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(2017) 08 BOM CK 0092

In the Bombay High Court

Case No : 3032 of 2016

Ram s/o Narsu Gore, & Ors. — APPELLANT

Vs

Sudarshan Gir s/o Ganesh Gir, (died) Through his L.Rs., & Ors. — RESPONDENT

Date of Decision : 21-08-2017

Acts Referred:
Bombay Public Trusts Act, 1950, Section 19, Section 17, Section 72, Section 2(9), Section 2(17), Section 2(13), <a hr

Citation : (2017) 08 BOM CK 0092

Hon'ble Judges : P.R. Bora

Bench : SINGLE BENCH

Advocate : P.D.Bachate, P.R.Patil, N.P.Patil Jamalpurkar, N.D.Kendre, V.V.Tamke

Final Decision : Dismissed

Judgement

1. The common judgment and order dated 13th of September, 2010, passed by the District Judge, Latur, in Civil Miscellaneous Application (Trust) No.100/2009 and 118/2009, is challenged in the present appeal. The order passed by the Joint Charity Commissioner, Latur Region, Latur, in Appeal No.4/2005, decided on 6th of April, 2009, was challenged before the District Court vide the aforesaid two applications filed under Section 72 of the Bombay Public Trusts Act, 1950; now, the Maharashtra Public Trusts Act (hereinafter referred to as ''the Act'').

2. The facts which have given rise for filing the present appeal in brief are thus: On 3rd December, 1981, Ram Narsu Gore, appellant no.1 in the present appeal, filed an application seeking registration of the trust, by name, Shri Ramgir Maharaj Math Sansthan, Wasangaon, taluka and district Latur. He claimed himself to be the president of the said trust and also mentioned in the said application names of other ten persons, stating them to be the trustees of the said trust. It was contended in the said application that the agricultural land survey No.10/1 admeasuring 11 acres 30 gunthas and the house bearing Gram

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Panchayat House No.232; both situate at village Wasangaon, were belonging to the trust and hence prayer was made to declare the said properties to be the trust properties and to take entry of the said properties on Schedule I.

3. The said application was resisted by the present respondents. The learned Assistant Charity Commissioner vide order passed on 30th of March, 1984, allowed the application and ordered that Shri Ramgir Maharaj Sansthan, Wasangaon, be registered as public trust. The said order was challenged by one Damodar Dadarao Patil before the Joint Charity Commissioner at Aurangabad vide Appeal No.83/1984. The learned Joint Charity Commissioner dismissed the said appeal vide judgment and order passed on 31st of August, 1989. The order passed by the learned Joint Charity Commissioner was questioned before the District Court at Latur under Section 72(1) of the Bombay Public Trusts Act. The learned District Judge, vide judgment and order passed on 20th of June, 2000, set aside the order passed by the Assistant Charity Commissioner in Enquiry Application No.361/1982 as well as the order passed by the Joint Charity Commissioner in Appeal No.83/1984 and remitted the matter back to the Assistant Charity Commissioner to decide it afresh by giving due opportunity to the parties. Accordingly, the learned Assistant Charity Commissioner at Latur conducted a fresh enquiry under Section 19 of the Trust Act and vide judgment and order passed on 28th of December, 2004, allowed the said application and directed registration of the public trust, namely, Shri Ramgir Maharaj Math Sansthan, Wasangaon, Tq. and Dist.Latur and to take necessary entries in the public register kept under Section 17 of the Trust Act. The respondents therein filed an appeal bearing appeal No.4/2005 against the said order before the Joint Charity Commissioner at Latur. Vide the judgment and order passed on 6th of April, 2009, the learned Joint Charity Commissioner allowed the appeal and thereby set aside the order dated 28.12.2004 passed by the Assistant Charity Commissioner, Latur. The order passed by the Joint Charity Commissioner, Latur, was excepted before the District Court at Latur vide Miscellaneous Civil Application Nos.100/2009 and 118/2009. As noted hereinabove, the learned District Judge dismissed both the applications and confirmed the order passed by the Joint Charity Commissioner at Latur in Appeal No.4/2005. Aggrieved thereby, the appellants have preferred the present appeal. Initially it was treated as Second Appeal and was numbered as Second Appeal No.781/2010. Subsequently, in view of the Full Bench judgment of this Court, the said Second Appeal was converted into First Appeal and was numbered as F.A.No.3032/2016.

4. The material on record reveals that there is a Math in the name of Shri Ramgir Maharaj Math Sansthan at Wasangaon, taluka and district Latur. It was not registered under the provisions of Hyderabad Endowments Regulations or under the provisions of the Bombay Public Trusts Act. The said Math was possessing some agricultural land as well as a residential house at Wasangaon. It was the contention of the original applicant Ram Narsu Gore that the said Math was liable to be registered as the public trust and the properties belonging to the said Math were liable to be declared as the trust properties. He, therefore, filed an

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application seeking registration of the said Math as a public trust under the provisions of the Bombay Public Trusts Act and also prayed for declaring the properties belonging to the said Math as the properties of the public trust. The said application was opposed by the present respondents on various grounds. It was their contention that the Nizam Government had granted Munthkhab to perform the Pooja of Khandgir Maharaj Samadhi in respect of the agricultural land survey No.10. It was also the contention of the respondents that it was a private property of the Gosavi community and it was used as residential place as well as burial ground by Gosavi persons. The aforesaid contentions though were not accepted by the Assistant Charity Commissioner, the learned Joint Charity Commissioner upheld the said contentions and set aside the order passed by the Assistant Charity Commissioner to register the said Math as a public trust under the provisions of the Bombay Public Trusts Act and to take the entries of the properties belonging to the said Math to be the trust properties in Schedule I of the Public Trusts Register. As noted hereinabove, the learned District Judge has confirmed the order passed by the learned Joint Charity Commissioner.

5. Shri Bachate, the learned Counsel for the appellant, assailed the common judgment and order passed by the learned District Judge as well as the order passed by the Joint Charity Commissioner in Appeal No. 4/2005 on various grounds. Learned Counsel submitted that the courts below have manifestly erred in holding that the property in question was personal property of the opponents. Learned Counsel further submitted that the Courts below have wrongly interpreted the relevant provisions under the Bombay Public Trusts Act. Learned Counsel submitted that the learned District Judge as well as the Joint Charity Commissioner both have failed in appreciating that the registration of the trust and to declare any property as trust property are two different issues and are required to be dealt with independently. Learned Counsel submitted that sufficient evidence has been brought on record by the present appellants to establish that the subject Math requires to be registered as the Public trust. Learned Counsel further submitted that the Math was developed by the villagers of Wasangaon and not only by people of Gosavi community. Learned Counsel further submitted that the appellant had also established that religious activities are being carried out by the villagers of Wasangaon in the subject Math and the religious instructions are also imparted through the programmes conducted in the said Math. Learned Counsel, placing reliance on the judgment of the Honourable Apex Court in the case of Bala Shankar Maha Shankar Bhattjee and others vs. Charity Commissioner, Gujarat State (AIR 1995 SC 167) submitted that the long use of the Math by the villagers as of right for worshipping, is a relevant factor leading to a presumption that the Math is a public temple. Learned Counsel, then referred to and relied upon the judgment of the Honourable Apex Court in the case of Mahant Shri Srinivas Ramanuj Das vs. Surjanarayan Das and another (AIR 1967 SC 256) to urge that an institution which comes within the definition of Math, ipso facto, comes within the description Hindu Public Trusts and endowments and, therefore, becomes subject

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to the provisions of the Trust Act. Learned Counsel, therefore, prayed for setting aside the judgment and order passed by the learned District Judge as well as by the learned Joint Charity Commissioner.

6. The respondents opposed the submissions made on behalf of the appellant. Shri P.R.Patil, learned Counsel appearing for the respondent nos. 2, 13 and 14, and Shri N.P.Patil Jamalpurkar, learned Counsel appearing for respondent nos. 3, 4, and 6 supported the impugned judgment. Shri P.R.Patil, learned Counsel, submitted that every tomb cannot be recognized as religious in nature. In order to support his contention, learned Counsel relied upon the judgment of the Madras High Court in the case of the Commissioner, Hindu Religious and Charitable Endowments Department, Madras and others Vs. Ramling Reddiar in A.S.No.512/2002 decided on 24th of June, 2009. Learned Counsel also cited the judgment of the Madras High Court in the case of Ramanasramam, by its secretary G. Sambasiva Rao and others vs. The Commissioner of Hindu Religious and Charitable Endowments, Madras (AIR 1961 Madras 265) to submit that the dedication of a property for worship at Tomb is not sanctioned by Shastriac practices and is not valid amongst the Hindus. Learned Counsel further submitted that nothing is brought on record by the original applicant that the Service Inam of the subject land was made for benefit of any sect of the society or that some obligation was annexed to the ownership of the Inam land held by the disciples of Govindgir Maharaj. According to the learned Counsel, in such circumstances, the question whether the Math is a public trust or private trust does not arise. In order to support his argument, learned Counsel relied upon the judgment of the Honourable Apex Court in the case of Ram Bharose Sharma vs. Mahant Ram Swaroop and Others ((2001) 9 SCC 477).

7. Shri N.P.Patil Jamalpurkar, learned Counsel appearing for respondent nos. 3, 4 and 6 submitted that merely because on certain occasions the general public visits the subject Math, the same cannot be held to be a public trust. To buttress his contention, learned Counsel relied upon the judgment of the Honourable Apex Court in the case of Haribhanu Maharaj of Baroda, vs. Charity Commissioner, Ahmedabad (AIR 1986 SC 2139).

8. I have carefully considered the submissions made on behalf of the learned Counsel appearing for the respective parties. I have perused the impugned judgment and the other material placed on record.

9. The material on record reveals that the Nizam Government had granted Munthkhab in respect of survey No.10 situate at village Wasangaon to perform the Pooja of Khandgir Maharaj Samadhi. The grant was not in the name of any deity but was in the name of individual person. The appellant or the persons interested in getting the subject Math registered as the public trust have not brought on record any material to show that the grant was in the name of a deity. As has been observed by the learned Joint Charity Commissioner in his judgment, the appellant Ram Narsu Gore has admitted in his cross examination that the subject Math was established prior to 100 years and it was belonging to

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Khandgir Maharaj and then the same was succeeded by his disciples. It has also come on record through the cross examination of said Ram Gore that the persons belonging to Gosavi community used to reside in the Math. It has also come on record that dead persons from Gosavi community were used to be buried near the residential place and there are 7/8 Samadhis as such of the persons from the Gosavi community. Ram Narsu Gore has further admitted in his cross examination that idols of God are not installed in the Math and the idols of Hindu gods are not worshipped in the Math. Ram Narsu Gore further pleaded ignorance as to who constructed the Math, whether the persons from Gosavi community or someone else.

10. From the facts which have come on record through the cross examination of Ram Narsu Gore, the learned Joint Charity Commissioner has rightly drawn an inference that the subject Math is the private property of the Gosavi community and it was not open for the public at large. The learned Joint Charity Commissioner has further observed that in the cross examination of Shri Ashok Gir, examined on behalf of the original objectors, nothing was brought on record to show that the subject Math was constructed by the villagers by collecting funds. Even in the cross examination of Damodar Bokade (DW 2), no such facts were brought on record that the Math was constructed by the villagers of Wasangaon and that it was used by the villagers for worship as of right. On the contrary, as has come on record through cross examination of Damodar Bokade (DW 2) at occasions, villagers were allowed to perform Bhajan, Pujan and Bhandara in the Math. However, as has been held by the Apex Court in the case of Haribhanu Maharaj of Baroda, cited supra, even if on specified occasions, the owners of the Math had permitted the members of the public to visit the Math and worship, it would not mean that the Math is a public trust. The learned Joint Charity Commissioner has, therefore, recorded a logical finding that the original applicant has failed in bringing on record sufficient evidence to show that the villagers of Wasangaon or the public at large used the subject Math for worship as of right.

11. More importantly, as has been held by the learned Joint Charity Commissioner, the original applicants have not brought on record any evidence to show that the subject Math was established for promotion of Hindu religion or that the religious instructions were imparted from the said Math or the persons In Charge of the said Math were rendering spiritual services to the public at large.

12. Section 2(13) of the Act defines Public Trust. The definition reads thus:

"2(13) '''' public trust'''' means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, (church, synagogue, agiary or other place of public religious worship,) [a dharmada] or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the societies Registration Act, 1860 (XXI of 1860)."

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13. Section 2(9) of the Act defines Math as under:

"2(9) ''''math'''' means an institution for the promotion of the Hindu religion presided over by a person whose duty it is to engage himself in imparting religious instructions or rendering spiritual service to a body of disciples or who exercises or claims to exercise headship over such a body and includes places or religious worship or instruction which are appurtenant to the institution."

14. As stated hereinabove, nothing has been brought on record to show that the person who was presiding over the subject Math was involved in promotion of Hindu religion and had engaged himself in imparting religious instructions by rendering spiritual services to a body of disciples or he exercised or claimed to exercise headship over such body. In absence of any such evidence, merely because the nomenclature is Ramgir Maharaj Math Sansthan, Wasangaon, it cannot be, in fact, held to be a Math as defined under Section 2(9) of the Act.

15. From the material on record it is discernible that the Math was and is being used as the property by the people of Gosavi community. It is used as residential place as well as burial ground by the people of Gosavi community. I, therefore, do not see any infirmity in the finding recorded by the learned Joint Charity Commissioner which has been confirmed by the learned District Judge that the original applicant has utterly failed in proving that the subject Math is a public trust.

16. In so far as the properties are concerned, I deem it appropriate to reproduce hereinbelow the discussion made by the learned Joint Charity Commissioner in paragraph no.17 of his judgment which reads thus:

"17) My attention was drawn by learned advocate for both the parties towards ''muntkhab'' of survey no.10. Both parties are claiming right over the landed property on the basis of this ''muntkhab''. The Marathi translation of ''muntkhab'' (Exh.32/8) in appeal is made available to me. This ''muntkhab'' shows that in the year 1303 hijari, 15 ''bighe'' land was given to Govindgir Chela Ganeshgir as ''service inam''. The condition of this ''service inam'' was to serve the ''samadhi''. In other words, this ''service inam'' was given to Govindgir Chela Ganeshgir for rendering service to ''samadhi''. This ''muntkhab'' clearly shows that ''inam'' was given to Govindgir Chela Ganeshgir and not to the deity. The ''service inam'' given to Govindgir Chela Ganeshgir will be personal property of Govindgir Chela Ganeshgir and said property can not become trust property. Under Sec. 2(c) of Hyderabad Atiyat Inquiries Act, 1952,''''Muntkhabs means documents issued by competent authorities as a result of inam''''. Therefore, the above said ''muntkhab'' will be the basic document under which right in the landed property was given to Govindgir Chela Ganeshgir. By no stretch of imagination, it can be held that 15 ''bighe'' land given to Govindgir Chela Ganeshgir as ''service inam'' is trust property. My attention was drawn towards the series of revenue litigation decided in between the parties. However, the litigation regarding entries in revenue record or entries in mutation register is not

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sufficient to create or extinguish title in the immovable property. Because for some period name of ''Shri Ramgir Math'' is recorded in revenue record, on the basis of such stray entry inference can not be drawn that the above said landed property is the trust property. On the other hand, on the basis of ''muntkhab'', which is the basic document, I have no hesitation to hold that the property shown by applicant as trust property does not belong to the trust."

No such material has been brought on record in the appeal also so as to take contrary view than recorded as above by the learned Joint Charity Commissioner.

17. After having considered the entire material on record, it does not appear to me that the learned Joint Charity Commissioner has committed any error in setting aside the order passed by the Assistant Charity Commissioner and, consequently, in rejecting the application for registration of Shri Ramgir Maharaj Sansthan, Wasangaon, taluka and district Latur as a public trust. The learned District Judge has concurred with the finding recorded by the learned Joint Charity Commissioner. The facts which have come on record, if scrutinized in the background of the provisions under the Trusts Act, and more particularly, in the context of the definitions of the "public trust" , "Temple" and the "Math", it is difficult to agree with the submissions made on behalf of the appellant that the subject Math is liable to be registered as a public trust and further that the properties belonging to the said trust are liable to be declared as trust properties.

18. I reiterate that since nothing has come on record to show that Ramgir Maharaj Math Sansthan, Wasangaon, is an institution for promotion of the Hindu religion presided over by a person whose duty is to engage himself in imparting religious education or rendering spiritual services to a body of disciples or who exercises or claims headship over such a body and includes places or religious worship or instructions which are appurtenant to the institution. Merely because the nomenclature is ''Math Sansthan'', the Ramgir Maharaj Math Sansthan cannot be held to be a Math as defined under Section 2(9) of the Maharashtra Public Trusts Act. Further, since admittedly, there is no idol installed in the subject Math, the same cannot be held to be a temple as defined under Section 2(17) of the Trusts Act. Further, nothing has come on record to show that the subject Math is being used by the public at large for religious worship as of right. In the above circumstances, in no case, the Ramgir Maharaj Math Sansthan can be held to be a public trust. There appears no substance in the appeal filed by the appellant. Hence, the following order: ORDER

1. The First Appeal is dismissed. No order as to the costs. Civil Applications, if any, stand disposed of.

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