

Cambay Municipality, Cambay

Vs

Ratilal Ambalal Reshamwala and Others

Civil Appeal No. 1832 of 1974

(N. Venkatachala, R. M. Sahai, S. P. Bharucha JJ)

23.11.1993

ORDER

1. The short question that arises for consideration in this appeal directed against the judgment and order of the Gujarat High Court is if a Dharamshala constructed on municipal land with funds provided by a private citizen is a public trust as defined in the Bombay Public Trusts Act, 1950 (Bombay Act XXXIX of 1950) (hereinafter referred as 'the Act').
2. The dispute arose as the respondent, a tenant of a shop in the Dharamshala, made an application before the Assistant Charity Commissioner under Section 19 of the Act for registration of the Parikh Jivanlal Mohanlal Dharamshala situated in Cambay as a public trust. The Assistant Charity Commissioner after considering the documents and examining the oral evidence led by parties concluded that the property in question was public trust under sub-section (13) of Section 2 of the Act and directed it to be registered as such. This order was maintained in appeal by the Deputy Charity Commissioner, the Assistant Sessions Judge in civil miscellaneous application and by the High Court in first appeal.
3. It is not in dispute that the Dharamshala stands on a municipal land. Nor it is in dispute that the Dharamshala was constructed by the funds offered by Parikh Jivanlal Mohanlal. On these two basic facts which are preceded by number of correspondence which took place between Mohanlal and the Municipal Board before it was ultimately agreed that the Dharamshala may be constructed as desired by Mohanlal on municipal land, the question which arose for consideration was whether it amounted to creation of a valid trust and if it was so whether it was a public trust within the meaning of the Act so as to require registration under the provisions of the Act. The High Court found on perusal of correspondence between Mohanlal and the Municipal Board, copies of which were filed as Exhibits 24, 25, 26, 29, 31, 60 and 63, that a valid trust in shape of the Dharamashala for the use of the public was clearly spelt out. The High Court found that in such a case it was not open to the Municipal Board to treat it as its own property. It is not necessary to refer to these documents, as they are not relevant for deciding the controversy, except Resolution No. 187 dated 5-12-1955 which has been relied by the High Court to come to a finding that by this resolution the municipality sanctioned transfer of a plot as per descriptions and measurements stated therein for the purpose of the said Dharamshala which Parikh Jivanlal Mohanlal was to construct under the supervision of the municipality. It is not in dispute that Mohanlal had earlier made request that the Dharamshala should be constructed over the vegetable market. But since this was objected to by some of the citizens the Municipal Board shifted it to another site owned by it. It was for this purpose that the aforesaid resolution was passed and it was resolved, "that instead of building on the market, the approval is hereby given to get the Dharamshala built at the place of the present urinals, by demolishing the same urinals, on the condition to build the urinals at the end of north-west side

of Hawada (a reservoir - a large basin of water for cattle to drink from), just opposite to the iron bar compound at his own expenses, at portion of 35'-0" length on the north side and at the portion of 25'-0" breadth at the northern end with the breadth of about 32'-0" on the north side, according to the plan, which will be supplied by the municipality, under the supervision of the Dharamshala department, through the applicant'. The decision of the Municipal Board to shift the site could not be construed as transfer of plot and, therefore, the High Court, in our opinion, committed an error of law by misreading the resolution dated 5-12-1995. Further Mohanlal was alive when the proceedings started before the Charity Commissioner. He deposed that he got the Dharamshala constructed for the municipality as its owner.

4. 'Public trust' has been defined under sub-section (13) of Section 2 of the Act. But for becoming a public trust as defined in the Act it should have been created by a settlor or an author indicating with reasonable certainty his intention to create a trust and transfer the trust property to the trustee. None of the ingredients of creation of trust are found to be present. Jivanlal was not the owner of the land. The offer of Jivanlal to provide the fund to construct the Dharamshala on the municipal land for the benefit of the public and its acceptance by the Municipal Board was in discharge of statutory function undertaken by the Municipal Board under clause (b) of Section 56 of Bombay District Municipal Act. The basic error committed by the High Court was to read the resolution for change of site as transfer of land. There is no material on record to indicate that the Municipal Board decided to part with the property. Rather it decided to hold it in order to carry out its duties and functions under Section 56. The High Court or the Charity Commissioner were thus not justified in concluding that the Dharamshala constructed on municipal land was a public trust.

5. In the result this appeal succeeds and is allowed. The orders passed by the High Court, the Assistant Sessions Judge, the Deputy Charity Commissioner and the Assistant Charity Commissioner are set aside and the application filed by the respondents under Section 19 of the Act is dismissed.

6. Parties shall bear their own costs.

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