

(2011) 03 GAU CK 0017

Gauhati High Court (Shillong Bench)

Case No: Writ Petition (C) No. 171 (SH) 2005

Shri Krishno Kanta Borooah

APPELLANT

Vs

The State of Meghalaya

RESPONDENT

Date of Decision: March 18, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 92
- Constitution of India, 1950 - Article 226
- General Clauses Act, 1897 - Section 16, 21
- Trusts Act, 1882 - Section 34, 73, 75, 76, 77

Citation: (2011) 5 GLR 584

Hon'ble Judges: B.K. Sharma, J

Bench: Single Bench

Advocate: P.K. Barman, D. Das, N.K. Golsmith, B.K. Daimary, H.L. Shangreiso, for the Appellant; K.S. Kynjing, General and N.D. Chullai, Sr. Govt. Advocate, for the Respondent

Final Decision: Allowed

Judgement

B.K. Sharma, J.

The order that has been put to challenge in this writ Petition is the one dated 18.10.2004, by which the Government of Meghalaya in the Law Department in the name of the Governor has dissolved the particular trust and reconstituted another Board of Trustees. According to the Petitioner, such an action is wholly illegal and not sustainable in law.

2. The basic facts as disclosed in the writ petition are that Late Bhola Nath Borooah, grandfather of the Petitioner was a bachelor. He was an architect in establishing "Earl Holiday Home" at Shillong, which was earlier known as "Earl India Sanatorium, which was established in the year 1920.

3. In paragraph 3 of the writ petition, the Petitioner has stated about the contribution to the society made by said Late Bhola Nath Borooah. It was in the early part of 20th century, he felt necessity to provide health care to the tourists, visitors and those persons who need such care. Keeping in mind that object, he had purchased the plot of land measuring 6.72 acres at Police Bazar, Shillong. In 1920, he had constructed two Bungalows thereon, one of which was named as Borooah Cottage and another as B. Borooah Hall. Subsequently, two more Bungalows were constructed in the said plot of land, one of which was named after Rani Avoishree, who had also made contributions towards constructing the subsequent two Bungalows. The other Bungalow was known as Dalia Cottage.

4. Late Borooah created a Board of Trustees with the said immovable properties for the welfare of the needy people of the then undivided Assam. He had executed a deed of trust incorporating the object and purpose, for which the same was created. The Board of Trustees was consisted of persons like Late Kanak Lal Borooah, Rev J.J. Nikols Roy, Hem Chandra Baruah, Sashi Prasad Borooah, Keshab Kanta Borooah, father of the Petitioner etc. Late Keshab Kanta Borooah continued in the said Board of Trustees in the year 1953.

5. According to the Petitioner, after completion of all necessary formalities towards creation of the said dreamed project, Late Borooah with the consent of all trustee members handed over the responsibility of the said trust along with all its immovable properties to the Government of Assam with the understanding that the Board of Trustees would be able to function properly with the aid and advice of the State Government for the welfare of the needy people.

6. The Petitioner has annexed the copy of the deed of trust dated 17.11.1953, which was declared at Shillong by then Government of Assam investing the subject matter of the trust, described in the scheduled thereto. The trust was declared with the following members:

- a. Secretary Judicial, Government of Assam or his successors in office.
- b. Secretary Revenue, Government of Assam or his successors in office.
- c. Shri H.P. Barua.
- d. Shri D.C. Das.
- e. Shri L.P. Changkakoti.
- f. Shri C.L. Barua.
- g. Shri R.P. Borooah.
- h. Shri G.C. Sarma.
- i. Shri S.N. Sikdar.

j. Shri J.N. Bawri.

k. Shri R.N. Barua

(Secretary Legislative Assembly).

7. Subsequently, a supplementary deed was made on 28.12.1953 with certain modification for smooth functioning of the trust and to carry out the welfare activities of the Earle Sanatorium, in which name the trustee was created. Further, on 26.12.1954, a set of rules was drawn up for its management. Subsequently, the Earle Sanatorium was re-named as Earle Holiday Home.

8. By Annexure-A letter dated 7.12.1987 addressed to the trustee-in-charged of Earle Holiday Home by the Government of Meghalaya, Law Department under the signature of the joint Secretary, the approval of the Government to the election to the Board of Trustee of the 3 trustees as required under Clause 9 of the deed of trust was conveyed. The Petitioner was one of the three trustees named in the letter and he was so inducted vice one Shri P.L. Das, expired.

9. According to the Petitioner, when the trustee incharge did not convene the regular meeting of the Board, he on many occasions along with other trustees made request to do so, but the same did not evoke any response. By Annexure- E letter dated 22.6.2004, the Petitioner requested the trustee incharge to convene the Trust Board meeting regularly. In the said letter, it was stated that such meeting was not called since 25.5.2004. In the letter, it was alleged that the trustee incharge was functioning more like a Chief Executive Officer of a company rather than an elected representative of the Trust Board. It was also stated in the letter that as per the last decision in the Board, after the annual closing of accounts, the trustee-in-charge would place the audited balance sheet and annual report from the C.A. within 30 days, but in spite of two months, no action in that direction had been taken.

10. When the matter rested thus, the Petitioner received a caveat filed by the State of Meghalaya in the Law Department in respect of the impugned notification dated 18.10.2004 in response to which, one of the trustees made the Annexure-E representation to the Law Secretary requesting him to furnish copy of the impugned notification along with the report pertaining to financial irregularities of the trust as was alleged. The said representation was followed by further representations dated 6.12.2004 . 17.12.2004, 18.1.2005 and finally, 9.5.2005 made by the Petitioner himself.

11. For a ready reference, the impugned notification dated 18.10.2004 is reproduced below:

"NOTIFICATION"

Dated Shillong, the 18th Oct 2004

No. LJ(A) -53/93Pt.I/4I/4 - The Governor of Meghalaya is pleased to Order dissolution of the Board of Trustees, Earle Holiday Home, Shillong with immediate effect and in consequence thereof all Trustees ceased to hold office accordingly.

No. LJ(A) -53/93/Pt. I/4-A -The Governor of Meghalaya is pleased to reconstitute the Board of Trustees, Earle Holiday Home, Shillong with immediate effect with the following persons as Trustees namely:

1. Mr. Dlesing Lyngdoh, Jaiaw Langsning, Shillong-2.
2. Mr. Leston Wanswett, Jaiaw Laitdom, Shillong-2.
3. Mr. Modriek Nongkynrih, Mawalai Nonglum, Shillong-2.
4. Mr. Radheshyam Goenka, Police Bazar, Shillong-2.
5. Shri R.R.K. Makdoh, Ex-CEM, Garikhana, Shillong.
6. Mr. J.E. Tariang, Lummawbah, Shillong-5.
7. Mr. L. Jyrwa, Fruit Garden, Shillong.
8. Mr. K.A. Pariat, Jaiaw Pdeng, Shillong-2.
9. Principal Secretary, Revenue Department Govt of Meghalaya or his representative.
10. Principal Secretary, Urban Affairs or his representative.
11. Secretary, Law, Govt. of Meghalaya or his representative.

Shri Leston Wanswett one of the aforesaid Trustees shall be the Convener of the meeting of the Board of Trustees till a Trustee-in-charge is appointed by the Board as envisaged under the Deed of Trust, dated Shillong the 17th November, 1953 and the Rules framed thereunder.

Sd/-

Secretary to the Govt. of Meghalaya
Law Department.

12. It is the aforesaid backdrop, the Petitioner has challenged the dissolution of the trust and its reconstitution. According to the Petitioner, the trust that was created wayback in 1920 followed by Annexure-A declaration of 1953 could not have been dissolved as per the whims and caprices of the Government of Meghalaya in the Law Department by the impugned notification dated 18.10.2004. The Petitioner has also alleged violation of principles of natural justice in issuing the impugned notification.

13. In the counter affidavit filed by the Respondents through the Joint Secretary, Law Department, it has been stated that the government had allotted a plot of land

measuring 6.72 acres to Late B.N. Borooah. The Respondent have denied that the Petitioner was one of the trustees. In paragraph 9 of the affidavit, it has been stated that the Government of Meghalaya was compelled to dissolve the Board of Trustees of Earle Holiday Home and reconstitute the same. According to the Respondents, none of the trustees can claim lifelong membership as a trustee or derive the benefit from the trust. According to the Respondents, there is no obligation to supply trustees of the with any of papers/documents relating to financial irregularities committed by them because of which the trust had to be dissolved.

14. The Petitioner has filed a rejoinder affidavit, in which he has reiterated the stand taken in the writ petition. It has been stated that the Earle Holiday Home was established for the benefit of all people from all walks of life. In the said rejoinder affidavit, the Petitioner has denied settlement of 6.72 acres of land with Late Borooah by then Government of Assam. According to the Petitioner, the land was purchased by Late Borooah. It has been stated that the impugned notification is in clear violation of the terms and condition of the deed of trust. It has also been stated that the impugned notification has been issued for unlawful gain deviating from the purpose for which the trust was created.

15. The Petitioner has also filed an additional affidavit bringing on record the letter dated 12.1.2009 addressed to the Secretary Law, Government of Meghalaya seeking information relating to business of the Board of Trustees. Another document annexed to the said additional affidavit is the letter dated 12.11.2009 in the similar line addressed to the Right to Information Officer in the Law department, Government of Meghalaya.

16. I have heard Mr. P.K. Barman, learned Counsel along with Mr. H.L. Shangreiso, learned for the Petitioner as well as Mr. K.S. Kynjing, learned Advocate General, Meghalaya assisted by Mr. N.D. Chullai, learned State counsel. I have also perused the entire materials on record and have given my anxious consideration to the submissions made ands the said materials.

17. Learned Counsel for the parties, during the course of hearing extensively argued referring to the provisions of the trust deed, the provisions of the Indian Trust Act, 1925, the General Clauses Act, 1897 and Code of Civil Procedure, 1908. Learned Counsel for the Petitioner has also placed reliance on decision of the Apex Court reported in [Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others,](#)

18. The object and background in which the deed of trust was declared and the trustees named above were invested with ownership of the properties and assets mentioned in the Scheduled thereto have been recited in the deed of trust as follow:

as trustees, whereas Shillong being the Capital of the State and one of the best health resorts of the country, it has long been felt that a suitable place of sojourn for the visitor to this place be built.

And whereas with this object in view the Governor has acquired for himself an area of 6.72 acres of land which along with an additional area of 3.30 acres belonging to the Government , making a total area of 10.02 acres of land be desired to dedicate for the above mentioned purpose.

And whereas in the promotion of the aforesaid object of the Governor, some generous members of the public also gave substantial donations in the shape of money and buildings and placed the same at the disposal of the Governor for the said purpose, and whereas the Governor has now the absolute power to make a disposition of all that property (now commonly known as the Earle Sanatorium) together with all funds and other assets appertaining thereto which the wishes to do for the aforesaid purpose to be used & managed in the manner hereinafter mentioned.

And whereas the Trustees above named are willing to be invested with the ownership of the properties and assets mentioned in the Scheduled hereto annexed.

19. Clause 1 of the deed, records transfer unto the trustees the entire property, funds, claims and other assets of the old Sanatorium renamed as Earle Holiday Home. Clause 2 obligates the trustees to keep the property with due and proper care with a view to afford a descent accommodation for occasional visitors to Shillong. Clause 5 on which the learned Counsel for the Petitioner has placed much emphasis is quoted below:

5. Government shall have the right of supervision through any of their officials appointed for the purpose in matters of management and if not any time the Government has reasons to believe that the Institutions has not been properly managed they shall have the right to direct the Trustees to be Constitute the Board of Management with the Trustees shall be bound to carry out within three months of the date of receipt of such direction by the Trustees in charge.

20. Clause 7 makes the provision for appointment o trustees- in-charge of the Board. Clause 9 empowers the trustees to elect with the approval of the Government any other person in place of any trustees. For a ready reference, the said clause is also reproduced below:

9. The trustees shall have the power to elect with the approval of Government any other persons in place of any Trustees who may have caused to be a member of the Board of Trustees either by death, retirement, resignation or refusal to serve as Trustees as otherwise.

21. On perusal of the aforesaid clauses in the deed of trust, it is seen that the Government shall have the right to supervise through any of its officials appointed for the purpose in the matters of management. As per Clause 5, if the Government has the reasons to believe that the institution has not been properly managed, it

shall have the right to direct the trustees to constitute the Board of Management with the trustees and such direction will be binding on the trustees so as to carry out the same within 3 (three) months of the date of receipt of such direction. No where in the trust deed, there is any provision for dissolution of the trust itself and constitution of another trust by the Government and that too, without any notice to the trust members.

22. Learned Advocate General, Meghalaya in his argument, submitted that if the Petitioner is aggrieved by the impugned notification, he should have taken recourse to the procedure laid down in Section 92 of the Code of Civil Procedure. He has also referred to Section 34 of the Indian Trusts Act as well as Section 16 and 21 of the General Clauses Act, 1897. According to him, the writ petition is not maintainable being bad for non-joinder of necessary parties as well as there being alternative remedy. He also submitted that the trust being a public trust, and the same being the creation of the Government, it has the authority to dissolve the same.

23. Section 92 of the CPC deals with Public charities. In case of any alleged breach of express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate -General, or two or more persons having an interest in the trust and having obtained the leave of the Court may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction The whole or any part of the subject-matter of the trust is situate to obtain a decree:

i. removing any trustee;

ii. appointing a new trustee;

iii. vesting any property in a trustee;

[(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;]

iv. directing accounts and inquiries;

v. declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

vi. authorizing the whole or any part of the trust property to be let, sold mortgaged or exchanged;

vii. settling a scheme; or

viii. granting such further or other relief as the nature of the case may require.

24. Referring to the aforesaid provisions, it is the stand of the learned Advocate General that if the Petitioner is aggrieved by the impugned notification, he should take recourse to the procedure laid down in the said Section. If this argument is to be accepted, same will rather help the case of the Petitioner. According to the Respondents, the impugned notification has been issued on account of financial irregularities in respect of the affairs of the trust. Thus, it was incumbent on the part of the authorities named in the said Section to take recourse to the procedure laid down therein instead of dissolving the trust itself and reconstituting the same by the impugned notification.

25. Section 34 of the Indian Trusts Act speaks of right to apply to Court for opinion in management of trust property. This provision rather helps the case of the Petitioner and not the Respondents. If the Respondents were dissatisfied with the management of the trust property, more particularly, when their officers are also trustees they could have applied by petition to a Civil Court of original jurisdiction for its opinion instead of dissolving the trust and reconstituting the same.

26. Section 16 of the General Clauses Act speaks of power to appoint to include power to suspend or dismiss. Such power is derived under Central Act or Regulation and not in respect of any trust deed. Section 21 of the said Act speaks of power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or byelaws. As in Section 16, in this Section also, the power is exercisable where, by any Central Act or Regulation, such power is conferred. In the instant proceeding, we are concerned with a public trust and not with an act of the State Government under a particular provision of a statute. That being the position, the argument advanced by the learned Advocate General does not appeal to this Court.

27. As regards the non-maintainability of the writ petition on the ground of non-joinder of necessary parties, it was submitted that since all the trustees to the deed of trust are not the party Respondents, the writ petition is not maintainable. Suffice is to say that the Petitioner who is one of the trustees is aggrieved by the impugned notification issued by the Government of Meghalaya in the Law department under the signature of the Secretary. In the writ petition both the State of Meghalaya and Secretary to the Government of Meghalaya, Law department are party Respondents. The Petitioner having not sought for any relief against the trustees and the author of the impugned notification being very much a party, it cannot be said that the writ petition is bad for non-joinder of necessary parties.

28. In *Gadde Venkateswara Rao* (supra), the Apex Court held that a Petitioner who seeks to file an application under Article 226 of the Constitution should "ordinarily" be one who has a personal or individual right in the subject matter of the petition. A personal right need not be in respect of a proprietary interest; it can also relate to an interest of a trustee. That apart, in exceptional cases, as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even

fiduciary interest in the subject matter thereof.

29. The Petitioner being a trustee of the trust is very much entitled to make challenge to the impugned notification to protect the interest of a trustee. The Petitioner has certainly been prejudiced by the impugned notification and thus, the petition under Article 226 of the Constitution at his instance is, therefore maintainable.

30. In the trust deed of 1953, the trustees therein had been invested with the ownership of the properties and assets mentioned in the Schedule thereto. They could not have been divested with the same by a stroke of pen as has been done with the issuance of the impugned notification. Learned Counsel for the Petitioner, upon a reference to Section 73 of the Indian Trust Act submitted that the particular procedure having been prescribed for appointment of new trustees on death etc., the Government of Meghalaya could not have been dissolved the trust in the name of the Governor, as if the trust is an authority of the State under its deep and pervasive control. Section 73 of the Act has laid down the methodology and procedure for substitution of trustees and appointment of new trustees. Bypassing such a procedure prescribed in the Act, the Government of Meghalaya in the Law department could not have dissolved the trust itself and constitute another trust.

31. Section 75 of the Act deals with vesting of trust property in new trustees. Whenever any new trustee is appointed u/s 73, all the trust properties shall become vested in such new trustee either solely or jointly with the surviving or continuing trustee or trustees, as the case may require. There is always survival of a trust as provided for u/s 76 of the Act on the death or discharge of one of several co-trustees, the trust survives and the trust property passes to the others, unless the instrument of trust expressly declares otherwise. Section 77 specifies as to how a trust is extinguished. None of the specifications is applicable to the instant case.

32. In the counter affidavit filed by the Respondents, they have even denied the trustee-ship of the Petitioner which will go to show the total non-application of the mind. The fact that the Petitioner is one of the trustees is an admitted position, as will be revealed from the Annexure-A letter dated 7.12.1987 annexed to the additional affidavit filed by the Petitioner. By the said letter, the Government of Meghalaya in the Law department under the signature of the Joint Secretary intimated the trust-in-charge about the approval of the election of the Petitioner to the Board of Trustees along with two other members. In the Annexure-D letter dated 22.6.2004 annexed to the writ petition, the Petitioner had clearly indicated about the non-convening of the Trust Board meeting since 25.4.2004 and also about the affairs of the Trust Board. This will clearly go to show that he was very much interested in the affairs of the trust. However, the Respondents in their wisdom have denied the very existence of the Petitioner in the Board of Trustee, which is really unfortunate. In the counter affidavit, the Respondents have not even obliquely stated about their source of power exercising which, the impugned notification has

been issued.

33. The impugned notification dated 18.10.2004 is not informed of any reason as to the requirement of dissolution of the trust and creation of new trust. The trust cannot be dissolved in such a manner and likewise, the trust cannot be created in the manner the same has been created by the impugned notification dated 18.10.2004. The creator of the notification and for that matter, the trust in the name of the Governor of Meghalaya is the Government of Meghalaya in the Law department under the signature of the Secretary. The said authority being very much party to the writ petition, it cannot be said to be a case of non-joinder of necessary parties, about which discussions have been made above.

34. The trust was created with the purpose mentioned in the deed of trust. Its existence with perpetuity and succession, as per the provisions of the Indian Trust Act, 1882 could not have been set at naught by issuing the impugned notification dated 18.10.2004 in violation of the terms and conditions of the trust deed and also the provisions of the Indian Trust Act, 1882.

35. Above being the position of fact and law, I have no hesitation to set aside and quash the impugned notification dated 18.10.2004 issued by the Government of Meghalaya in the Law department in the name of the Governor under the signature of the Secretary, by which the Board of Trustees created under the deed of trust executed on 17.11.1953 has been dissolved and the new Board of Trustees of Earle Holiday Home has been created. Consequently, the earlier Board of Trustees stands revived.

36. Writ petition is allowed, without, however, any order as to costs.