

(1962) 08 BOM CK 0036

Bombay High Court

Case No: First Appeal No. 250 of 1959

The Charity Commissioner

APPELLANT

Vs

The Municipality of Taloda

RESPONDENT

Date of Decision: Aug. 28, 1962

Acts Referred:

- Bombay Public Trusts Act, 1950 - Section 56B

Citation: (1963) 65 BOMLR 27 : (1963) MhLj 201

Hon'ble Judges: Patel, J; Palekar, J

Bench: Division Bench

Judgement

Patel, J.

His Lordship after setting out the facts, proceeded. Mr. Jahagirdar has raised a preliminary point that the Charity Commissioner has no locus standi to appeal against the decision of the District Court. It is argued that as the Charity Commissioner is the authority who has finally to decide before the matter comes to the District Court all questions under the Act his interest in the decision is merely that of a Court or a Tribunal who decides a dispute and no further and, therefore, he has no right to appeal against the decision of the District Court. He relies upon Sections 18 to 22 and 70 of the Bombay Public Trusts Act, 1950.

2. Section 18 requires a trustee to make an application for registration of the trust. Section 19 casts a duty upon the Assistant Charity Commissioner or Deputy Charity Commissioner of deciding matters enumerated in Section 19 either on an application or on his own motion. The matters to be decided are whether a trust exists and whether it is a public trust, whether any property is the property of such trust, the names and addresses of the trustees and manager of such trust, the mode of succession to the office of the trustee of such trust, the origin, nature and object of such trust, etc. Section 20 requires him to record his findings. Section 21 requires entries to be made in the register in accordance with the findings or the decision in appeal and provides that the entries shall be final. Section 22 provides for making

changes in the entries. Section 70 gives a right of appeal against the decision of the Deputy or Assistant Charity Commissioner to the Charity Commissioner. Section 72 provides for an application being filed to the District Court against the decision of the Charity Commissioner under Sections 40, 41, 50A, 70 or 70-A or on the questions whether a trust exists and whether such trust is a public; trust or whether any property is the property of such trust.

3. In order to consider whether or not this contention is sound, we must consider the scheme of the Act and the functions which the Charity Commissioner exercises in relation to public trusts. There cannot be any scope for doubt that the Crown or Government is parent patria in respect of wards and is also the protector of charities in general (see Tudor on Charities, 5th edn, p. 174). From time to time various Acts were made by the Government both Central and State for controlling mismanagement in the properties of public trusts. However, it was only about 1950 in almost every State that Acts for the supervision of public trusts came to be passed. The purpose of the Act as shown by the preamble is to make better provision for the administration of public religious and charitable trusts in the State and having due regard to the purpose of the Act, i.e. it having been passed for the public good, it is the duty of the Courts of justice to put such a construction upon it as may tend to the furtherance rather than to the restriction of the powers conferred by it upon the Charity Commissioners : See *In re Duncan* : *In re Taylor's Trusts* (1867) 2 Ch. 356. We must, therefore, proceed to consider what are the powers of the Charity Commissioner vis-a-vis a public trust, and determine as to whether the Charity Commissioner would be a person interested to appeal against the decision of the District Court.

4. Section 3 of the Act enables the Charity Commissioner subject to the general or special orders of the Government to superintend the administration and carry out the provisions of the Act. The purpose of the provisions would appear hereafter. Section 37 gives a general power to the Charity Commissioner and others therein mentioned to enter on and inspect any property belonging to a public trust, to call for or inspect any extract from any proceedings of such trust as well as any books of account in the possession of the trustees as also any returns, statements, etc. Sub-section (2) of Section 37 creates a liability in the trustees to afford all convenience and reasonable facilities for such examination. u/s 38 he is entitled to refer the matter to an auditor to look into the management, and u/s 38 to call upon any of the defaulting trustees to give explanation, u/s 40 to determine if any loss is caused by the management to the public trust and u/s 41 to surcharge any of the defaulting trustees and the manager. This clearly shows that the Charity Commissioner has an inquisitorial jurisdiction or power over public trusts. Section 47AA enables the Charity Commissioner to make an application to the Court for appointment of a new trustee if an existing trustee is convicted of any offence under the Act. Section 57 establishes a fund called the Public Trusts Administration Fund to vest in the Charity Commissioner and every public trust is liable to contribute

towards this fund. The constitution of the fund and contribution to it by public charities in the State could not be without any purpose. It is meant for the expenses of establishment of the Charity Commissioner and his subordinates, the purpose of which is the effective control and supervision over public trusts by the Charity Commissioner. Section 68 which defines the duties and powers of the Charity Commissioner gives a power of superintendence over public trusts. Section 50 gives a right to the Charity Commissioner to institute a suit in cases of breach of trust for recovery of possession of property belonging to any public trust or for directions where they are necessary and it also provides that if any other person wants to institute a suit on behalf of the Charity he must obtain sanction of the Charity Commissioner.

5. All these powers, which are given by the Act, clearly show that the Charity Commissioner is not merely a judicial or quasi-judicial authority who has merely to determine certain questions which are brought before him. He exercises a dual function, one as a delegatee of the Government's power of superintendence over trusts, and second as an authority who is vested with quasi-judicial powers of deciding questions under the Act. It is not, therefore, correct to say that his interest in the decision of the District Court is merely that of an ordinary Tribunal. The provisions of Section 56-B particularly clinch the matter. It says:

(1) In any suit or legal proceedings in which it appears to the Court that any question affecting a public religious or charitable purpose is involved, the Court shall not proceed to determine such question until after notice has been given to the Charity Commissioner.

(2) If upon the receipt of such notice or otherwise the Charity Commissioner makes any application in that behalf, he shall be added as a party at any stage of such suit or proceedings.

Sub-section (3) of Section 56-B is not material. It is clear that the notice to the Charity Commissioner and his right of being added as a party in case he feels necessary to come before the Court is not a mere idle formality. It was probably thought that some at least of those in charge of litigation or a proceeding may not carry it through properly and may not act in the best interest of the institution, and it is for this reason that notice is required to be given to the Charity Commissioner before the Court can proceed in a matter. It is not contended♦and we do not think that it can possibly be contended♦that this section cannot apply to a proceeding u/s 72 of the Act. If the Charity Commissioner is given notice and is entitled to be a party and if he is a party there can be no reason why if he is aggrieved by a decision he should not have a right of appeal. We must so construe the provisions of the Act as not to render the remedy provided by it nugatory but to advance it and it seems to us that the provisions of the Act justify an inference that the Charity Commissioner is entitled as of right to appeal against the decision of a tribunal if the decision is against the public charity, even though there is no direct provision enabling him to

appeal. This conclusion is further strengthened by the adoption of neutral language in Sub-section (4) of Section 72 which provides for an appeal. It simply says:

An appeal shall lie to the High Court against the decision of the Court under Sub-section (2) as if such decision was a decree from which an appeal ordinarily lies.

This contention of Mr. Jahagirdar, therefore, must be repelled.

6. The rest of the judgment is not material to this report.