

CASE NO.:
Appeal (civil) 1260 of 2006

PETITIONER:
Vinod Kumar Mathurseva Malvia & Anr

RESPONDENT:
Maganlal Mangaldas Gameti & Ors

DATE OF JUDGMENT: 24/02/2006

BENCH:
S.B. Sinha & P.K. Balasubramanian

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (Civil) No.24198 of 2005]

S.B. SINHA, J :

Leave granted.

This appeal is directed against the judgments and orders dated 06.10.2005 and 10.10.2005 passed by a learned Single Judge of the High Court of Gujarat at Ahmedabad in First Appeal No. 988 of 2005 whereby and whereunder the appeal preferred by the Appellants herein from a judgment and decree dated 07.04.2005 passed by the Extra Assistant Judge, was dismissed.

The basic fact of the matter is not in dispute.

The Church of Brethren General Board (India) (CBGB) is a trust registered under the Bombay Public Trust Act, 1950. It has a scheme of trust for administration, management including indicating mode of succession for appointment of trustees. In 1971 the Church of Brethren General Board (India) came into existence, which was registered in 1971. A public trust known as 'Church of North India' (CNI) was also registered before the Charity Commissioner in the year 1980-81. Yet another trust known as 'First District Church of Brethren' was registered under the Societies Registration Act, 1860 as a public trust as also in terms of the Bombay Public Trust Act. Interpretation and application of Clause 9 of the scheme of CBGB was the subject matter of dispute between the parties, which reads as under :

"9. Appointment of New trustees when vacancies arise :

Trustee shall be appointed by the Church of the Brethren General Board, Elgin, Illinois, USA by granting Power of Attorney to select individuals either American or Indian. Where there is a vacancy, nominations to fill the post may be made to the Church of the Brethren General Board by First District Church of the Brethren or Second District Church of the Brethren or Second District Church of the Brethren (India) or their successors, whenever any Trustee, either original or substituted under the Scheme shall during his tenure of Trusteeship dies or is absent for more than six months from India without leave of absence from the Charity Commissioner or Assistant Charity Commissioner of the region, or is convicted of a criminal offence involving

moral turpitude or desires to be discharged from or refuses or becomes unfit or incapable to act in the Trust or to execute the powers in his reposed, the surviving or continuing Trustees for the time being shall intimate to the Church of the Brethren General Board to fill in the said vacancy within three months from the date of the receipt of the intimation; and if they fail to do so within three months, the surviving or continuing trustees may appoint any person or persons to be trustees in the place or places of trustees so dying or convicted, as aforesaid, or desiring to be discharged or refusing or becoming unfit or incapable to act as aforesaid. If any such vacancy shall occur and no appointment in writing of a new trustee or trustees shall be made by passing an unanimous resolution in that behalf by all the surviving or continuing trustees within six months from the happening of such event, it shall be lawful for the Charity Commissioner at any time after the expiration of such time by writing to appoint a new Trustee or Trustees of this Trust as he may think fit and proper and as circumstances may require."

In between 1985 to 1991 five change notices were filed before the Assistant Commissioner but no action was taken thereupon

A change notice was filed in terms of Section 22 of the Bombay Public Trust Act before the Assistant Commissioner by the Respondent No.1 herein. He, despite the fact that in terms of the scheme, the trust was to consist of not less than 5 and not more than 7 trustees, was the sole surviving trustee. By reason of the said change notice a proposal was made to delete the names of (i) Bishop of Gujarat Rev. Christachari; and (ii) Mr. Vithaldas N. Bhagat, as admittedly they were no more. The Respondent No.1 also proposed four other names for their appointment as trustees. The Assistant Charity Commissioner did not make any enquiry in relation thereto. The said change notice was approved. The legality and/or validity of the said order dated 03.08.1999 approving the said change notice was questioned before the Appellate Authority, namely, the Joint Charity Commissioner, Baroda, in Appeal No.7 of 1999. The matter was remanded to the Assistant Charity Commissioner for holding an enquiry and for granting an opportunity of hearing to the interested parties. The said order of the Joint Charity Commissioner was questioned before the District Judge purported to be in terms of Section 72 of the Bombay Public Trust Act and the order of the Joint Charity Commissioner was set aside by the District Judge by an order dated 07.04.2005.

The claim of the Church of North India is that the First District Church of Brethren has lost its entity and has been amalgamated therewith and, thus, it has only the authority to recommend names of the trustees to the parent body of USA. The Church of North India with whom the other trusts were said to have been merged also filed a change notice purported to be on the strength of the authority given by the parent body at USA, wherein five names : (i) Rt. Rev. Paul Chauhan, (ii) Francis G. Gameti, (iii) N.R. Rajawadi, (iv) Jesing S. Bhagat, and (v) Rt. Rev. Malvia, were proposed to be included as trustees. The said change notice was disputed by the then trustees of the CBGB Trust before the Joint Charity Commissioner, Baroda, and by order dated 20.09.1997 the matter was remitted to the Assistant Charity Commissioner with a direction to frame issues as to whether the First District Church of Brethren was amalgamated with CNI and whether the Church of North India was the successor of the First District Church of Brethren. The said decision of the Joint Charity Commissioner was impugned before the District Court.

In the meanwhile, a civil suit was filed by one Ambalal Onkarlal

against the trustees. The said suit was decreed holding that all the six uniting churches including the First District Church of Brethren were dissolved and united in one church i.e. the Church of North India. A First Appeal was preferred thereagainst being Regular Civil Appeal No. 72 of 1984 and the Assistant Judge, Surat, by a judgment and decree dated 11.08.1986 allowed the said appeal holding that the First District Church of Brethren was not dissolved and had not ceased to exist. It was further held that the civil court had no jurisdiction to entertain the said suit. The judgment and decree of the Assistant Judge came to be questioned in Second Appeal before the High Court being Second Appeal No.303 of 1986, which was dismissed. The matter ultimately came up before this Court in *Church of India v. Lavajibhai Ratanjibhai & Ors.* [(2005) 10 SCC 760], wherein it was held that the Civil court has no jurisdiction in such matters. While arriving at the said finding the Court invariably had to deal with various contentions raised by the parties. It was stated :

"With a view to determine the question as regards exclusion of jurisdiction of the civil court in terms of the provisions of the Act, the court has to consider what, in substance, and not merely in form, is the nature of the claim made in the suit and the underlying object in seeking the real relief therein. If for the purpose of grant of an appeal, the court comes to the conclusion that the question is required to be determined or dealt with by an authority under the Act, the jurisdiction of the civil court must be held to have been ousted. The questions which are required to be determined are within the sole and exclusive jurisdiction of the authorities whether simple or complicated. Section 26 of the Act must be read in that context as it specifically refers to those questions wherewith a court of competent jurisdiction can deal with and if the same is not expressly or impliedly barred. Once a decision is arrived at, having regard to the nature of the claim as also the reliefs sought for, that the civil court has no jurisdiction, Section 26 perforce will have no application whatsoever."

The High Court relying on or on the basis of the said decision, inter alia, opined that the First District Church of Brethren did not cease to exist. It further came to the conclusion that this Court had held that the property of the society vested in the trust and not in the governing body of the society. On the aforementioned premise it was directed :

"\005It is seen that the Joint Charity Commissioner remanded the matter to the Assistant Charity Commissioner only on the assumption that CNI was interested party and was required to be heard, but as per the decision and conclusion of the Apex Court, the reasons for the remand would not stand any further and it would not be necessary at all to remand the matter to the Assistant Charity Commissioner to decide the issue which is already decided by the Apex Court. It may be true and on merits at the relevant juncture when the Joint Charity Commissioner passed the orders in Appeal NO. 7 of 1999, the decision of the Apex Court was not pronounced and Joint Charity Commissioner might have found that CNI was an interested party. The cause at this juncture to remand the matter back for decision of the Assistant Charity Commissioner, according to my humble view, would not be surviving after the decision of the Apex Court in the matter of *Church of North India vs. Lavajibahi Ratanbhai* (supra).

As regard the change notice filed by the Church of North India, it was opined :

"Now the question of postponement of appointing trustees as proposed by the Change Report No.329 of 1999 is concerned, true it is that, as decided by the Apex Court. The issue of merger between churches is required to be decided by the Charity Commissioner, and such issue is subjudice. In fact, as aforesaid, the decision of the Joint Charity Commissioner to decide the same after framing of the issue that whether the churches are merged, the challenged before the District Court and is pending. The scheme of the Bombay Public Trust Act undoubtedly reveals only objective of betterment and proper administration of public as well as religious trusts. It is on record that only surviving trustee of C.B.G.B. Trust is Opponent No.1 herein is aged about 90 years. There are no other trustees except proposals are made for appointment of trustees, highly contested and are pending at various hierachal levels. In these circumstances as well as in view of what is decided by the Apex Court in the matter of Church of North India Vs. Lavajibhai Ratanbhai (supra), it is considered that the postponement of the decision of present change report NO. 329 of 1999 would not serve the object of the Bombay Public Trust Act, 1950 would be served more if the proposed by change report no. 329 of 1999 and administration of public religious trust is well taken care of. So when these appointments sought by Change Report No. 329 of 1999, prima facie, appears to be in consonance with the Scheme of C.B.G.B. Trust particularly Clause \026 9, it would not serve the interest of justice, if the issue of appointment of trustees as per Clause \026 9 is postponed till the issue of merger of churches is decided finally at various levels which is ultimately affect the administration of public religious trust."

Mr. Vinod A. Bobde, the learned Senior Counsel appearing on behalf of the Appellants, pointed out that in respect of change notices filed in the years 1985 to 1991, the Assistant Charity Commissioner took no action whereas on the change notice filed by the Respondent No.1 herein approval was accorded within five days.

It was contended that whereas this Court held that the civil court in such matters would have no jurisdiction, the High Court misread and misinterpreted the judgment of this Court in arriving at a finding that this Court had held that the First District Church of Brethren did not cease to exist. It also read the judgment of this Court wrongly opining that the merger between the churches is required to be decided by the Charity Commissioner and the said issue is subjudice.

It was pointed out that the High Court itself noticed that the issue of merger between the churches is required to be decided by the Charity Commissioner and as the said issue is subjudice, presumably in view of the change notice filed by the Church of North India whereby and whereunder names of five persons were proposed as trustees of the trust.

It is beyond any doubt or dispute that the Assistant Charity Commissioner did not follow the procedure before approving the change

notice filed by the First Respondent. It is on that premise that the Joint Charity Commissioner directed the Assistant Charity Commissioner to consider the change notice in terms of the rules. However, that order was set aside by the District Court. The High Court although noticed that the matter is subjudice before the Charity Commissioner and, thus, the said issue has to be resolved upon giving an opportunity of hearing to all the parties, erroneously proceeded to hold that this Court had already adjudicated upon the said issue. The aforementioned two findings of the High Court are contradictory and inconsistent. The High Court in its judgment noticed that the Assistant Charity Commissioner was required to follow the procedure laid down in the Act in terms whereof enquiry into the matter was mandatory. It has further noticed the long battle about amalgamation of trusts raised in the above suit.

This Court in *Church of North India* (supra) held :

"Prayer (a) in the plaint is for a declaration. Such declaration cannot be granted by a civil court as regards succession of the District Church of the Brethren as the same was a religious trust registered under the BPT Act. Prayer (b) of the plaint also could not have been granted, as the question as to whether the applicant is the legal continuation and successor of the First District Church of the Brethren is a matter which would fall for exclusive determination of the Charity Commissioner keeping in view the provisions of the deed of trust as regards its succession. It would necessarily follow that a declaration whether the first appellant became a legal successor of the properties held by the First District Church of the Brethren could not also have been granted. The decision and resolution purported to have been adopted by the Synod and the Gujarat Diocesan Council are binding on all churches or not would again be a question which could have been gone into by the Charity Commissioner as the same had direct bearing not only on the administration and management of the Church registered with it but also related to the properties held by it. Such a decision of the Charity Commissioner is again final and conclusive subject to the decision of the Appellate Authority viz. the Bombay Revenue Tribunal."

In *Church of North India* (supra), it was further held that the change notices are required to be determined by the statutory authorities. This Court opined :

"The provisions of the Act and the scheme thereof leave no manner of doubt that the Act is a complete code in itself. It provides for a complete machinery for a person interested in the trust to put forward his claim before the Charity Commissioner who is competent to go into the question, and to prefer appeal if he feels aggrieved by any decision\005"

In view of the aforementioned findings, we are of the opinion that the High Court arrived at a wrong conclusion that the First District Church of Brethren did not cease to exist. Such a question indisputably, in view of the decision of this Court, is required to be determined by the statutory authorities under the Bombay Public Trust Act and not by the civil court. This Court held that the civil court had no jurisdiction; a fortiori no finding could have been arrived at that the First District Church of Brethren did or did not cease to exist.

We have furthermore noticed hereinbefore that the High Court had arrived at a contradictory and inconsistent finding.

In this view of the matter, the impugned judgment of the High Court and the District Judge cannot be sustained.

Mr. Hazefa Ahmadi, the learned counsel appearing on behalf of the Respondents, however, has rightly pointed out that this Court directed that the matter relating to dissolution of trust would fall for consideration by the Charity Commissioner alone.

As noticed hereinbefore, although the orders of remand passed by this Court and that of the Joint Commissioner pertained to two different matters, we are of the opinion that the interests of justice require that all the questions must be determined by the Charity Commissioner himself. The Charity Commissioner shall also determine all the pending disputes including the change notices filed in the years 1985 and 1991, if they have not already been disposed of.

The Charity Commissioner shall give notice of hearing to all concerned. If the parties intend to file additional pleadings, they may be allowed to do so. We have no doubt that keeping in view the urgency, the Charity Commissioner will consider the desirability of disposing of the matter as expeditiously as possible and preferably within a period of four months from the date of receipt of a copy of this order.

We would, however, direct the Charity Commissioner, keeping in view the existing scheme, consider also the desirability of appointing an Administrator/Receiver for managing the properties and other affairs of the trust. However, till such appointment is made, the First Respondent herein shall continue to act as a trustee.

The appeal is disposed of with the aforementioned directions and observations. However, in the facts and circumstances of the case, there shall be no order as to costs.