

(2024) 05 GUJ CK 0075
In the Gujarat High Court

Case No : R/Special Civil Application No. 8353 Of 2024

Viththalbhai Somabhai Patel

APPELLANT

Vs

Jayantkumar Mahadevprasad Dave & Ors

RESPONDENT

Date of Decision : 27-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Bombay Public Trusts Act, 1950 — Section 50A

Citation : (2024) 05 GUJ CK 0075

Hon'ble Judges : Vimal K. Vyas, J

Bench : Single Bench

Advocate : Bhaumik Dholariya, Manan V.Bhatt

Final Decision : Dismissed

Judgement

Vimal K. Vyas, J

1. Learned advocate Mr.Manan V.Bhatt has submitted that he has instructions to appear on behalf of the respondent no.1. The registry shall accept his vakalatnama as and when it is filed.

2. The present petition is filed under Article 226/227 of the Constitution of India with the following prayers :

“(A) Your Lordship may be pleased to issue a writ of certiorari/prohibition or any other appropriate writ, order or direction in the nature of certiorari/prohibition and be pleased to quash and set aside the order dated 23.05.2024 passed by the learned Joint Charity Commissioner, Rajkot, in Scheme Application No.50 of 2021 and consequently be pleased to dismiss the Application for stay filed by the Respondent No.1 in Scheme Application No.50 of 2021 (Annexure ‘E’ Colly.);

(B) During the pendency and till the final disposal of this petition, Your Lordships may be pleased to stay the further hearing and proceedings pursuant to Order dated 23.05.2024 in Scheme Application No.50 of 2021 (Annexure ‘E’ Colly.);

(C) Any other and further relief as thought fit may be granted in the peculiar facts and circumstances of the case and in the interest of justice.”

3. It appears from the record that the petitioner and the respondent had jointly filed Scheme Application No.50 of 2021 under Section 50-A of the Bombay Public Trusts Act, 1950, for the trust, namely, Shri Vasna Kotariya Gamat Gaushala Trust, Vadodara, which was partly allowed by the learned Joint Charity Commissioner, Vadodara, and accordingly, the scheme was framed by virtue of the order dated 18th May 2024.

4. The respondent no.1, thereafter, issued notice dated 20th May 2024 for scheduling a meeting for the implementation of the said scheme. Similar notice has also been issued by the present petitioner. Thereafter, the respondent no.1 has preferred an application before the learned Joint Charity Commissioner, Vadodara, to stay the operation, implementation and execution of the order dated 18th May 2024.

5. On 23rd May 2024, the learned Joint Charity Commissioner, Vadodara, has issued notice to the petitioner and the stay application was fixed for hearing on 24th May 2024. The said order is challenged by the petitioner in the present petition, mainly on the ground that after passing of the order dated 18th May 2024, the learned Joint Charity Commissioner becomes functus officio and she has no authority to stay the application preferred by the respondent no.1.

6. Heard learned advocate Mr.Bhaumik Dholaria for the petitioner and learned senior advocate Mr.Asim Pandya assisted by learned advocate Mr.Manan V.Bhatt for the respondent no.1 as well as perused the documents as pointed out by them.

7. It appears from the documents produced on record that the respondent has filed the application to stay the operation, implementation and execution of the order dated 18th May 2024, therefore, instead of passing any ex parte interim order, and with a view to afford opportunity of hearing to the present petitioner, the learned Joint Charity Commissioner thought it fit to issue notice and fixed the matter for hearing. This Court has gone through the impugned order of the learned Joint Charity Commissioner and found that the learned Joint Charity Commissioner has permitted the petitioner to appear personally or through an advocate and to file the written objections as well. It transpires that the learned Joint Charity Commissioner has followed the principles of natural justice. She has not passed any ex parte ad interim order but, with a view to afford opportunity of hearing to the petitioner, she has issued notice by way of impugned order and fixed the matter for hearing on 24th May 2024. Needless to say, that all opportunities are available to the petitioner to raise every objection regarding the maintainability of the petition as well as jurisdiction, etc. at the time of hearing. It appears that without doing so, the present petition has been filed.

8. Since the learned Joint Charity Commissioner has not passed any ad interim or final order and has only issued the show-cause notice to the petitioner, and

that too, with a view to afford opportunity of hearing to the petitioner, the present petition seems to be premature.

9. In view of the aforesaid circumstances, the petition being devoid of any merits, the same deserves to be and is hereby dismissed. The petitioner is permitted to raise all the objections before the learned Joint Charity Commissioner, who shall consider and decide the same in accordance with law.