
(1961) 07 GUJ CK 0006
In the Gujarat High Court

Shantilal Khimchand and Others

APPELLANT

Vs

Mulchand Dalichand and Others

RESPONDENT

Date of Decision : 18-07-1961

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22, 72, 72(4), 72(4)
Evidence Act, 1872 — Section 29(2)
Limitation Act, 1963 — Section 12, 29, 4

Citation : (1962) 3 GLR 117

Hon'ble Judges : V.B. Raju, J;A.R. Bakshi, J

Bench : Division Bench

Judgement

A.R. Bakshi, J.—This is an appeal u/s 72(4) of the Bombay Public Trusts Act, against the order dated 22nd June 1957 passed by the learned District Judge, Broach in Miss. Application No. 14 of 1956 filed before him u/s 72 of the Bombay Public Trust Act, 1950, setting aside the order passed by the Charity Commissioner in Change Application No. 181 of 1953.

2. A few facts relating to this matter may be stated. On 25th November 1953 a report of a change in the trustees was made to the Assistant Charity Commissioner u/s 22 of the Act. That application was contested by those respondents who claimed themselves to be the members of the Broach Jain Sangh having the right to appoint trustees. An enquiry under the provisions of Section 22 was started and was transferred to the Deputy Charity Commissioner who held the enquiry with the aid of assessors. On a consideration of the evidence, the Deputy Charity Commissioner held that the old trustees wanted to resign, but it was for the Broach Vejalpore Jain Sangh to accept their resignations and to appoint new trustees and that the Ladwa Shrimali Jains who appointed the applicants before him as the new trustees had no such power. The Deputy Charity Commissioner also did not accept the contention raised on behalf of the respondents that the Ladwa Shrimali Jains and the Vejalpore Jain Sangh were an identical body. He therefore rejected the change report and ordered the new trustees to hand over the charge of the trust if taken by them to the old

trustees who were to continue the management until validly appointed trustees take over the charge from them. Appeal No. 186 of 1954 was preferred to the Charity Commissioner u/s 70 of the Act and it was held therein that the change in the office of the trustees had in fact taken place before the date of the change application and that as the change had already been effected it must be recorded u/s 22 of the Act and that the legality and the validity of the change could not be challenged in proceedings u/s 22. Against this decision of the Charity Commissioner an application u/s 72 of the Act was preferred before the District Judge Broach who by his order dated 22nd June 1957 allowed the application and set aside the order passed by the Charity Commissioner. It is over this order that the present appeal is preferred before us.

3. Mr. A.N. Surti appearing on behalf of the appellants has urged three points before us viz.

(1) That the application to the District Judge against the order of the Charity Commissioner was barred by limitation as provided u/s 72(1) of the Act.

(2) That the scope of an enquiry u/s 22 of the Act was limited to the fact of the occurrence of the change and cannot include an inquiry into the question of its validity.

(3) That the Ladwa Shrimali Jain Sangh consisting of the appellants was competent to appoint new trustees and that therefore the change must have been recorded.

4. On the issue of limitation the learned District Judge held against the appellants. Likewise the issue as regards the scope of the inquiry was also decided against the appellants. As regards the third issue which was an issue of fact the learned District Judge decided that the Ladwa Shrimali Jain Panch of Vejalpore was not identical with the Vejalpore Jain Sangh which must be taken to be a larger body and therefore the Ladwa Shrimali Jain Panch had no authority to accept the resignations of the old trustees and to appoint new ones.

5. As regards the point of limitation Mr. Surti has urged that the application has been filed after 60 days from the order of the Charity Commissioner and that Sections 4 and 12(2) of the Limitation Act being inapplicable to the proceedings under the Bombay Public Trusts Act none of those sections can save the period of limitation prescribed under the Bombay Public Trusts Act Mr. Surti has referred to Section 75 of the Act which reads as under:

In computing the period of appeal under this chapter the provisions of Sections 4 5 12 and 14 of the Indian Limitation Act 1905 shall apply to the filing of such appeals.

6. Mr. Surtis contention is that the application of the sections referred to in Section 75 quoted above to applications has not been specifically made or provided for in Section 75 of the Act and that therefore by implication the application of these sections to applications must be taken to have been excluded

of this is so Mr. Surti further urges that Section 29 of the Indian Limitation Act cannot be resorted to and that therefore Section 4 or Section 12 of the Indian Limitation Act would clearly be inapplicable and the application to the District Judge will be obviously barred by limitation. The gist of Mr. Surti's contention therefore is that the period during which the District Court was closed on account of vacation and the time taken for obtaining true copies should not be excluded while counting the period of sixty days prescribed by Section 72(1) of the Bombay Public Trusts Act. It has however been conceded by Mr. Surti that if we take the view that either of the sections viz. Section 4 or Section 12 of the Indian Limitation Act would apply to the present case then the application under consideration would be within time.

7. The question therefore that arises for consideration is whether Section 4 or Section 12(2) of the Indian Limitation Act would be applicable to the application u/s 72. We do not propose to consider the second part of the question as regards the applicability of Section 12(2) in view of the fact that we are clearly of the view that Section 4 is applicable to the present case and the application to the District Judge u/s 72 is clearly saved by Section 4 of the Indian Limitation Act. It is therefore unnecessary to consider the second part of the question.

Section 29(2) of the Indian Limitation Act reads as under:

29 Where any special or local law prescribes for any suit appeal or application a period of limitation different from the period prescribed therefore by the first schedule the provisions of Section 3 shall apply, as if such period were prescribed therefore in that schedule and for the purpose of determining any period of limitation prescribed for any suit appeal or application by any special or local law.

(a) the provisions contained in Section 4 Sections 9 to 18 and Section 22 shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law and

(b) the remaining provisions of this Act shall not apply.

8. The provisions of Section 29(2) make it abundantly clear that the provisions contained in Section 4 shall apply to the extent to which they are not expressly excluded by a special or a local law. The exclusion therefore that is referred to in the said section must be specifically mentioned as excluded in the special or local law. What we have therefore to see is whether Section 75 of the Bombay Public Trusts Act provides for such a specific or express exclusion. All that Section 75 provides for is that the provisions of Section 4 shall apply the filing of such appeals but it does not exclude the application on Section 4 of the Indian Limitation Act to applications. It is clear that in order that the sections mentioned in Section 29(2) of the Indian Limitation Act should not apply, the exclusion by the special or local law must be express and not by implication and there is nothing in Section 75 of the Bombay Public Trusts Act which deals with computation of the period of limitation for an application and which expressly excludes the provisions of Section 29(2). Section 75 deals with appeals which are

provided under the Act and with regard to appeals the provisions of certain sections have been made applicable. There is a specific reference in Section 75 of the Bombay public Trusts Act to appeals and applying Section 75 to appeals the effect would be that the sections of the Indian Limitation Act mentioned in Section 75 will apply to appeals. But that does not necessarily mean that Section 4 of the Indian Limitation Act will not apply to applications as the application of Section 29 or Section 4 of the Indian Limitation Act has not been specifically excluded. In spite of the provisions of Section 75 of the Bombay Public Trusts Act therefore which as we have already stated would apply only to appeals Section 29 of the Indian Limitation Act will yet hold the field in respect of these matters which are not appeals. In other words as regards applications Section 69 of the Indian Limitation Act will continue to apply and consequently Section 4 of the Indian Limitation Act as well. There is therefore no substance in the first contention of Mr. Surti.

9. The second contention raised by Mr. Surti is based on Section 22 of the Bombay Public Trusts Act. It is contended by Mr. Surti that the enquiry u/s 22 of the Act is related to the fact whether a change has in fact occurred and it cannot be extended to a consideration of the question regarding the validity of the change. The District Judge says Mr. Surti has no jurisdiction to investigate into the question of the validity of the change and his decision thereon is therefore bad in law. We are unable to accept this contention. It will be useful here to quote the relevant provisions of Section 22 of the Bombay Public Trusts Act.

22(1) Where any change occurs in any of the entries recorded in the register kept u/s 17 the trustee shall within 90 days from the date of the occurrence of such change or where any change is desired in such entries in the interest of the administration of such public trust report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trust Registration Office where the register is kept. Such report shall be made in the prescribed form.

(2) For the purpose of verifying the correctness of the entries in the register kept u/s 17 or ascertaining whether any change has occurred in any of the particulars recorded in the register the Deputy or Assistant Charity Commissioner may hold an inquiry.

(3) If the Deputy or Assistant Charity Commissioner as the case may be after receiving a report under Sub-section (1) and holding an inquiry if necessary under Sub-section (2) or merely after holding an inquiry under the said Sub-section (2) is satisfied that a change has occurred in any of the entries recorded in the register kept u/s 17 in regard to a particular public trust he shall record a finding with the reasons therefore to that effect. Such finding shall be appealable to the Charity Commissioner. The Deputy or Assistant Charity Commissioner shall amend the entries in the said register in accordance with such finding and if appeals (or applications) were made against such finding in accordance with the final decision of the competent authority provided by this Act. The amendments

in the entries so made shall be subject to any further amendment on the occurrence of a change be final and conclusive.

10. u/s 22(1) it is the trustee who has to report the occurrence of the change. u/s 22(2) the Deputy or Assistant Charity Commissioner is authorised to hold an inquiry which relates to two matters-(1) verifying the correctness of the entries in the register and (2) ascertaining whether any change has occurred in any of the particulars recorded in the register. Sub-Section 3 of Section 22 requires the officer holding an inquiry to be satisfied that a change has occurred and is enjoined to record a finding with reasons therefor. The fundamental question before him would thus be whether a change has occurred and for that purpose it is obvious that he will have to enquire whether a change has occurred in the constitution of the trustees if the reported change relates to such a question. As a necessary consequence he will have to see that the new trustees referred to in the change have been appointed as trustees in whom the trust property can legally vest. Such persons as are mentioned in the change can be trustees provided they are appointed by a body of persons authorised to appoint a trustee. Whenever therefore a question arises whether the body of persons who has appointed the trustees is not in fact the real body of persons who could appoint a trustee such a dispute will have to be enquired into and the officer holding the inquiry will have to go into that dispute because if an unauthorised group of persons or outsiders choose to appoint a trustee such a person cannot be said to be a trustee at all and it cannot be said in such a case that he has been appointed a trustee. For the purpose of proving the correctness of the fact of a change it will have to be shown not only that the appointment of a person has been made but also that such person is appointed as a trustee. If therefore an unauthorised group of persons or outsiders have effected the change and appointed new trustees such persons so appointed cannot be said to be trustees at all and such an appointment or a change cannot be said to be an appointment or a change at all. If this were not so it would be easy to manipulate the introduction of foreign elements outside the scope of the trust in the administration of the trust and vest the trust properties in them. To give any other construction or effect to the provisions of Section 22 would create great hardship and produce results not contemplated by the section. If the interpretation sought to be given by Mr. Surti were to be accepted any persons who might choose to pose themselves falsely as persons authorised to appoint trustees and who are really outsiders without any right would be able to interfere and inter-meddle with the affairs of a trust and be able to effect changes of their choice. The change contemplated by Section 22 postulates firstly a lawful cessation of the old position and secondly thereafter a lawful creation of a new one. If the new state of affairs constituting the change cannot in law change or substitute the old order there is no change at all in fact and such a supposed change cannot be recorded. The change in other words must occur as contemplated above before it is recorded and an inquiry into such an occurrence must include all matters inter-related and closely connected with it and which

enable the inquiry officer to come to a conclusion regarding its existence. Moreover the position of a trustee is a position of status and an inquiry into the fact of the appointment is really an inquiry into the fact whether the appointment to hold such a status has been made. The real question in such cases would be whether a change in fact has occurred in the legal status and therefore would fall within the field of inquiry u/s 22 and whenever questions or disputes such as are indicated above arise it would be necessary to inquire into such disputes and to decide them. In the present case the inquiry into the change in the constitution of the trustees must therefore include the question whether the persons who were appointed were in fact appointed as persons to hold the status of trustees. Such persons could not be trustees or hold the status of trustees in they were so appointed by persons who had no power to appoint them and an inquiry into the question as was made by the Deputy Charity Commissioner and the learned District Judge was therefore proper.

11. As regards the third question the factual position has been summarized by the Deputy Charity Commissioner in Para 7 of his order as follows:

At the time of renovating this temple in Samvat 506 Jains other than Ladwa Shrimali Jains contributed money and so in the form filled up Ladwa Shrimali Jains and other Jains living in Vejalpore locality of Broach were shown as the persons who were to fill up future vacancies. So when the old trustees wanted to resign it was for the whole Vejalpore Jains to accept the resignations and to elect new trustees. So the new trustees selected by a section of Jains of Vejalpore i.e. by Ladwa Shrimali Jains is not proper I do not accept the version of the new trustees that Ladwa Shrimali Jains and Vejalpore Jain Sangh mean the same thing. The former is a part of the latter The change report should not be inconsistent or contrary to the finding given at the time of inquiry. If there is any mistake in the finding steps should have been taken to remove that mistake. And the change report submitted is inconsistent with the finding given in inquiry No. 191/1952 and so deserves dismissal on the very face of it.

12. The learned District Judge has also held that according to the accepted mode of succession in the application made u/s 19 (No. 191 of 1952) Col. 2 it was mentioned that the Broach Vejalpore Jain Sangh was to appoint new trustees. The new trustees shown in the change report were appointed by the Broach Vejalpore Ladwa Shrimali Jains. The learned District Judge has also observed:

As per notice dated 31st October 1953 (page 23) there are Jains belonging to different sub-sects such as Ladwa Shrimali Visa Shrimali Porwad Oswal Jains etc. Therefore the Ladwa Shrimali Jain Panch of Vejalpore would only be a part of Vejalpore Jain Sangh which must be taken to be a larger Body and including the Ladwa Shrimali Jains of Broach Vejalpore.

13. It therefore, appears that the Ladwa Shrimali Jain Panch at Vejalpore is not identical with the Vejalpore Jain Sangh which is a larger body and which includes within itself the Ladwa Shrimali Jains of Vejalpore. The learned District Judge

referring to the evidence in the case has observed:

It appears from the evidence of Chimanlal (exhibit 17) that the Jain temple of Vejalpore was renovated at considerable expense, the contributions being made to the funds by Jains of different sub-Section and invitation to the Installation Ceremony (Pratishtha) was made in the name of the Broach Vejalpore Jain Sangh, and that accounts for the public trust being registered in the name of Shri Broach Vejalpore Jain Derasar Sarvajanic Trust and the successors thereto were to be appointed by the Shri Broach Vejalpore Jain Sangh and not Broach Vejalpore Ladwa Shrimali Jain Sangh or Ladwa Shrimali Sthanik Jain Sangh which only would be a part of the larger body known as Broach Vejalpore Jain Sangh.

14. In these circumstances the change report was rightly rejected by the Deputy charity Commissioner on the ground that the new trustees selected by the Ladwa Shrimali Jains were not appointed by the Jains of Vejalpore i. e. the Vejalpore Jain Sangh which is a larger body than the Ladwa Shrimali Jains and the learned District Judge was also right in accepting that finding of the Deputy Charity Commissioner and in setting aside the order passed by the Charity Commissioner.

15. The last question that has to be considered is about costs. The learned District Judge has ordered opponents Nos. 1 to 4 before him to pay the costs of the applicants before him throughout and the costs of the Charity Commissioner have been ordered to be recovered from the properties or funds of the trust. We do not propose to disturb the latter portion of his order as regards the costs of the Charity Commissioner which shall be met from the funds of the trust and we make the same order as regards the costs of the Charity Commissioner also in the appeal before us. As regards the costs of the applicants before the District Judge we are of the view that the costs should be taxed at Rs. 15/-. As regards this appeal the costs of the respondents except the costs of the Charity Commissioner shall be taxed also at Rs. 15/-which shall be paid by the appellants.

In the result this appeal is dismissed with the order as to costs mentioned above.