

SUPREME COURT OF INDIA

Nautam Prakash Dgsvc, Vadtal and Others

Vs

K. K. Thakkar and Others

Appeal (Civil) 2409 of 2006 (Arising Out of Slp (Civil) No.4529 of 2003)

(S. B. Sinha and P. K. Balasubramanyan, JJ)

02.05.2006

JUDGMENT

S. B. SINHA, J.

Leave granted.

Jurisdiction of the Assistant Charity Commissioner of Bombay in relation to the administration of the Appellant-Trust is in question in this appeal which arises out of a judgment and order dated 25th September, 2002 passed by the High Court of Judicature of Bombay in Writ Petition No. 1519 of 2002.

The appellant herein is a religious trust. A scheme for management of the temple of Swami Narain Vadtal and other temples subordinate to it, was framed by the High Court of Bombay in the year 1922. The said scheme contained provisions as to how accounts should be maintained. Clauses 26 to 29 thereof, which are relevant as under:

"26. At each temple proper accounts of all receipts and expenditure shall be kept and for such purposes the following books of account shall be kept:-

i) Cash Book (Rukad)

ii) Auro (Monthly Rozmel)

iii) Nondh (Daily Journal)

iv) Ledger containing separate Khatas for each head of income and expenditure including all expenditure on account of Tyagis.

The ledger kept at the Vadtal Temple shall also contain separate khatas of

(a) Name Vero and Bhets;

(b) The household expenditure on account of the Acharya;

(c) Any expenditure incurred on account of the Acharya on official tours and other official occasions; and

(d) What may be paid to the Acharya on account of the personal expenditure but not of such personal expenditure

27.....

28. At the close of each Samvat year a separate Financial Statement and Balance Sheet shall be drawn up in regard to each temple and in regard to the whole Institution. Copies of such Statements and Balance Sheets shall be furnished to each member of the Committee by the Kothari (Manager) before the first quarterly meeting of the following year and such Balance Sheets and Statements shall be checked and passed by the Committee at such Meeting.

29. In terms of Clause 29, all books of accounts and vouchers were to be opened to for inspection of each member of the Committee or all Satsangies appointed by the Committee."

Upon coming into force of the Bombay Public Trust Act, 1950 ('the Act'), the Trust was to be governed thereunder.

An application for registration of the Trust was filed, pursuant where to a certificate of registration in respect of the temple of Lakshmi Narayan Devasan and properties of the temples subordinate thereto was issued by the Assistant Charity Commissioner, Greater Bombay.

The Parliament enacted The Bombay Reorganization Act, 1960 in terms whereof the State of Gujarat was carved out of the State of Bombay. In anticipation of such reorganization, the Legislature of the State of Bombay enacted the Bombay Statutory Corporations (Regional Act XXI of 1960). Section 3(1) hereof read as under:-

"3(1) If it appears to the State Government expedient that any existing corporation which is operating and functioning immediately before the commencement of this Act, should be dissolved or that it should be reconstituted and reorganized so that there are established or functioning separate corporations for the Maharashtra and Gujarat regions, that Government may by order make provision for such dissolution or reconstitution and reorganization of such existing corporation."

The said provision was intended to apply to the institution of Charity Commissioner.

The State of Gujarat was formed with effect from 1st May, 1960. However, immediately prior thereto, an Order known as the Bombay Charity Commissioner (Regional Reorganisation) Order, 1960 was issued which came into force with effect from 28th April, 1960, the relevant provisions whereof are as under:-

"The Bombay Charity Commissioner (Regional Reorganisation) Order, 1960: On the bifurcation of the former State of Bombay with effect from 1st May, 1960, the State of Gujarat and the State of Maharashtra, have their own Charity Organisations for public trusts within their respective States. In view of the bifurcation of the Bombay State, it was proposed to provide for the reorganization of such statutory corporate bodies into two intra-regional bodies before bifurcation of the State as also for distribution of their assets and liabilities etc., and allocation of their employees. By virtue of the Legal Department Order No. 12921/E, dated the 28th April, 1960, the Charity Commissioner, Bombay, a corporation sole, was reconstituted and reorganized so as to constitute a new corporation for Gujarat Region and to reconstitute the existing corporation to function for Maharashtra Region."

Clauses 4 (b) & (c), 5 and 6 (a) & (b) read thus:-

"4. Registration of public trusts where property or office is situate, In the case of a public trust duly registered under the Act before the appointed day, or deemed to be so registered, if, immediately before that day, -

(a).....

(b) the trust property is situated partly in the Maharashtra region and partly in the Gujarat region, then in respect of so much of the said property as is situate in the Maharashtra region or the Gujarat region, the trust shall, whether the office for the administration of the trust is or is not situate in that region, be deemed to be so registered in that day without further inquiry, charge or

fee in the Maharashtra region or, as the case may be, the Gujarat region.

(c) The trust property is situate in the Maharashtra region and the office for the administration of the trust is situate in the Gujarat region or vice versa, then the trust shall be deemed to be so registered on that day without further inquiry, charge or fee in each of the two regions."

"5. Payment from Public Trusts Administration Fund of existing Corporation to new Corporation. From the balance standing to the credit of the Public Trusts Administration Fund of the existing Corporation (including the investment made therefrom), immediately before the appointed day, and struck after taking into account all outstanding liabilities upto that date, there shall be paid to the new Corporation in respect of the Gujarat region an amount in the ratio which the income from all sources including any sums specified in clauses (a) to (c) of sub-section (2) of Section 57 of the Act, court fees and miscellaneous receipts other than deposits received in respect of that region during the period between the establishment of the Public Trusts Administration Fund for the first time under the Act and the 30th November, 1959, bears to the total income from those sources credited to that fund during the said period from the Maharashtra as well as Gujarat regions."

"6. Recovery of outstanding contributions and dues. The right to recover contributions and other dues, payable before the appointed day in respect of any public trust but not recovered, shall belong-

(a) Where the trust under paragraph 4 is deemed to be registered exclusively in the Maharashtra or the Gujarat region, to the Corporation having jurisdiction over that region.

(b) Where the trust is deemed to be registered in both the regions, to the Corporation having jurisdiction over the region within which the Public Trusts Registration Office in which the trust was registered is, on that day, situate."

In the year 1961, despite the 1960 Act and 1960 Order, presumably, in view of the fact that one of the temples was situate in the State of Maharashtra, the appellant herein filed an application for registration thereof to the Assistant Charity Commissioner, Bombay and the same was granted. The appellant indisputably also filed Statements of Accounts in respect of the said trust up to 1973 before the Maharashtra Charity Commissioner's office. It is not in dispute that the office of the trust had been situate in the State of Gujarat. In the meanwhile, having regard to the fact that the office of the trust was situate in the State of Gujarat, an application was filed for modification of the said scheme in the City Civil Court at Ahmedabad. A contention raised in the suit that the Courts of Gujarat had no jurisdiction was negatived. Ultimately, the said scheme was modified by the Gujarat High Court by a judgment and Order dated 20th June, 1974, clause 30(c) of the Scheme as mentioned is as under:-

"30(c) The Board shall within nine months after the close of every financial year, prepare a balance sheet and the statement of income and expenditure for the said year and forward the same together

with the Auditor's report to every person whose name is entered in the Voters' list and also to Acharya."

According to the appellant, the Trust had been rendering its accounts to the Assistant Charity Commissioner in Gujarat at Nadiad and had also been filing other documents and changed reports from time to time therein. Respondent No. 1 herein claiming he to be a member of the trust, filed an application before the Assistant Charity Commissioner of Greater Bombay purportedly under Section 41A and 41B of the Act praying, inter alia, for appointment of proper persons and trustees of the said trust.

By an order dated 31.12.2001, the said application was allowed. The Assistant Charity Commissioner in the said order directed:-

"1. The application No. 5924/2000 is partly allowed.

2. The opponents are hereby directed to submit the audited statement of Account from years 1973 to 2001 within fortnight.

3. the opponents are further directed to submit the change report of changes occurred from time to time in trustees, properties etc. U/s. of the B.P.T. Act, 1950 within fortnight.

4. The opponents are further directed to take the steps for amendment of the scheme framed by Hon'ble High Court of Bombay, in Civil Application No.

690/1937."

A writ petition filed there-against by the appellant herein was dismissed by the Bombay High Court by reason of the judgment impugned herein opining that as the appellant never challenged the vires of the provisions of the Act or the 1960 Order and having itself filed an application for registration and furthermore having filed the statement of accounts before Assistant Charity Commissioner after 1973, they have disintitiled themselves from contending that the provisions of the Act, 1960 or the Order, 1960 are unconstitutional. The appellants are thus before us.

The short question which arises for consideration in this appeal is as to whether the Assistant Charity Commissioner, Greater Bombay had jurisdiction to interfere with the administration of the Appellant-trust.

The trust was registered at Baroda in the State of Gujarat. Some proceedings in relation to the said trust were also initiated in the State of Gujarat. However, after the Reorganisation Act came into force, an application for registration of the property situate in Gujarat was filed. The audited statements of accounts admittedly were also filed till 1973.

But as would appear from the discussion hereinafter, the same by itself would not be determinative of the jurisdictional question raised before us. The High Court had proceeded to dismiss the writ petition of the appellant herein only on the ground that the jurisdiction of the Assistant Charity Commissioner could not have been questioned by the appellant as the vires of 1960 Act or the 1960 Order had not been questioned by them. If by reason of the provisions of the said Act or the 1960 Order, the jurisdiction of the Assistant Charity Commissioner, Bombay was confined only to the properties situate within the State of Maharashtra, having regard to the doctrine of lex-sites, the said authority could not have assumed jurisdiction in respect of the entire trust. The Assistant Charity Commissioner, Bombay derived his jurisdiction from the provisions of the Bombay Public Trust Act. Upon reorganisation of the State, he had a limited jurisdiction to exercise. All the provisions of the said Act were indisputably also not applicable to both the State of Maharashtra and the State of Gujarat.

The Assistant Charity Commissioner exercised his jurisdiction in terms of Section 41A and 41B of the Act.

Section 41A of the Act reads thus:-

"41A. Power of Commissioner to issue directions (for proper administration of the trust) (1) Subject to the provisions of this Act, the Charity Commissioner may from time to time issue directions to any trustee of a public trust or any person connected therewith, to ensure that the trust is properly administered, and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust; and the Charity Commissioner may also give directions to the trustees or such person if he finds that any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of.

(2) It shall be the duty of every trustee or of such person to comply with the directions issued under sub-section (1).

Section 41B of the Act indisputably is not applicable in the State of Gujarat.

The jurisdiction of the Assistant Commissioners of Greater Bombay and State of Gujarat is required to be determined primarily on a construction of Clauses 4(b) and 4(c) of the 1960 Order.

Indisputably, the office for administration of the trust is situate in the State of Gujarat i.e. Gujarat region. Only some properties of the trust are situate in the Maharashtra region. Clause 4(c) creates a legal fiction in terms whereof the trust shall be deemed to be registered in Gujarat region whereafter no other or further inquiry is required to be conducted. The trust was already registered having its office at Baroda. The said registration, therefore, continued to have force.

The trust has properties both in Maharashtra and Gujarat regions. In terms of clause 4(b) of the order, only so much of the property which was situate in the Maharashtra region would be deemed to be so registered in Bombay. The jurisdiction of the Assistant Charity Commissioner, Greater Bombay was, therefore, confined to only the property which was situate within the Maharashtra region.

The High Court, therefore, in our opinion, committed a manifest error insofar as it proceeded to hold that the appellants in view of their conduct could not question the jurisdiction of the Assistant Charity Commissioner of Bombay.

The contentions raised in this appeal should have been determined having regard to the doctrine of *lex-situs*. The law in this behalf, in view of the provisions of the Act and the Order, are clear and explicit. Whether in the area of International law or the domestic law, *lex-situs* has to be determined in the context of the proper law applicable therefor, be it in the realm of contract or otherwise. [See *Delhi Cloth & General Mills v. Surnam Singh*, 1955 AIR(SC) 950

The Legislature of a State while enacting a law is required to maintain the territorial nexus. Only in certain cases, extra-territoriality provided for in the Act is accepted. The field of legislation in respect of religious endowments and religious institutions is referable to Item 28 of List III of the Seventh Schedule of the Constitution. Ordinarily, therefore, the Legislation enacted by a State will be applicable only within the territorial limits thereof. There is a general presumption that the Legislature does not intend to exceed its jurisdiction. An Act relating to religious and charitable institutions would be presumed to be applicable only in respect of the properties or any part thereof situate in the State. The 1960 Act, however, makes the provisions explicit, clear and unambiguous. The property of the Trust situate within the Maharashtra region in terms of Clause 4(b) of the 1960 Order is to be deemed to be registered with the Charity Commissioner, Bombay. The said authority could thus have exercised its jurisdiction only in respect of that property. It had no jurisdiction in relation to the administration of the entire trust as the office of the trust is situate within the State of Gujarat. The Assistant Charity Commissioner, therefore, could not have issued any direction as prayed for in the application filed before it by the first respondent herein. A statutory authority, as is well known, must exercise its jurisdiction within the four corners of the statute. It cannot act beyond the same. Any order which is passed by an authority which lacked inherent jurisdiction would be *ultra vires*. [See *Kiran Singh & Ors. v. Chaman Paswan & Ors*,

In *Anant Prasad Lakshminiwas Ganerival v. State of Andhra Pradesh* 1963 AIR(SC) 852, this Court relying on its earlier decision in *State of Bihar v. Charusila Dasi* , opined:

"This decision, in our opinion, makes it abundantly clear that where the trust is situate in a particular State, the law of that State will apply to the trust, even though any part of the trust property whether large or small, is situate outside the State where the trust is situate."

In *Charity Commissioner, Bombay v. Administrator of the Shringeri Math and its properties* , this Court embarked on a discussion of the question as to how *situs* of the trust is required to be

determined and opined:

"It seems to us that in view of the above authorities, in order to determine the situs of the trust which consists of a math and a subordinate so called math or maths, it is the situs of the principal math which will determine the applicability of the Act. We need not here decide the position of an independent real math though connected with another math. The High Court has found in this case that in the Nasik math no religious instructions are imparted and no spiritual service is rendered to any body of disciples. Further, no member of the body is allowed to enter the place of worship without permission although worship is carried out by the pujaries according to vedic usage. In view of these findings, the Nasik math cannot be held to be a real math or temple within the definitions set out above. In our opinion, the High Court was right in holding that the Nasik math is not liable to be registered under the Act."

Yet again, dealing with almost an identical question, this Court in *Ramswarup Guru Chhote Balakdas v. Motiram Khandu Patil & Ors.* opined that two different authorities cannot exercise the right to supervise and control the management of the trust properties, holding:-

"The curious result of such a construction would be that though the trust is situate and is administered at Burhanpur in Madhya Pradesh, the authorities under the Bombay Act can claim to control its management."

It was categorically held:

"The fact that a part of its property is situate in Maharashtra State though the trust is within Madhya Pradesh State, would not mean that the trust would be governed partly by the Madhya Pradesh Act and partly by the Bombay Act. Such a division of the trust and its administration is not contemplated by either of the two Acts. It is, therefore, clear that the present trust does not fall within the ambit of Section 28 and is not one of those trusts which can be deemed to be registered under the Bombay Act. That being so, it is obviously not a trust which fulfils the second condition of Section 88B of the Bombay Tenancy and Agricultural Lands Act and the appellant cannot be said to be entitled to the certificate under that Section."

In the premises above-mentioned, the jurisdiction of the Charity Commissioner, Bombay must be held to be confined only to the management of the property situate within the State of Maharashtra and not in relation to the entire trust.

The Charity Commissioner did not find that the allegations relating to mismanagement had any foundation. It has been clearly held that the said allegations are not proved. The Charity Commissioner also declined to pass an order in terms of Section 41A as regards the prayer for appointment of an administrator. The first respondent was only given liberty to file an appropriate application under the Act. In the event, such an application is filed, indisputably the same has to be determined on its own merit. We would, however, observe that any such application alleging to

mismanagement of the trust, if filed, may be forwarded to the Assistant Charity Commissioner, Gujarat who shall deal with it. It is further made clear that the respondent would be at liberty to inspect the audited accounts in the office of the Assistant Charity Commissioner in terms of the scheme framed by the Gujarat High Court.

In view of the aforementioned observations and directions, the impugned judgment cannot be sustained. The appeal is, therefore, allowed. In the facts and circumstances, the parties shall bear their own costs.