(1971) 12 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No. 595 of 1971

Ratandasji Sevadasji and another APPELLANT

Vs

Babubhai Krishnashankar Dave and others RESPONDENT

Date of Decision : 03-12-1971

Acts Referred:

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

Citation : AIR 1972 Guj 216

Hon'ble Judges : B.J. Divan, J

Bench : Single Bench

Advocate : B.R. Shah, for the Appellant; H.B. Shah, for Respondent No. 3, B.J. Shelat, Asst. Govt. Pleader and Charity Commissioner, for the Respondent

Final Decision : Dismissed

Judgement

Divan, J.—The petitioners herein are the Trustee and Manager respectively of a Public Trust, which owns properties in Ahmedabad. The respondents herein had applied to the Charity Commissioner u/s 51 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the Act) for permission to file a suit u/s 50 of the Act. That application was on the footing that the petitioners had committed breaches of trust and were acting against the interests of the trust by mismanaging and mis-applying the trust funds and mal-administering the trust property. The Joint Charity Commissioner held an inquiry into the matter, heard both the parties and by his order, dated August 5, 1969, he dismissed the application with costs. Against this order of the Joint Charity Commissioner, the respondents filed an appeal before the Gujarat Revenue Tribunal under the provisions of Section 51 (2) of the Act. On behalf of the petitioners, a contention was raised before the Revenue Tribunal that since the legal proceedings in the shape of an appeal before the Revenue Tribunal raised a question affecting the Public Religious or Charitable purpose, the Tribunal could not proceed to determine such question until after a notice had been given to the Charity Commissioner. That objection was turned down. There was also an application to join the Charity Commissioner as a party to the appeal and that application was also rejected. It is against this decision of the Revenue Tribunal rejecting this application to join the Charity Commissioner that the present Special Civil Application under Article 227 has been filed.

2. Section 56-B of the Act provides-

56-B. (1) In any suit or legal proceedings in which it appears to the Court that any question affecting a public religious or charitable purpose is involved, the Court shall not proceed to determine such question until after notice has been given to the Charity Commissioner. ....

(3) In this section "Court" shall mean any Civil Court of competent jurisdiction in the State of Gujarat.

Mr. B. R. Shah, for the petitioners, contends that the words "Civil Court" mean a Court where civil proceedings are entertained. Now, it must be borne in mind that there are three broad categories of all Courts, viz., Revenue Courts, Criminal Courts and Civil Courts; but there is a common feature of all Courts, which must be possessed before the designation "Court" can be applied to any Tribunal or body and that essential characteristic is the adjudicatory process, whereby the Court concerned will adjudicate upon a particular dispute. In deciding whether the sanction to prosecute a particular suit u/s 50 of the Act should or should not be granted, the Charity Commissioner does not adjudicate upon any dispute; and it is for him after holding such inquiry as he thinks fit to give his consent to the suit being filed. This function is purely administrative and in these proceedings u/s 51. the Charity Commissioner cannot be said to adjudicate upon any dispute between the parties. Looking to the interests of the charity as a whole he has to decide whether to give his consent to the filing of a suit, for which an application has been filed; and whether it is in the interests of charity to grant such consent or not. In doing so, he does not adjudicate upon any dispute. The appeal u/s 51 (2) lies to the Revenue Tribunal against the decision, of the Charity Commissioner refusing to give his consent to the institution of a suit; and the scope of the powers of the Revenue Tribunal cannot be wider than the scope of the authority of the first instance i.e. the Charity Commissioner. Surely, the Revenue Tribunal exercising the appellate powers u/s 51 (2) can exercise the same powers of the Charity Commissioner; but it is not open to the Revenue Tribunal functioning u/s 51 (2) to adjudicate upon any dispute or to decide any question either of fact or of law, while deciding the appeal u/s 51 (2). Under these circumstances, the Revenue Tribunal while functioning u/s 51 (2) cannot be said to be a Court much less a Civil Court of competent jurisdiction. I may point out that under the definition Section 2 (4). "Court" means in the Greater Bombay, the City Civil Court and elsewhere the District Court. Therefore, if the special definition u/s 56-B (3) had not been there, the scope of Section 56-B would have been confined only to suits or legal proceedings in Bombay City Civil Court or the District Court. In order to see that all suits and legal proceedings in each and every Civil Court of competent jurisdiction, where any question affecting public religious or charitable purpose is involved, a Civil Court of competent jurisdiction, whether functioning under the Bombay Civil Courts Act or under the Provincial Small Cause Courts Act or under the Rent Control Act or any other similar legislation setting up a Civil Court, will have to give notice to the Charity Commissioner about the pendency of such suit or proceeding. But if a forum before which or the Tribunal before which a legal proceeding is pending, is not a Court, much less a Civil Court of competent jurisdiction, there is no question of any notice having to be given to the Charity Commissioner even though there may be a legal proceeding.

3. Considering from still another angle, it seems to me that the notice to the Charity Commissioner is totally redundant so far as the appellate proceeding u/s 51 (1) is concerned. The Charity Commissioner himself gave the decision and against his own decision the appeal is being carried to the Revenue Tribunal u/s 51 (2). Under these circumstances, it could never have been the intention of the Legislature that a notice about the appeal arising against its own decision should be required to be given to the Charity Commissioner by the Revenue Tribunal when the Revenue Tribunal is deciding the appeal.

4. Under these circumstances, the conclusion of the Revenue Tribunal on the application filed by the petitioner before it was correct. This Special Civil Application, therefore, fails and rule is discharged. The petitioners to pay personally the costs of the respondents of this Special Civil Application. The Charity Commissioner''s costs to come out of the trust fund.

Petition dismissed.

