(2015) 07 GUJ CK 0061

In the Gujarat High Court

Case No : Special Civil Application No. 11302 of 2014

Nareshchandra Ramprasad Raja — APPELLANT

Vs

State of Gujarat and Others — RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 17, 22, 22(1), 26, 72
Constitution of India, 1950 — Article 226

Citation : (2015) 3 GLR 1986

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : K.H. Baxi, for the Appellant; Jyoti Bhatt, A.G.P., Advocates for the Respondent

Final Decision : Dismissed

Judgement

C.L. Soni, J—By the present petition filed under Art. 226 of the Constitution of India, the petitioner has made following prayers:--

"(a) Be pleased to admit this petition;

(b) Be pleased to declare that the action of the respondent No. 2 in effecting entry No. 12 in P.T.R. at Annexure-E is absolutely wrong, illegal, unconstitutional, wrong, illegal, arbitrary and unauthorized;

(c) Be pleased to direct the respondents to make entry in the register as required under the provisions of Sec. 26 of the Bombay Public Trusts Act, 1950 pending the admission and final disposal of this petition;

(d)...."

The case of the petitioner is that Vadnagar Hatkeshwar Mahadev temple is approximately 1200 years old, managed by the Charitable Trust named Hatkeshwar Mahadev Sanstha, Vadnagar, registered under the Bombay Public Trusts Act, 1950 (''the Act''). In respect of such Trust, an application was preferred, being Scheme No. 9 of 1994, by one Jawahar V. Mehta and in pursuance of such application, the scheme was framed by the Joint Charity Commissioner vide order dated 27-2-2003 and entries for such scheme were made in the Public Trust Register (P.T.R.) maintained under the Act. Such scheme was however challenged under Sec. 72 of the Act, by preferring an application, being C.M.A. No. 120 of 2004, which was allowed by the Fast Track Court vide its order dated 30-9-2010 and the scheme was set aside. Against such order, First Appeal No. 3838 of 2010 is preferred and is pending before this Court. The petitioner however came to know through the information provided under the Right to Information Act, 2005 that some persons claiming to be the trustees were unauthorizedly dealing with the property of the Trust under the guise of entries made in the P.T.R. It is further case of the petitioner that one Entry No. 12 is made in P.T.R. contrary to the provisions of Sees. 22 and 26 of the Act.

2. This petition is opposed by affidavit-in-reply filed on behalf of respondent No. 2 stating that Entry No. 12 made in P.T.R. is of an order passed by learned Fast Track Court, Mehsana in C.M.A. No. 120 of 2004 as by the said order, Scheme No. 9 of 1994 formulated by the Joint Charity Commissioner was set aside. It is further stated that provision of Sec. 26 requires such entry to be effected in P.T.R. register kept under Sec. 17 of the Act, and thus there is no illegality in the matter of making Entry No. 12 in the P.T.R.

3. Learned Advocate Mr. Baxi appearing for the petitioner submitted that Entry No. 11 was posted in P.T.R. as regards the scheme framed by the order of the Joint Charity Commissioner and if such scheme was set aside by the order of the Court, separate entry of order is to be made in register in the form of Schedule VI and VII to be maintained as per Rule 15 of the Bombay Public Trust (Gujarat) Rules, 1961 (''the Rules''). Mr. Baxi submitted that change in the entries is recorded in P.T.R. kept under Sec. 17 of the Act is to be made as per Rule 13 of the Rules, if such change is reported as per Sec. 22 of the Act. Mr. Baxi submitted that entry of a decision of the Court of competent jurisdiction is governed by Sec. 26 and such entry of the decision of the competent Court could not be said to be change in entry as contemplated by Sec. 22 of the Act, and therefore, is not required to be effected in the P.T.R. Mr. Baxi submitted that if Entry No. 12 could not have been effected in P.T.R., Entry No. 11 which was made in connection with the scheme could not have been deleted or scored out from P.T.R.. Mr. Baxi thus submitted that the action of scoring off Entry No. 11 from P.T.R. and making of Entry No. 12 in the P.T.R. as regards decision of the Court was contrary to the provisions of the Act and the Rules, and therefore, not only Entry No. 12 is required to be quashed but Entry No. 11 is required to be restored in P.T.R.

4. Learned Assistant Government Pleader Ms. Bhatt on the other hand submitted that Entry No. 11 was made in the P.T.R. pursuant to the scheme framed by the order of the Joint Charity Commissioner, however such scheme was when set aside by the competent Court in exercise of powers under Sec. 72 of the Act,

change occurred in Entry No. 11 was required to be made in the P.T.R. as contemplated by Sec. 22 of the Act, and Rule 13 of the Rules, and to effect such change, Entry No. 11 was required to be scored out and new entry being Entry No. 12 of the order of the competent Court was required to be inserted in the P.T.R. Ms. Bhatt submitted that Rule 15 provides for maintaining of the register in form of Schedule VI and VII in the office of Charity Commissioner and Public Trust Registration office of the decisions of the Courts relating to Public Trust. Ms. Bhatt submitted that maintaining of such registers is in addition to making change occurs in the entries in the P.T.R. on account of the decision of the Court, and therefore, no illegality was committed in scoring out Entry No. 11 from the P.T.R. and of recording Entry No. 12 in the P.T.R. Ms. Bhatt submitted that Sec. 26 of the Act does provide for making change in the entries in the register kept under Sec. 17 of the Act as regards the decision of the competent Court deciding the question relating to Public Trust. Ms. Bhatt submitted that Entry No. 12 made in P.T.R. is an exercise of powers under Sec. 26 of the Act read with Rule 13 of the Rules, and therefore, there is no question of either scoring Entry No. 11 in P.T.R. or cancelling Entry No. 12 made in the P.T.R. Ms. Bhatt submitted that if the decision of the competent Court for which Entry No. 12 is made in P.T.R is not entered in register in form of Schedule VI and VII, as required by Rule 15 of the Rules, the same would not be a ground to say that Entry No. 12 made in the P.T.R. is illegal. Ms. Bhatt submitted that having come to know that in some offices, Forms VI and VII are not maintained, the Charity Commissioner has now issued circular asking all the concerned authorities under the Act to maintain register in the Form of Schedule VI and VII.

5. Having heard learned Advocates for the parties, it appears that Sec. 17 of the Act requires the Deputy and Assistant Charity Commissioner in every Public Registration office or Joint Public Trust Registration Office to keep and maintain such books, indices and other registers as may be prescribed. Such books, indices or registers are to contain particulars as may be prescribed. Section 17 thus contemplates maintaining of more than one registers. Rule 5 of the Rules provides for maintaining a register of the Public Trusts in the form of Schedule-I in respect of Public Trust registered or deemed to be registered under the Act. Copy of the Register of Public Trust maintained in each Public Trusts Registration Office or Joint Public Trusts Registration office is to be kept in the office of the Charity Commissioner as required by sub-rule (2) of Rule 5. Register in form of Schedule-I, which is known as Register of Public Trust (P.T.R.), contains 24 different columns for making different entries as stated against each of the columns in respect of the Public Trust. Entries thus in the register in form of Schedule-I are independent and to exist separately than entries to be made in the register in form of Schedule VI and VII as required by Rule 15 of the Rules. Column 6 in the form of Schedule-I provides for entry of particulars of documents creating Trust and Column 7 provides for entries as regards particulars other than documents about the origin or creation of a Trust. For any change occurs in the entries recorded in the register in the form of Schedule-I

kept under Sec. 17 of the Act, Sec. 22 requires the trustee to report such change occurred or the change proposed to the Deputy or Assistant Charity Commissioner in charge of the Public Trust Registration office where such register is kept, and thereupon, change in the entries is to be recorded in separate register and in P.T.R. as per Rule 13 of the Rules. Section 26 of the Act provides for causing the entry to be made or amended in the register maintained under Sec. 17 of the Act in accordance with the decision of the Court. Rule 13 provides for procedure to effect the changes in the P.T.R.. Sub-rule (1) thereof provides for reporting change in any of the particulars under Sec. 22(1) of the Act to the Deputy or Assistant Charity Commissioner by the trustee. Sub-rule (2) provides for entering change in the particulars reported to the Deputy or Assistant Charity Commissioner in the register to be kept for the purpose in form of Schedule-IV. In such register, particulars in respect of changes effected in P.T.R. otherwise than on report of trustee are also to be entered. Form of Schedule-IV is titled as ''Register of Changes''. Thus, there is a separate register of changes maintained, wherein change in the particulars recorded in the P.T.R. reported by the trustee or otherwise than on report of trustee is to be entered. Sub-rule (3) of Rule 13 provides for amendment in the entries in the P.T.R. by scoring out in red ink the original entry or entries, and the addition or alteration initialled by the Deputy or Assistant Charity Commissioner.

6. Section 22 and Sec. 26 of the Act both speak about effecting change in the entries recorded in the register maintained under Sec. 17 of the Act. As stated above, register of the Public Trust, called as P.T.R., in form of Schedule I when contains many entries, change in such entries as required under Sec. 22 and Sec. 26 of the Act is to be made as provided in sub-rule (3) of Rule 13. Therefore, when Entry No. 11 was in existence in the P.T.R. in respect of the scheme made by the order of the Joint Charity Commissioner, on cancellation of such Scheme by the order of the competent Court, a change or amendment in Entry No. 11 was called for. Such change in Entry No. 11 could be by amendment as provided in sub-rule (3) of Rule 13 by scoring out Entry No. 11 and by addition or alteration initialled by Deputy or Assistant Charity Commissioner. However, learned Advocate Mr. Baxi questioned effecting or recording Entry No. 12 in P.T.R. by contending that when the decision of the competent Court is to be entered in separate register in Form VI and VII as per Rule 15, it was illegal on the part of the concerned authority to effect Entry No. 12 of the decision of the Court in P.T.R. Answer to such contention lies in sub-rule (3) of Rule 13 which provides for making of addition after scoring out the existing entry.

7. Section 26 of the Act has provided causing of entry to be made of the decision of the Court in the register kept under Sec. 17 of the Act. Therefore, like the original entries, to be differently recorded against different columns provided in form of Schedule-I causing of entry of the decision of the Court in the register kept under Sec. 17 of the Act appears to be one of such prime requirements, and therefore, one of the columns, i.e. Column No. 7, provided in form of Schedule-I is of ''Particulars other than documents about the origin or creation of the Trust''.

If the register in form of Schedule-I is looked at with the registers in form of Schedule-VI and Schedule-VII, which are to be kept and maintained in the office of the Charity Commissioner and in the Public Trust Registration Office, for the purpose of entering the decision of the Court, it would clearly appear that while making entry of the decision of the Court in the registers in forms of Schedule VI and VII as required by Rule 15 of the Rules, the concerned authority is also required to endorse or record the date on which the amendments were made in the register of Public Trust (P.T.R.). This goes to show that not only the entry as regards the order or decision of the Court is required to be made in the P.T.R. kept under Sec. 17 of the Act, but the decision of the Court is to be separately entered in the registers maintained in form of Schedule-VI and Schedule-VII. In view of such clear distinct intention emerging from two different provisions, the Court finds that the concerned Authority has acted in consonance with the provisions of the Act and the Rules while making Entry No. 12 in the P.T.R. after scoring off Entry No. 11 in the P.T.R.

8. In above such view of the matter, it could not be said that Entry No. 12 made in the P.T.R. of the decision of the Court rendered in C.M.A. No. 120 of 2004 was in any way illegal or unauthorized. For the reasons stated above, the petition is rejected. Notice discharged. Interim relief, if any, stands vacated.

