

(2002) 01 BOM CK 0110
In the Bombay High Court
Case No : F.A. No. 815 of 1990

Pandurang Tatoba Gurav since deceased through L.Rs. APPELLANT
Parvati Pandurang Gurav and Others

Vs

Narayan Bhau Pawar and Others RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 50A, 50A(3)

Citation : (2002) 3 BomCR 575 : (2002) 3 MhLj 695

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : B.P. Apte, for the Appellant; A.R.S. Baxi, for respondent Nos. 1 and 2 and Bharat H. Mehta, for the Respondent

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—Heard learned Advocates for the parties and perused the record. Though the present appeal was admitted as the First Appeal, in view of the law laid down by this Court in the case of Maqbul Ahmed Miya Girav v. Hydayatulla Baldi reported in 1993(1) B.C.R. 386 followed by a Division Bench in the case of Shivprasad Shankarlal Pardeshi, since deceased by his heirs Vs. Leelabai Badrinarayan Kalwar since deceased by her heirs and others, and the present appeal being arising from the judgment and order passed by the Additional District Judge in the appeal u/s 72(1) of the Bombay Public Trusts Act, 1950 (hereinafter called as "the said Act"), it is necessary to ascertain whether the matter involves any substantial question of law or not, for the purpose of interference by this Court.

2. The facts in brief relevant for the decision are that there is a Maruti Devasthan in village Gharniki in Atpadi tahsil of Sangli District which was originally managed by one Bhau Mhadu Gurav and on his demise from 21st September, 1949 the same was managed by his close relations, which included Pandurang Tatoba Gurav, the original appellant herein. The said Pandurang was recognised by then

Assistant Judge as the heir of deceased Bhau Gurav and necessary certificate in that regard was issued in his favour and he continued to manage the properties of the said Devasthan which included agricultural land bearing Gat No. 814 admeasuring 8 acres and 16 Rs. situated in village Gharniki. Subsequent thereto the said Pandurang got the trust registered by getting the scheme u/s 50-A of the said Act approved and by appointing the appellants including Pandurang as the trustees thereof. The Respondent Nos. 1 and 2 being dissatisfied with the management of the said Trust by the appellants complained to the Respondent No. 3 and thereafter, consequent to the enquiry held by the Respondent No. 3, the new scheme came to be prepared and approved by the authority under the said Act as a result of which the appellants excluding Pandurang were removed from the membership of the board of trustees and in their place villagers were sought to be appointed. The number of the trustees was also increased to 9 from 5. Pandurang was allowed to be one of the members of the board of trustees during his life time with specific clause that after his death the vacancy is to be filled by surviving trustees, thereby denying the right of succession in favour of the legal heirs of Pandurang to the membership of the board of trustees. The scheme newly prepared and approved was sought to be challenged by the appellants u/s 72(1) of the said Act before the District Court without any success as the same was rejected by the impugned judgment and order dated 6th August, 1990.

3. While assailing the impugned judgment and order as well as that of the Respondent No. 3 approving the modified scheme, learned Advocate for the appellants submitted that the orders below do not disclose justification for restricting the membership of the board of trustees only in favour of Pandurang and denying the right to the legal heirs of Pandurang after his death to continue to be member of the board of trustees as also rejecting the claim of the appellants to continue to be Pujari in the Maruti temple. The entire scheme having been modified without disclosing any justification for the same, it discloses improper exercise of the powers by the authority as well as non-application of mind to the point sought to be raised by the appellants in the course of enquiry before the authority. Attention also has been drawn to the decision of the Division Bench of Madras High Court in the matter of Venkataraman Vs. L.A. Thangappa Gounder, . Learned Advocate for the respondent Nos. 1 and 2, on the other hand, has submitted that the authority, upon detailed enquiry in the matter, has arrived at the finding about the mismanagement of temple by Pandurang and his family members. It is further submitted that the order passed by the respondent No. 3 apparently discloses how the temple was totally neglected and the necessity for changes which have been brought about under the modified scheme.

4. Upon hearing the learned Advocates and on perusal of the records, the substantial question of law which arises in the matter is whether the authority acting u/s 50-A of the said Act could have modified the scheme of the trust thereby denying the right to the appellants to be the member of the board of

trustees as well as denying the right of succession to the heirs of Pandurang once he having been granted lifetime membership of the board of trustees and in that regard whether the exercise by the authorities under the said provision of law can be considered as proper and just.

5. Bare reading of the judgments and orders passed by the authority and the Court below disclose that in the process of modification of the scheme of the trust the authority found it fit to have Pandurang as the lifetime member of the Board of Trustees of the Trust. It is also undisputed fact that the management of the temple was all throughout with the family of the appellants. Undoubtedly enquiry revealed some mismanagement on the part of the appellants as far as administration of the temple and the maintenance thereof is concerned. Though the authority found it necessary to have one of the family members of the appellants as member of the Board of Trustees for the lifetime, however no reason has been disclosed in the order to deny such right to the successor of Pandurang. Once it is admitted that the management was all throughout with the family of the appellants and even the function of Pujari in the temple was performed by their family members, it is not understood as to why the inclusion of the member of the family of the appellants in the management was restricted only during the lifetime of Pandurang. In this connection as rightly submitted by the learned Advocate for the appellant, the authorities have to bear in mind while acting u/s 50-A that when the management of the temple is in the hands of Pujari for number of years and for generations, interest in the form of hereditary trust ship is created in favour of such persons, subject of course to the limitations and restrictions which may be specifically provided for under the statutes applicable to the administration of the subject matter in relation to which such interest is created. The Madras High Court in Venkataraman"s case has quoted the observation from its earlier decision in Muthuswami Gurukkal v. Aiyaswami Thevar reported in 1964-2 Mad LJ 560, which reads thus :--

"There is nothing illegal in hereditary trusteeship and pujariship being combined in the same person especially in the case of small temples where there has been no interference or control by any of the villagers of the place. In the case of small village temples, where there temple property is of insignificant value and the income is hardly sufficient even to meet the routine expenses of the temples, if the archaka or the poojari is left in management of the temple lands and the affairs of the temple without any interference by any of the villagers for a long number of years, it has to be presumed that with the consent and acquiescence of the worshippers of the village the pujari is the trustee as well. In such a case it must be held that the poojari managing the lands and affairs has made out his right to hereditary trusteeship and the interests of the temple are not likely to suffer, when the person concerned admits that the lands are temple lands and has never set up any rights to them as his own property."

6. Bearing in mind the observation of the Madras High Court and considering the facts of the case in hand it is apparent that the authority while taking action u/s

50A has not applied its mind to the points regarding the management of the Trust for a long time with the appellants as well as no justification has been disclosed for denying the right of succession to the heirs of Pandurang. The lower Appellate Court also in its turn has not considered the said points and merely because there was mismanagement for certain time, the appellants and heirs of Pandurang have been denied the membership of the board of trustees. In the circumstances, therefore, it is necessary to set aside both the decisions and to remand the matter to the respondent No. 3 to reconsider the decision after proper enquiry into the matter. Needless to say Respondent No. 3 has to give hearing to all the parties in the matter before arriving at proper decision in the matter. The respondent No. 3 shall also take into consideration the observations of the Madras High Court in the above referred decision and the observations made hereinabove while taking appropriate decision in the matter.

7. In the result, therefore, appeal succeeds. The decision of the authority dated 1st December, 1988 is hereby set aside and the matter is remanded to consider the application u/s 50-A(3) in the light of the observations made hereinabove. The authority is required to take appropriate decision within a period of six months from the date of receipt of the order of this Court. Appeal is accordingly disposed of with no order as to costs. Meanwhile the arrangement as per the approved scheme to continue till the decision of the respondent No. 3 on remand.