the sale to the original defendant No. 2, has ceased to be the trust property and, therefore, the provisions contained u/s 50 of the Act are not attracted and that, therefore, the suit would not be maintainable under the above-said provisions of the Act. A reference to the provisions contained u/s 50 of the Act and especially Sub-clause (i) makes it clear that such a suit would be competent and maintainable, where it is alleged that there is a breach of a public trust. It is not in dispute that the property belonged to a public trust, which was duly registered under the Act and that, later on, the previous sanction was also obtained. Merely because acting upon such a previous consent, the sale deed has been executed, it cannot be successfully urged that the property in question loses the original character of being a trust property. The property, which was, undoubtedly, a trust property, can be traced wherever it is, after following the necessary procedure, as laid down by law. The Charity Commissioner, in fact, wanted to trace the trust property, which, according to him, has passed over to defendant No. 2 illegally. It, therefore, cannot be successfully urged that, in such a case, the provisions contained u/s 50 of the Act have no application.

9. We are of the opinion that the acceptance of the contention being raised by the learned counsel, at our hands, would render the salutary provisions contained u/s 50 of the Act rather nugatory, making, in its turn, impossible for the Charity Commissioner to trace the trust property after its passage to the third parties, on the basis of a transaction, which is not supported by a valid and legal previous sanction and appears to be in violation of the terms and conditions annexed to the orders according previous sanction. We find ourselves unable to agree with such a construction sought to be placed upon Section 50 of the Act.

10. Therefore, looking to the provisions contained u/s 36 and Section 50 of the Trusts Act, we feel that the learned single Judge was perfectly justified in coming to the conclusion that the Charity Commissioner wanted to put forth a case of a breach of public trust within the purview of Section 50(1) of the Act and that, therefore, we do not see any reason to interfere with the orders pronounced by the learned single Judge. Finding no warrant for interference, we feel that the

present appeal requires to be dismissed. We do not. We make no order as to costs.

11. Upon a plea advanced by the learned counsel for the appellants, which deserves a countenance, we make it clear that it shall be the choice of the appellants to contend before the Civil Court in their defence, that as a matter of fact, no fraud was practised upon the Office of the Charity Commissioner, while obtaining previous sanction and that there was no violation of the terms and conditions imposed thereunder, and that if such contentions are raised, they shall be dealt with by the Court according to law and on merits.