

Tandale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****FIRST APPEAL NO. 1142 OF 2003****WITH****CIVIL APPLICATION NO. 2818 OF 2003**

Shri Shivkumar das Guru Suresh Ramdas,]
 Age : 45 years, Occ. Mahant,]
 C/o Lambe Hanuman Mandir,]
 Panchawati, Nasik - 6] ...Appellant

Versus

1. Shri Surabhan Nakiram Agrawal,]
 Age : 52 years, Occ.: Business,]
 R/o Katya Maruti, Panchwati, Nasik.]
2. Shri Vivek Govind Rajhans]
 Age : 35 years, Occ.: Business,]
3. Sau. Rajpati Babulal Sharma,]
 Age : 45 years, Occ.: Household,]
 R/o. Sallagadh, Niwasti, Jamuna,]
 Poolroad Palwai.]
4. Shri Vijaya Maruti Ratu,]
 Age : 42 years, Occ.: Business,]
 R/o Katya Maruti Chauk,]
 Panchawati, Nasik.]
5. The Asstt. Charity Commissioner,]
 Kharbanda Park, Nasik Pune Road,]
 Nasik.] ...Respondents

ALONG WITH**FIRST APPEAL NO. 1032 OF 2012****WITH****CIVIL APPLICATION NO.2109 OF 2012**

1. Mahant ShivKumar Guru Suresh Ramdas,]
 Age : 50 years, Occ.: Nil,]
 R/o Katya Materi Mandir,]
 Panchwati, Nashik, Tq.Dist.Nashik.] ...Appellant

Versus

1. Shri Surajbhan Nekiram Agrawal,]
Age : 49 years, R/o. 4611, Agrawal Wada,]
Krushna Nagar, Panchawati, Nashik.]
2. Shri Vijay Marotirao Raut,]
Age : 5 years, R/o. 4610, Raut Restaurant,]
Old Aadgaon Naka, Panchwati,]
Nashik.]
3. Shri Vivek Govindrao Rajhans,]
Age : 45 years, R/o. Katya Matori Mandir,]
Old Adgaon Naka, Panchawati,]
Nashik, Tq. Dist. Nashik.]
4. Deputy Charity Commissioner,]
Maharashtra State, Bombay,]
Through Joint Charity Commissioner,]
Nashik, Janki Plaza, Dwarka, Nashik.]
5. Shri Gopaldas Guru Mahant Shivkumardas]
Age : 35 years, R/o Mahant Room,]
Katya Mandir, Panchavati, Nashik,]
Taluka & District Nashik.]
6. Shri Anil Chunilal Verma,]
Age : 40 years, R/o Hrawadi Road,]
Shakti Nagar, Flat No.4,]
Kunjawan Apartments]
Hirawadi, Nashik 3.]
7. Shri Brijmohan Devkinandan Sharma,]
Age : 45 years, R/o Shop No.1,]
Mnsi Towers, Sai Krupa Complex]
Kashi Mira, District Thane.]
8. Smt.Rajvatidevi Babulal Sharma,]
Age : 51 years, R/o. Shriraj Ice Cream Factory,]
Sallaged, Nayi Vasti, Jamnapur Road, Palval,]
District Faridabad, Harayana.] ...Respondents

Mr. P. B Shah, Advocate for the Appellant in both matters.

Mr. S. B. Shetye, Advocate for Respondent Nos.1 to 4 in FA No.1142
of 2003 and Respondent No.2 in FA No.1032 of 2012.

Mr. A. R. Patil, AGP for the Respondent-State.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 4th DECEMBER, 2021
PRONOUNCED ON : 13th JANUARY, 2022

JUDGMENT:-

1. Since the genesis of these appeals under Section 72(4) of the Maharashtra Public Trusts Act, 1950 (for short, “the Trusts Act, 1950”), as it stood before it came to be deleted by Maharashtra Act No. 55 of 2017, is in the order passed by the learned Assistant Charity Commissioner, Nashik on an application (application No. 06 of 2001), dated 21st April 2003, settling the scheme under Section 50A(1) of the Trusts Act, 1950, both these Appeals are taken up for hearing and final disposal by this common judgment.

2. Shorn of unnecessary details, the background facts leading to these appeals can be stated as under :

(a) ‘Shri Katya Maruti (Lambe Hanuman)’, is a religious public trust registered under the provisions of the Trusts Act, 1950 vide registration No.A-438 (Nashik). It is situated at Survey No.296, Panchawati, Nashik. The trust owns property admeasuring 50 acres at Adgaon. It was registered in the year 1954. Shri Shivkumardas Guru Suresh Ramdas, the appellant, had been acting as a trustee of the said trust in accordance with ‘Guru Shishya Parampara’.

(b) Shri Surajbhan Nakiram Agrawal and Shri Raoveer Tejsing Sharma preferred an application, bearing application No.4 of 1998, before the learned Assistant Charity Commissioner, Nashik for settlement of a scheme under Section 50A(1) of the Trusts Act, 1950. The learned Assistant Charity Commissioner, by an order dated 29th July 2000, was persuaded to dispose of the said application, directing the appellant Shri Shivkumar - the opponent therein, to submit a scheme for the better management and administration of the trust within one month of the said order and, in default, it was further provided that the Charity Commissioner may proceed to hold sou motu inquiry.

(c) Shri Shivkumar, the appellant, didn't prefer an application for settlement of the scheme under Section 50A of the Trusts Act, 1950, in terms of the aforesaid order. Instead, the appellant preferred an application, being Misc. Application No.573 of 2000, for review of the aforesaid order dated 29th July 2000, passed in application No.4 of 1998. The learned Assistant Charity Commissioner rejected Misc. Application No.573 of 2000 by an order dated 24th April 2003.

(d) In the meanwhile, Shri Surajbhan N. Agrawal - the respondent No.1 and Shri Vivek G. Rajhans - the respondent No.2 preferred an application for settlement of the scheme, being application No.6 of 2001 under Section 50A(1) of the Trusts Act, 1950. The learned Assistant Charity Commissioner was persuaded to hold that it

was necessary to frame a scheme for better administration and management of the affairs of the trust. Since the appellant as well as the respondent Nos.1 and 2 had submitted the draft schemes, there was no qualm over the necessity of the settlement of the scheme. The learned Assistant Charity Commissioner further held that having regard to the religious nature of the trust it was necessary to maintain the status and position of Shri Shivkumar, the appellant, and thus it was directed that Shri Shivkumar, the appellant, would be the Managing Trustee by chair as well as Mahant of the Trust.

(e) The learned Assistant Charity Commissioner, appointed a first Board of Trustee comprising Shri Shivkumar, the appellant, and four other persons including the respondent No.1-Shri Surajbhan N. Agrawal, the respondent No.2-Shri Vivek G. Rajhans, and respondent No.4 - Shri Vijay Maruti Raut. The term of the office of the trustees was fixed at five years. After completion of the first term, the learned Assistant Charity Commissioner, Nashik directed that the next Board of Trustees shall be appointed by the remaining trustees with the consultation of the Managing Trustee Shri Shivkumar, the appellant. With these directions as regards the appointment of the Managing Trustee, the first Board of Trustees and the mode of succession, the learned Assistant Charity Commissioner settled the scheme annexed as

‘Annexure-A’ to the order, for the better administration of the affairs of the trust.

(f) Being aggrieved by the order passed by the Assistant Charity Commissioner, Nashik, the appellant Shri Shivkumar preferred an application under Section 72 of the Trusts Act, 1950 before the District Court, Nashik, being Civil Application (B.P.T.) No.1 of 2003. The learned District Judge, didn’t find any reason to interfere with the order passed by the Assistant Charity Commissioner. Thus, the application came to be dismissed by the judgment and order dated 31st July 2003.

(g) Being further aggrieved and dissatisfied with the rejection of the application assailing the order passed by the learned Assistant Charity Commissioner settling the scheme under Section 50A of the Trusts Act, 1950, Shri Shivkumar, the appellant, preferred an appeal, being Appeal No.1142 of 2003, under Section 72(4) of the Trusts Act 1950, as it then stood.

(h) For the completion of the narration of facts, it may be expedient to note that by an order dated 18th August, 2003, this Court granted ad-interim stay in respect of the appointment of respondent No.1-Shri Surajbhan N. Agrawal and respondent No.4-Shri Vijay Maruti Raut as the trustees of the first Board of Trustees.

(i) During the pendency of Appeal No.1142 of 2003, with the passage of time, and consequent to the expiry of the term of the first Board of Trustees, Shri Shivkumar reported change under Section 22 of the Public Trusts Act, 1950 to the learned Assistant Charity Commissioner, Nashik. It was, inter alia, reported that a meeting was held on 6th May, 2008 and a new Board of Trustees was elected therein for a term of five years in accordance with the scheme settled by the learned Assistant Charity Commissioner in Application No. 6 of 2001. In Inquiry Application No.462 of 2008, the Deputy Charity Commissioner, Nashik was persuaded to reject the change by an order dated 17th March, 2010 holding, inter alia, that there was no legal change.

(j) Being aggrieved, the appellant Shri Shivkumar and rest of the persons who claimed to be appointed as trustees, in the said meeting, preferred an appeal under Section 70 of the Public Trusts Act, 1950 before the Joint Charity Commissioner, Nashik. By a judgment and order dated 21st December 2010, the Joint Charity Commissioner concurred with the view of the Deputy Charity Commissioner and confirmed the order of rejection of change.

(k) Being further aggrieved, Shri Shivkumar, the appellant and other persons, who claimed to be appointed as trustees, preferred an application under Section 72 of the Trusts Act, 1950 before the learned

District Judge, Nashik, being Civil Misc. Application No. 8 of 2011. By the judgment and order dated 2nd May 2012, the learned District Judge, Nashik was persuaded to reject the application as no infirmity was found in the orders passed by the authorities below.

(1) Being aggrieved, Shri Shivkumar, the appellant has preferred Appeal, being First Appeal No. 1032 of 2012.

3. From the aforesaid narration of facts, it becomes evident that the challenge in Appeal No.1142 of 2003 is to the settlement of the scheme under Section 50A of the Act 1950 by the learned Assistant Charity Commissioner. In Appeal No.1032 of 2012, the challenge is to the rejection of the change reported by the appellant in accordance with the mode of succession prescribed in the said scheme. Evidently, the scheme has been acted upon. The appellant claims to have appointed the trustees in exercise of the authority vested in him under the scheme settled by the Assistant Charity Commissioner.

4. In the backdrop of the aforesaid facts, I have heard Mr. Shah, the learned counsel for the appellant and Mr. Shetye, the learned counsel for the respondent Nos.1 to 4, the contesting respondents. With the assistance of the learned counsels, I have perused the material on record including the impugned orders and the documents tendered for the perusal of the Court and authorities below.

5. At the outset, Mr. Shah, the learned counsel for the appellant submitted that there have been subsequent events, which bear upon the determination of these appeals. It was submitted that the change reports submitted by the appellant, for the succeeding terms have been accepted. Resultantly, in a sense, the determination in these appeals becomes academic.

6. Mr. Shah invited the attention of the Court to an order passed by the learned Assistant Charity Commissioner, Nashik in Change Report No. 3145 of 2018, dated 24th October 2019, whereby the Assistant Charity Commissioner accepted the change reported for the tenure of 2018 to 2023.

7. Mr. Shah, the learned counsel for the appellant, however submitted that the competence of the respondent Nos.1 and 4 to be appointed as the trustees in the first Board of Trustees, is required to be determined as the respondent Nos.1 and 4 are unjustifiably interfering in the administration of the trust. This submission was premised on the fact that, in Application No.4 of 1998, the Assistant Charity Commissioner had recorded that the applicant No.2 therein Shri Surajbhan N. Agrawal (the respondent No.1) was a tenant in the property of the trust and the applicant No.1 Shri Raoveer Tajsing Sharma had criminal antecedents. This aspect has not been properly evaluated by the learned Assistant Charity Commissioner while

appointing the first Board of Trustees and even the learned District Judge failed to rectify the mistake committed by the learned Assistant Charity Commissioner, while passing the impugned judgment and order.

8. In opposition to this, Mr. Shetye, the learned counsel for respondent Nos.1 to 4 submitted that, the learned Assistant Charity Commissioner as well as the learned District Judge, has categorically recorded a finding regarding the necessity of settling the scheme for the better administration of the trust. The authorities have taken care to provide that the appellant continues to be the Managing Trustee and Mahant of the Trust. Yet, the appellant is not satiated and desires to exercise absolute and unregulated control over the affairs of the trust. Thus, there is no infirmity in the orders passed by the Assistant Charity Commissioner and the learned District Judge, which warrants exercise of appellate jurisdiction by this Court under Section 72(4) of the Trusts Act, 1950.

9. In order to lend support to the aforesaid submission, Mr. Shetye placed reliance on a judgment of the Division Bench of this Court in the case of *Shivprasad Shankarlal Pardeshi Vs. Leelabai Badrinayaran Kalwar*,¹ wherein it was laid down that an appeal preferred under Section 72(4) of the Trusts Act, 1950, is in the nature of second appeal and subject to the restrictions and limitations imposed on a second

1. 1998 (1) Mh.L.J. 444

appeal as prescribed under Section 100 of the Code of Civil Procedure, 1908 and thus it can be entertained only if the High Court is satisfied that the case involves a substantial question of law.

10. Mr. Shah, the learned counsel for the appellant joined the issue by canvassing a submission that there are no such limitation and/or restrictions sought to be urged on behalf of the respondents, in the High Court exercising the appellate jurisdiction under Section 72(4) of the Trusts Act, 1950. Reliance was placed on the Full Bench judgment of this Court in the case of *Prabhakar Sambhu Chaudhary and Anr. Vs. Lxman Baban Mali & Ors.*,² wherein after disagreeing with the decision in the case of *Shivprasad Shankarlal Pardeshi (supra)*, it was enunciated that the appeal provided under Sub-section (4) of Section 72 of the Trust Act, 1950 is not subjected to the restrictions and limitations imposed under the provisions of Section 100 of the C.P.C. and the scope of appeal extends to reconsideration of decision of the lower forum on questions of fact and questions of law with a jurisdiction to reverse, modify the decision or remand the matter to the lower forum, for fresh decision in terms of its direction. It is not necessary for the High Court to formulate substantial question of law while admitting the appeal.

11. The Full Bench judgment in the case of *Prabhakar Sambhu Chaudhary (Supra)* sets the controversy as regards the nature of

² 2016 (3) Bom. C.R. 714

appellate jurisdiction, at rest, and the appeal under Sub-section (4) of Section 72, as it then stood, can be said to be a comprehensive appeal wherein all questions of facts and law can be legitimately agitated.

12. In the facts of the case at hand, however, it appears that, the question of justifiability of the scheme for the better administration of the affairs of the trust is not required to be delved into. The Assistant Charity Commissioner has ascribed justifiable reasons as to the necessity of the settlement of the scheme. In the changing scenario, where the property of the trust is required to be protected and administration attuned to the object of advancement of the trust, a scheme for the better administration of affairs of the trust is, in a sense, indispensable. It is imperative to note that, the appellant couldn't assail the principal finding of the Assistant Charity Commissioner that the settlement of the scheme was necessary for the better administration of the trust, by ascribing any reason, much less a compelling one. Thus, no interference is warranted in the finding recorded by the learned Assistant Charity Commissioner that the scheme was necessary for the better administration of the trust, which was affirmed by the learned District Judge by the impugned judgment and order.

13. The Assistant Charity Commissioner ensured that the settlement of the scheme for the better administration of the trust doesn't infringe the authority of the appellant as the head of the religious order. The

appellant was retained as the Managing Trustee. His position as a Mahant of the trust was not at all disturbed. On the contrary, the Appellant was vested with the authority to influence the appointment of the trustees for the succeeding tenure. In fact, the appellant claims to have appointed trustees in exercise of the said authority. Hence, no fault can be found with the dispensation provided by the Assistant Charity Commissioner in the matter of the mode of succession, as well.

14. The submission on behalf of the appellant that the Assistant Charity Commissioner committed an error in appointing respondent No.1 - Shri Surajbhan N. Agrawal and respondent No.4 - Shri Vijay M. Raut as the members of the first Board of Trustees, in the backdrop of conflict of interest and antecedents, even if taken at par, is of no significance. By the efflux of time, the tenure of respondent Nos.1 and 4, as the members of the first Board of Trustees, came to an end, in the year 2008 itself. Their appointment was for the term of five years. They were not appointed in perpetuity. Thus, at this juncture, the legality, propriety and correctness of the order passed by the Assistant Charity Commissioner to settle the scheme for the trust can not be assailed on the ground that the choice of the members of the first Board of Trustees was infirm.

15. Had it been the case that the same Board of Trustees continued, either on account of intervention by the Court or otherwise, different

considerations would have come into play. On the contrary, it is the case of the appellant that a fresh Board of Trustees came to be constituted in the meeting held on 6th May, 2008. Resultantly, the challenge to the impugned judgment and order is devoid of any substance.

16. Mr. Shetye, the learned counsel for the respondent Nos.1 to 4 would urge that the respondent Nos.1 and 4, whose appointment was stayed by interim order passed by this Court, deserve restorative reliefs. The respondent Nos.1 and 4 cannot be made to suffer the stigma of disqualification, which the interim order passed by this Court, according to Mr. Shetye, entailed.

17. This submission of Mr. Shetye, in my considered view, doesn't merit determination in these appeals. Indisputably, the appointment of respondent Nos.1 and 4 was for the first term of five years. The mode of succession is governed by the scheme settled by the learned Assistant Charity Commissioner. It provides that, after completion of term of the first Board of Trustees, next board of trustees shall be appointed by the remaining trustees with the consultation of the Managing Trustee.

18. In this view of the matter, it would suffice to clarify that as and when the vacancy arises in the Board of Trustees and such vacancy is proposed to be filled up in accordance with the scheme, the fact that this Court had stayed the appointment of respondent Nos.1 and 4, by

order dated 18th August, 2003, shall not operate as an impediment in consideration of their candidature.

19. I hasten to add that, this Court may not be understood to have expressed any opinion on the eligibility and competence of the respondent Nos.1 and 4, and it would be open for the authority vested with the power to appoint trustees under the scheme, to decide the said aspect, as and when it arises, on its own merits.

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20. In the backdrop of the facts, which have been elaborately noted above, this appeal, which essentially assails the correctness of the order passed by the Deputy Charity Commissioner, rejecting the change, reported for the period of 2008 to 2014, and which was confirmed by the Joint Charity Commissioner and the learned District Judge, by the impugned Order, is rendered infructuous by the passage of time.

21. As indicated above, Mr. Shah, the learned counsel for the appellant invited the attention of the Court to the order passed by the learned Assistant Charity Commissioner, Nashik in C.R. No.3145 of 2018, whereby the change reported for the term 2018 to 2023 has been accepted.

22. The Court has to take cognizance of the subsequent events which bear upon the controversy. Since on the own showing of the appellant

the new Board of Trustees has taken up the management of the affairs of the trust and the change reported in that regard has also been accepted by the Assistant Charity Commissioner, Nashik, it would be superfluous to delve into legality, propriety and correctness of the orders passed by the authorities under the Trusts Act, 1950 and the learned District Judge.

23. The upshot of the aforesaid consideration is that, subject to observations in para 18 and 19 above, both the appeals deserve to be dismissed.

24. Hence, the following order:

: O R D E R :

- (i) First Appeal No.1142 of 2003 stands dismissed.
- (ii) In view of dismissal of Appeal itself, Civil Application No.2818 of 2003 does not survive and accordingly stands disposed of.
- (iii) First Appeal No.1032 of 2012 stands dismissed.
- (iv) In view of dismissal of the Appeal No.1032 of 2012, Civil Application No.2109 of 2012 does not survive and accordingly stands disposed of.
- (v) In the circumstances, the parties shall bear their respective costs.

[N. J. JAMADAR, J.]