(2003) 12 GUJ CK 0016

In the Gujarat High Court

Case No : Special Civil Application No. 9340 of 2003

Shree Dwarka Lohana Mahajan Sada-Vrut Fund APPELLANT

Vs

Joint Charity Commissioner RESPONDENT

Date of Decision : 05-12-2003

Acts Referred:
Bombay Public Trusts Act, 1950 — Section 50A

Citation : AIR 2004 Guj 147

Hon'ble Judges : M.S. Shah, J

Bench : Single Bench

Advocate : Bhavika Kotecha, for Yogesh S. Lakhani, for the Appellant; Dipen Desai, AGP, for the Respondent

Judgement

M.S. Shah, J.—Rule. Mr. Dipen Desai, learned AGP waives service of rule for the respondent.

2. What is challenged in this petition filed under Article 226 and 227 of the Constitution of India is the order dated March 12, 2003 passed by the learned Joint Charity Commissioner, Saurashtra - Kutch Region at Rajkot rejecting the petitioner''s application raising the preliminary contention against initiation of suo motu proceedings u/s 50-A of the Bombay Public Trusts Act, 1950 ("the Act" for short) for framing the scheme in respect of Shree Dwarka Lohana Mahajan Sadavrut Fund ("the trust" for short).

3. By the show cause notice dated August 1, 2000 the learned Joint Charity Commissioner called upon the Trustees of the trust to state their case regarding framing of the scheme for the trust for its proper management and administration. The Trustees submitted their preliminary reply dated November 9, 2000 raising preliminary contention that suo motu notice u/s 50-A of the Act cannot be issued without some factual data or material finding place in the show cause notice and the Trustees getting an opportunity to show cause that such suo motu proceedings should not be initiated. The petitioner also relied upon the decision of the Bombay High Court in the case of Taher Alimohohamad

Poonawala Vs. Quizar Shaikh Nomanbhoy and others, . The petitioner also submitted the application dated November 3, 2002 praying that preliminary contention raised in the aforesaid application be raised as a preliminary issue and decided first.

4. Learned Joint Charity Commissioner, however, rejected the said application by his order dated March 12, 2003 taking a view that the Charity Commissioner has got statutory and discretionary powers to initiate the proceedings for framing the scheme u/s 50-A of the Act and that the Trustees have no right to get any such preliminary issue raised. Learned Joint Charity Commissioner also observed that the Trustees are going to get an opportunity during the proceedings, and, therefore, there was no reasonable cause for not continuing the suo motu proceedings. It is against the aforesaid order that the Trustees have approached this Court.

5. Ms. Bhavika Kotecha, learned counsel for the petitioner trust, has vehemently submitted that the learned Joint Charity Commissioner has not at all appreciated the legal and jurisdictional contention raised by the petitioner that the Joint Charity Commissioner had no jurisdiction to initiate such proceedings without some factual material which must be indicated in the show cause notice. Learned counsel submitted that a bare perusal of the show cause notice clearly indicates that the learned Joint Charity Commissioner had not given any reason or indicated any material or made reference to any material for justifying initiation of the suo motu proceedings. It is submitted that the question of framing the scheme for the proper management and administration of the trust would arise only if there is some material indicating that the trust was not being properly managed or administered and if such allegations were contained in the show cause notice with some specific details, the trust would have got opportunity to deny the allegations and to rebut the material being put against the trust. It is submitted that, in view of the aforesaid decision of the Bombay High Court, learned Joint Charity Commissioner has committed jurisdictional error in not entertaining and appreciating the preliminary contention raised by the petitioner.

6. On the other hand, Mr. Dipen Desai, learned AGP for the learned Joint Charity Commissioner, has supported the order of the learned Joint Charity Commissioner and submitted that the show cause notice has stated that the scheme is required to be framed for proper management and administration of the trust and that is sufficient ground for initiating the suo motu proceedings u/s 50-A of the Act. Mr.Desai has relied on the decision of this Court in Bipinchandra P. Patel Vs. Jashwant Lalbhai Naik 15 GLR 411.

7. Having heard the learned counsel for the parties, it appears to the Court that the contention raised by Ms. Bhavika Kotecha, learned counsel for the petitioner, is very well founded and is clearly supported by the decision of the Bombay High Court in the case of Taher Alimohohamad Poonawala Vs. Quizar Shaikh Nomanbhoy and others, . In the said decision, the Bombay High Court has clearly held that, mere reproduction of words of Section in the show cause notice

for commencement of the suo motu inquiry can never amount to sufficient compliance of law and at least some factual data and material sought to be relied on must find place in the show cause notice issued to the trustees. In the facts of the instant case, the show cause notice is indeed very vague and is nothing, but, mere reproduction of the words of section 50-A of the Act. If some factual data or material had been indicated in the show cause notice or by way of annexures to the show cause notice, the petitioner would have got opportunity to rebut the said material or would have at least known as to what material the trust is required to produce before the learned Joint Charity Commissioner. In absence of any such factual data or material, learned Joint Charity Commissioner could not have initiated the suo motu proceedings u/s 50-A of the Act.

8. It is true that some observations are made by this Court in para 5 of the decision in Bipinchandra Purshottamdas Patel vs. Jashwant Lalbhai Naik, 15 GLR 411 to the effect that the Charity Commissioner has been empowered to initiate proceedings u/s 50A if he has reason to believe that in the interests of proper management or administration of a public trust, a scheme should be settled for it and that it will naturally depend upon his subjective satisfaction.

However, immediately after the aforesaid observations, the Court proceeded to observe as under :-

"If there is such subjective satisfaction of his (Charity Commissioner), he has to give the trustees due opportunity to be heard, and after giving such due opportunity to be heard, he has to satisfy himself that it is necessary or expedient so to do to frame a scheme for the management or administration of such public trust or when two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that in the interest of the proper management or administration of a public trust, a scheme should be settled for it, he has to give such due opportunity to the trustees of being heard and after being satisfied that it is necessary or expedient so to do, he is entitled to frame a scheme for the management or administration of such a public trust. In my opinion, therefore, it cannot be said that in all such cases, the procedure that is to be followed in the trial of a suit has got to be followed. In my opinion, it will all depend on the facts and circumstances of each case and on the facts and circumstances of each case, one will be required to decide whether due opportunity to the trustees of such public trust of being heard was given or not."

9. In view of the aforesaid observations, it is clear that the trustees will not get due opportunity unless the trustees are informed through the show cause notice as to what are the facts or the materials which have prima facie appealed to the Charity Commissioner to arrive at the subjective satisfaction that in the interest of the proper management or administration of a public trust, a scheme should be settled for it. Obviously, the procedure u/s 50A of the Bombay Public Trusts Act is not for the trial of a suit but when this Court has also held that the inquiry u/s 50A is not an administrative inquiry, but a quasi judicial inquiry (para 23 of the judgment) and that the principles of natural justice are required to be

followed, the trustees will have to be given an opportunity to show cause against initiation of the proceedings for framing a scheme because the proceedings for framing a scheme are not to be initiated unless the Charity Commissioner first comes to the conclusion that it is in the interest of proper administration or administration of the public trust that the scheme should be settled for it.

Of course, this Court also observed in paras 18 to 21 of the judgment that insistence upon examination and cross-examination of witnesses before initiation of the proceedings for framing a scheme may not be required.

That is however not the same thing as laying down that no facts or material is required to be brought to the notice of the trustees while issuing the show cause notice u/s 50A of the Act. As held in the above decision, it will all depend on the facts and circumstances of each case to decide whether due opportunity of hearing was given to the trustees of the public trust.

10. In the instant case, since the show cause notice is absolutely vague and contains no factual or other material, it has to be held that there is violation of the principles of natural justice. That this is the minimum that is required to be done is also borne out by the observations made in various decisions referred to by this Court in the aforesaid judgment.

11. In view of the above, the impugned order dated March 12, 2003 and the show cause notice dated August 1, 2000 at Annexure-A to the petition are quashed and set aside. The suo motu proceedings being Scheme Proceedings No.8 of 2000 pending before the learned Joint Charity Commissioner, Rajkot are accordingly quashed and declared as void ab initio.

It is, however, clarified that the learned Joint Charity Commissioner will be at liberty to initiate fresh suo motu proceedings in accordance with law and in light of the observations made in this judgment.

Rule is made absolute with no order as to costs.