

## Subhash Trimbakrao Inamdar and Others Vs Pandurang Tansingh Savner and Others

**Court:** Bombay High Court (Nagpur Bench)

**Date of Decision:** April 8, 2003

**Acts Referred:** Bombay Public Trusts Act, 1950 & Section 50A, 50A(1)

**Citation:** (2003) 3 MhLj 131

**Hon'ble Judges:** J.N. Patel, J

**Bench:** Single Bench

**Advocate:** V.D. Bhavsar, for the Appellant; J.T. Gilda, for the Respondent

**Final Decision:** Dismissed

### Judgement

J.N. Patel, J.

Heard learned Counsel for the parties.

2. The appellants out of whom the appellant No. 1 is the original non-applicant before the Assistant Charity Commissioner, Amravati is impugning

the decision dated 3rd April, 1996 in Misc. Civil Appeal No. 76 of 1993, by the Joint District Judge, Amravati upon an application filed u/s 72 of

the Bombay Public Trust Act, 1950 (hereinafter referred to as Trust Act") which application came to be rejected under the said order. The

appellants had preferred an application u/s 72 of the Trust Act, before the District Judge, being aggrieved by the judgment and order of the

Assistant Charity Commissioner dated 3rd June, 1993 passed by the Assistant Charity Commissioner, Amravati on the application made by the

respondents u/s 50-A of the Trust Act, for framing scheme.

3. The subject-matter of the dispute relates to Shri Shukleshwar Deosthan of Wathoda Shukleshwar. The indisputable facts are that the ancestors

of the appellants namely -- Bapuji Raghunath Inamdar (Gurav) was granted mam of the Trust property on 23rd May, 1867, under which

agricultural land bearing survey No. 202, admeasuring 21 Acres 28 Gunthas of village Wathoda Shukleshwar was granted to Bapuji, so as to

enable him to maintain the Shukleshwar Mahadeo Temple, out of the income of the lands and also to maintain his family. It is under this grant that

Bapuji Raghunath Inamdar became the owner of the agriculture land and incharge of Shukleshwar Mahadeo Temple. The litigation has a

checkered history, as on previous occasion also an attempt was made to dislodge Tukaram son of Bapuji, on the ground that he has not been able

to maintain the temple and carry out Pooja regularly, as the temple was not repaired nor it was lighted, but the same came to be turned down,

there was another complaint against the appellants by the respondents that the deceased Tryambak has no issue and he died issueless, therefore a

receiver may be appointed. The same also came to be dismissed. The present appellants are the successors of deceased Tryambak Inamdar.

4. In the year 1960-61 Tryambakrao who had inherited the Inam by succession got the Deosthan registered as a Public Trust under the Madhya

Pradesh Public Trust Act, and it was given registered Public Trust No. A-32 and the mode of succession came to be stated as ""hereditary"" in

column No. 4 of the Register of Trust, and this is how the temple as well as the agricultural land of which Inam was given in favour of Bapuji and

has passed over to Tryambak Tukaram by way of succession became a Public Trust. The respondents moved the Assistant Charity Commissioner

u/s 50-A of the Trust Act, to frame a scheme. The said application came to be registered as Application No. 16 of 1988. After obtaining the

report of the Inspector and hearing the parties in the matter, the Assistant Charity Commissioner found that the appellants and his father have not

rendered the services to the temple and failed to perform Pooja and Archana as a result of which the Public Trust is suffering. It was also observed

that the sole Trustee has been continuously negligent in getting the accounts of the Trust audited in time as required under the Trust Act, and though

he is getting sufficient income by cultivation of the land, he is not performing his duties towards the temple i.e. the condition of the temple is

deteriorating and further the sole Trustee who holds hereditary office is not performing the Pooja and Archana in the temple. From the report of the

Inspector, the Assistant Charity Commissioner found that the appellant has not maintained the accounts and has mortgaged the Trust property with

the Central Bank of India, of Wathoda Shukleshwar and obtained loan in contravention of Section 36-A, without the permission of the Joint

Charity Commissioner, and it in these facts and circumstances, it was held that though there is sufficient income from the agricultural fields

belonging to the Trust, the object of the Trust are not carried out properly. It is after considering this fact situation, the Assistant Charity

Commissioner held that it is necessary and expedient to frame a scheme of Shri Shukleshwar Deosthan, Wathoda Shukleshwar and passed the

Judgment and Order dated 3rd June, 1993.

5. In the application filed u/s 72 of the Trust Act, the learned Joint District Judge after hearing the learned Counsel for the parties and examining the

report found that the impugned order passed by the Assistant Charity Commissioner does not require any interference. The learned Joint District

Judge found that the Shukleshwar Deosthan is a Public Trust and the agriculture land bearing survey No. 202 of Wathoda Shukleshwar is the

property of the Public Trust as registered under the Madhya Pradesh Public Trust Act, after the enquiry was held by the Registrar of Public Trust,

in the year 1953. Further after reorganization of the State, enquiry was held u/s 28 of the Bombay Public Trust Act, in the year 1961 and it was

confirmed that Shukleshwar Deosthan is a Public Trust and field survey No. 202 is the Trust property. This finding that Shukleshwar Deosthan is a

Public Trust and field survey No. 202 is Trust property was never challenged by the appellant or any person interested in the Trust, and it is in this

background it was held that the proceedings u/s 50-A of the Trust Act is tenable. The other contention which was examined by the learned Joint

District Judge, was whether there is any violation of principles of natural justice and the lower Court has committed an error in framing the scheme

in the manner of mismanagement of the Trust property. This was specifically on the foundation that the applicants before the Assistant Charity

Commissioner cannot be held to be the persons interested in the Trust, as defined u/s 2(10) of the Trust Act, and if so whether a scheme can be

framed so as to change the constitution of the Trust which is hereditary in nature. It was held that the respondents are the persons interested in the

Trust as they are residents of the same village having faith in the Trust and Trust property. The learned Joint District Judge found that the main

contention of the appellants was to claim exclusive ownership over the property of the Trust by ignoring that it is the Trust property, and it held that

the question of claiming the right as exclusive ownership over the property does not arise. The Joint District Judge, also concurred with the findings

of the Assistant Charity Commissioner that the hereditary Trustee has failed to manage the Trust and has acted against the interest of the Trust, and

therefore, it was necessary to settle the scheme for smooth working and for the betterment of the Trust as well as its property. It also approved the

decision of the Assistant Charity Commissioner in excluding the appellants from the Trusteeship, as the appellants failed to submit their consent to

be appointed as Trustees, and therefore did not find any error or illegality in the decision of the Assistant Charity Commissioner and dismissed the

application.

6. Mr. Bhavsar, the learned Counsel appearing for the appellants submitted that, he is assailing the order passed by the Assistant Charity

Commissioner as well as the learned Joint District Judge, by raising the following substantial questions of law :

(a) Whether the respondents i.e. original applicants have locus standi to apply u/s 50-A of the Bombay Public Trust Act ?

(b) When in the basic document, mode of succession is given as hereditary, that in such circumstances the learned Assistant Charity Commissioner

Amravati, will have no power to frame new scheme and also to appoint new Trustee/Trustees.

It is also submitted by him that the two Authorities also have failed to take note of certain important questions which are required to be considered

before such a decision is taken and therefore, the impugned orders needs to be quashed and set aside.

7. Mr. Bhavsar, the learned Counsel has placed reliance on the following decisions viz. : (1) Sardarkhan Rajadarkhan Vs. Charity Commissioner

and others, in order to emphasize that it was not proper on the part of the Assistant Charity Commissioner or the District Judge, to have deprived

the appellants of his hereditary rights as well as of his entitlement to cultivate the land which was given to his ancestors by way of Inam, and/or

framing of the scheme consisting of persons who cannot be said to be interested in the Trust; (2) the previous decision between the parties to show

that there has been a consistent attempt on the part of the respondents to grab the Trust property by removing the appellants who are hereditary

Trustees and therefore, according to him the application moved before the Assistant Charity Commissioner to frame the scheme so as to take over

the Trust property from the hereditary Trustee and then dispose it of to suit their interest; (3) an unreported judgment in the case of Shamdas Gur

Naridas Jahagirdar v. Goverdhandas Gangadas and Ors. decided on 6th October, 1949 in Appeal No. 33 of 1947, in which his Lordship Chagla,

C.J. as he then was, quashed and set aside the order of the lower appellate court and declared that in case of a property which has been given as a

gift and inam to the Archak for the purpose of defraying the expenses of the temple, such a person is entitled to enjoy the income of the said

property and that the rights being vested in him as the Archak and Manager of the temple and such a property cannot be held to be a Public Trust

and therefore, the defendant in the case or any other members of the Public have no right over to ask for the account of income of the said

property or to obstruct the plaintiff in the possession and enjoyment thereof; (4) The decisions rendered by the Supreme Court in the matter of

Kakinada Annadana Samajam, Vs. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad and Others, ; Shri Gollaleshwar

Dev and Ors. v. Gangawwa Kom Shantayya Math and Ors., 1986 Mh.LJ. (SC) 809, in order to emphasize that who can be called as person

having interest and submitted that the respondents do not fall within the category of persons interested in the Trust property and therefore, have no

locus standi to apply to the Assistant Charity Commissioner to frame the scheme and oust the hereditary Trustee.

8. Mr. Gilda, the learned Counsel appearing for the respondents submitted, that as regards the contention of the learned Counsel for the appellants

that the respondents have no locus standi, it is a well settled law that the residents of the locality under which the religious institution is situated are

the persons having interest in the Trust and this fact is not disputed that the respondents are the persons who are residing in the village and are

worshiper"s of the deity situated in the Shukleshwar Temple, and therefore this contention of the appellants cannot be accepted. It is further

submitted by Mr. Gilda, that there can be no dispute over the issue as to whether in Shukleshwar Deosthan and the Agricultural land which was

given under Inam to the ancestors of the appellants are no more the exclusive property of the appellants, but it is a Public Trust as the father of the

appellant No. 1 himself gave up the rights which he got in Inam by getting the property registered under the Madhya Pradesh Public Trusts Act,

and thereafter under the Bombay Public Trusts Act. It is submitted that at the time the properties came to be registered as Public Trust and except

for certifying that it would be managed by hereditary Trustee it was not clarified as to how the hereditary Trustee would perform his obligations.

Mr, Gilda, further submits that though the Trust may be managed by the hereditary Trustee, still the Public Trust Act would govern the Public Trust

and to carry out its purpose and object, the Charity Commissioner is well within its powers to frame a scheme if it is found that the hereditary

Trustee is guilty of mismanaging the properties of the Trust, he can also be removed and excluded from being considered for being inducted in the

Board of Trustees to be constituted under the scheme framed by the Assistant Charity Commissioner.

9. Mr. Gilda, the learned Counsel for the respondents further submitted that, this is not a case where the appellants were not heard in the matter

and they were deprived of the opportunity to place before the Assistant Charity Commissioner proper accounts and statements as to how they

have properly managed the Trust in furtherance of its object and purpose and it is not necessary to frame the scheme. On the other hand the

record and proceedings before the Assistant Charity Commissioner discloses that the appellant No. 1 participated in the proceedings. Mr. Gilda,

submitted that the appellants have shown all interest hostile to the Trust property by claiming the Trust property as their own, which was given as

Inam, further the nature of disputes in earlier litigation in the matter, does not show that the respondents are bent upon dislodging the appellants and

grab the Trust.

10. Mr. Gilda, submitted that in the given facts and circumstances the scheme framed by the Assistant Charity Commissioner which has been

upheld by the Joint District Judge, does not call for any interference and the appeal deserves to be dismissed as no substantial question of law

arises for consideration.

11. Taking into consideration the rival contentions of the parties and hearing the learned Counsel for them, the following points arise for my

determination, which are raised as substantial question of law :

(a) Whether the respondent i.e. Original Applicant has locus-standi to apply u/s 50-A(I) ?

(b) When in basic document, mode of succession is given as "hereditary" then under such circumstances learned Charity Commissioner can have

power to appoint a new Trustee/Trustees ?

12. Insofar as the contention of the appellants that the original applicants have no locus standi to apply u/s 50-A of the Bombay Public Trust Act to

move the Assistant Charity Commissioner as they have no locus standi in the matter is concerned, cannot be accepted. It is not disputed that the

respondents are the residents of the same village where Shukleshwar Deosthan is situated, and that the villagers including the respondents visits the

temple to worship the deities, and therefore, they come within the definition of person having interest, as defined u/s 2(10) of the Trust Act. Clause

(a) of Sub-section (10) of Section 2 clearly states that ..... "a person who is entitled to attend or is in the habit of attending the performance of

worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the distribution of gifts thereof." The definition of

person "interested" is a inclusive definition and must be liberally construed so as to impress all persons who may be directly or indirectly concerned,

and therefore the contention of Mr. Bhavsar, the learned Counsel appearing for the appellants that the respondents are not persons interested in

the Trust cannot be accepted. The authority relied upon by Mr. Bhavsar in Shri Gollaleshwar, 1986 Mh.LJ. (SC) 809 is on the point of "persons

having interest would also include the Trustee", it does not debar the category of all persons in which the respondents fall. On the other hand this is

not challenged by the appellants that the respondents are not residing in the village or visiting the temple for worshipping the deity. Therefore, this

question has to be answered in the affirmative.

13. The next question is that, in a case of hereditary Trustee, whether the Charity Commissioner has power to frame new scheme and also to

appoint new Trustee or Trustees. The facts brought on record reveal that the application came to be made by the respondents before the Assistant

Charity Commissioner, when they found that the Shukleshwar Deosthan is not being maintained properly and the income from the agricultural land

is being misappropriated by the hereditary Trustees, not only this, the hereditary Trustee has also mortgaged the agricultural land belonging to the

Trust without seeking permission of the Charity Commissioner. The Assistant Charity Commissioner called for the report of the Inspector which

reveals the gross mismanagement of the Shukleshwar Deosthan and the Trust property by the hereditary Trustee to the detriment of the Trust, and

therefore in the facts and circumstance, the Assistant Charity Commissioner was justified in framing a scheme.

14. In a decision rendered by the Supreme Court in the case of Saiyad Mohammad Bakar El-Edroos (dead) by Lrs. Vs. Abdulhabib Hasan Arab

and Others, , while considering the issue of even substitution or delayed substitution of the L.Rs. of the deceased i.e. one of the persons having

interest in the Trust, the Supreme Court has observed and held that under the Bombay Public Trusts Act, the Charity Commissioner is crowned

with very wide powers to check and control the irregularities, malpractices and misconduct in the functioning of the Public Trust. Also to supervise,

regulate, settle a scheme for the proper management or administration of a Public Trust, in fact involved in almost every step to functioning of a

Public Trust. Section 50-A infuses the Charity Commissioner with power in addition to Section 50 to frame, amalgamate or modify any scheme in

the interest of proper management of a Public Trust. This is exercised either suo motu when he has reason to believe it is necessary to do so or

when two or more persons having interest in a Public Trust make an application to him in writing in the prescribed manner. This merely enable the

Charity Commissioner to initiate proceedings for settling a scheme for the proper management or administration of a Public Trust. In the

background of the setting of various provisions, the object of the Act, the Charity Commissioner being clothed with sufficient powers to deal with

all exigencies where a Public Trust or its Trustees stray away from its legitimate path and where the materials are before him or laced before him by

the said two persons, then to hold abatement of proceedings on application of any procedural laws not only would amount to the curtailment of his

power but make him spineless and helpless to do anything in the matter of a Public Trust eroding the very object of the Act.

15. In the present case the Assistant Charity Commissioner on receipt of the application made by the respondents, and after obtaining the report of

the Inspector, was satisfied that the appellants have failed to manage the Trust and was rather Acting in detriment to the object and purpose of the

Trust and its properties, was justified in framing the scheme. The contention of Mr. Bhavsar, that the hereditary Trustee cannot be removed is

unacceptable, even if the authority of Kakinada Annadana Samajam, Vs. Commissioner of Hindu Religious and Charitable Endowments,

Hyderabad and Others, is referred to, which is relied upon by the learned Counsel. The head note (A) would itself indicate as to how the Supreme

Court has interpreted the office of hereditary Trustees. The said note reads as under :

The hereditary Trustees of the institutions generally have only a bare right to manage and administer the secular estate of the institution or the

endowment and they do not have proprietary or beneficial interest either in the corpus or in the usufruct of the estate. The position of a hereditary

Trustee does not appear to be in any way different from that of a Dharamkartha or a mere manager or custodian of an institution or endowment.

There is one exception only. The hereditary Trustee succeeds to the office as of right and in accordance with the rules governing succession. But in

all other respects his duties and obligations are the same as that of Dharamkartha. A hereditary Trustee cannot be equated to a Shebait of a

religious institution or a Mathadhipati or the Mahant. The ingredients of both office and property, of duties and personal interest are blended

together in the rights of the Mahant as also a Shebait and a Mathadhipati. The position of Dharamkartha, on the other hand is not that of a Shebait

of a religious institution or of the head of a math. These functionaries have a much higher right with larger power of disposal and administration and

they have a personal interest of beneficial character. A bare right to manage an institution or an endowment cannot be treated as property within

Article 19(1) and Article 31. Consequently the right of hereditary Trusteeship is not property within the meaning of Article 19(1)(f) or any other

Article of the Constitution.

Therefore, merely because the appellants are the hereditary Trustee does not permit them to deal with the Trust property at their own whims and

fancy, and to act against the interest of the Trust and its property, and therefore this Court finds that there is no merits in the appeal.

16. It is a well settled law that once endowment is made it never reverts to the donor and therefore the appellant cannot claim that as their

ancestors were granted agricultural land by way of Inam so as to enable them to manage the Shukleshwar Deosthan, they would continue to treat it

as their personal property, though the father of the appellant No. 1 have surrendered his rights under the grant by getting the Shukleshwar

Deosthan and the agricultural fields registered as a Public Trust.

17. There is only one thing which appeals to the court which requires consideration and that is the appellants ought to have been offered an



opportunity to be part of Board of Trustees, constituted under the scheme. Probably the Assistant Charity Commissioner having found that the

appellants have acted to the detriment of the Trust and the Trust property, felt it proper to exclude them from the Management of the Trust.

Though the decision of the Assistant Charity Commissioner excluding the appellants from the management of the Trust may not be illegal, but it was

irregular as it has failed to consider their rights to participate in the management of the Trust, of which they were the hereditary Trustees, and

therefore, this Court directs the Assistant Charity Commissioner to reexamine the scheme by taking into consideration the entitlement and eligibility

of one of the appellants to be appointed on the Board of Trustees by hearing the parties before him. In case the appellants are keen to avail of this

opportunity they should file an appropriate application justifying their claim to be appointed on the Board of Trustees under the scheme, framed by

the Assistant Charity Commissioner, such application be made within four weeks of the disposal of this appeal. On such application being made

the Assistant Charity Commissioner will give notice to the parties to the appeal and after hearing them decide the entitlement and eligibility of the

appellants to be appointed on the Board of Trustees. The Assistant Charity Commissioner to complete all this exercise and take a decision in the

matter on or before 31-05-2003. But for this exception the Assistant Charity Commissioner can proceed to implement the scheme and the Board

of Trustees appointed by him would take over the Management of the Trust and its properties, and may offer the agricultural field for cultivation by

inviting bids to the highest bidder, in which the appellants will also be entitled to bid and if the appellant is permitted to pay the highest bid received

by the Board of Trustees for cultivation of the agricultural field, they shall be permitted to cultivate the agricultural field. It is made clear that none of

the Board of Trustees or their family members or relatives except the appellants, would be entitled to participate in the bid for cultivation of the

agriculture lands belonging to the Trust. With these directions the appeal is dismissed with no order as to costs.