(1988) 02 GUJ CK 0001

In the Gujarat High Court

Case No : First Appeal No. 1731 of 1987

Patel Nanji Devji and Others APPELLANT

Vs

Patel Jivraj Manji and Others RESPONDENT

Date of Decision : 20-02-1988

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 2(10), 50, 51

Citation : AIR 1988 Guj 182 : (1988) 2 GLR 830

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Advocate : C.H. Vora, for the Appellant; Suresh M. Shah and M.S. Shah, for the Respondent

Judgement

1. Seven (out of eleven) trustees of public trust known as "Shri Santpath. Sampradaya Jyotidham Mandir", Nana Kadiya, Taluka Nakhtrana, Dt. Kutch, filed the suit inter alia praying that respondent Nos. 1 to 4 who are acting as trustees of the trust be removed as trustees and be also permanently restrained from interfering with the management of the trust. The respondent appeared in the suit and resisted the same on facts as well as on law points. The respondents submitted an application under O. VII, R. 11(d) of the C.P. Code and prayed that the suit was barred by the provisions of Bombay Public Trust Act, 1950 (hereinafter referred to as ''the Act'') inasmuch as necessary consent of the Charity Commissioner before filing the suit has not been obtained and hence the suit is liable to be rejected. The trial Court after hearing the parties came to the conclusion that as per the provisions of S. 51 of the Act, consent of the Charity Commissioner was necessary before filing the suit in question. Admittedly no such consent has been obtained in the instant case. Hence the trial Court rejected the suit under the provisions of O. VII, R. 11 (d) of the C.P. Code. Therefore this appeal by the original plaintiffs.

2. Learned counsel for the appellants-original plaintiffs submitted that the phrase ''the persons having an interest in any public trust'' occurring in S. 51 of the Act

would not include the trustees of the trust and therefore, the provisions of S. 51 cannot be invoked against the plaintiffs who are admittedly the trustees of the trust in question. In his submission the phrase ''person having interest'' has been defined in S. 2(10) of the Act. As per this definition, the trustees have not been included therein and therefore, in his submission, the plaintiffs who are trustees of the trust in question were not required to obtain consent even though the suit is of the nature specified under S. 51 of the Act.

3. This contention cannot be accepted for the simple reason that the definition of ''person having interest'' occurring in S. 2(10) of the Act is an inclusive definition. This definition has been amended by the Bombay Act 28 of 1953. Formerly the definition of ''person having interest'' was differently worded. Prior to the amendment, the definition was exhaustive one because the word ''means'' was employed by the legislature while defining the phrase. However, by the aforesaid amendment, the word ''means'' has been substituted by the word ''includes''. By this amendment legislature has made its intention explicitly clear. In view of this position of law by no stretch of reasoning it can ever be said that the definition would not take within its sweep the trustees of the trust. Trustees of the public trust would certainly be the persons having interest in the trust property in wider sense of the term. There is no reason why restricted or truncated meaning be given to the phrase. If trustees have no interest in the property of trust, who else would have interest? Be it noted that this interest of the trustees need not be pecuniary or personal in the trust property. They would be interested in the proper management of the trust and its property. When the nature of the suit is such that it falls within the purview of S. 50 of the Act, it would be proper that before filing such suit the consent of the Charity Commissioner is obtained by the plaintiff, even though the plaintiffs are some of the trustees of the trust.

4. Learned counsel for the appellants relied upon a decision of this court in the case of Nadiad Nagarpalika, Nadiad Vs. Vithalbhai Zaverbhai Patel and Others, . That was a suit for removal of encroachment over the trust property and it was filed by the trustees against the trespassers. The defendant raised a contention that necessary consent of the Charity Commissioner was not obtained by the trustees before filing the suit and therefore the suit was not maintainable. In the context of the aforesaid factual position, this court held that first proviso to S. 50 which reads as follows would not come in the way of the plaintiff.

"Provided that no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust except in conformity with the provisions thereof;"

5. In that case, this court held that when the trustees filed suit for removal of encroachment alleged to have been made by the trespassers in the trust property, the consent of the Charity Commissioner as contemplated under S. 51 read with S. 50 of the Act was not required to be obtained. The aforesaid decision has no application to the facts and circumstances of this case. In this case it is an admitted position that the suit filed by the trustees falls within the

scope of the S. 50 of the Act. In the suit it is inter alia prayed that the respondents be removed as trustees. Therefore undoubtedly the suit is of the nature specified in S. 50 of the Act. In the case of Nadiad Nagarpalika, Nadiad Vs. Vithalbhai Zaverbhai Patel and Others, the suit was not of the nature specified in S. 50 of the Act. Therefore, the principles laid down by this court in the case of Nadiad Nagarpalika. (supra) would not be applicable to this case. In para 5 of the judgment it is inter alia observed as follows : -

"S. 50, therefore, could not have been intended to impose an embargo on the general powers of the trustees to file suits for the recovery of the possession of the trust property either from tenants or licensees or from trespassers."

From what is stated hereinabove, it should be clear that the observations made and principles laid down in the case of Nadiad Nagarpalika (supra) would not apply to the suit of the nature specified in S. 50 of the Act and to which the provisions of S. 50 of the Act are undoubtedly and undisputedly applicable.

6. The underlying idea behind enacting the provisions of S. 51 is to avoid unnecessary and frivolous litigations against and/or by the public trust. For that purpose only an embargo is placed by the legislature in insisting upon the consent of the Charity Commissioner before a suit specified of the nature under S. 50 of the Act is filed. If the trustees are having interest in the trust and they are permitted to file suit of the nature specified in S. 50 of the Act, without the consent of the Charity Commissioner, then there would be chaos and the very object of S. 51 would be frustrated. The trustees of public trust instead of resolving their conflicts amicably would always be seen fighting litigations in one or other court. That way the trust property would be squandered away in such litigations only. The real beneficiaries of the trust would be left high and dry. They would have the benefit of looking at the game wherein litigation is fought at the cost of somebody else and with no risk whatsoever to the contesting litigants (i.e. quarreling trustees themselves). At any rate such litigation would never be in the interest of public at large or the trust itself. That is the reason why the legislature has put an embargo on the genral powers of trustees and insisted that whenever a suit of the nature specified in S. 50 is to be filed, the consent of the Charity Commissioner shall be necessary. There is no reason why the trustees of the trust be excluded from the definition of the phrase ''person having interest'' occurring in S. 2(10) of the Act.

7. In above view of the matter, there is no substance in the first appeal. Hence dismissed. However, it is clarified that if plaintiffs are desirous to file a fresh suit, they may file such suit after obtaining necessary consent of the Charity Commissioner. These observations do not mean that Charity Commissioner is bound to grant such consent. If and when prayed for, the Charity Commissioner may decide the question regarding grant or refusal of consent on merits without in any way being influenced by the clarification made herein.

8. Appeal dismissed.

