

2014 (0) AIJEL-HC 231844

GUJARAT HIGH COURT

Hon'ble Judges:S.G.Shah, J.

Rupeshkumar Prafulchandra Shastri Versus Ravindrabhai Purushotamdas Upadhyay & 2

Civil Applications No. 10586 of 2014 ; *J.Date :- OCTOBER 13, 2014

Equivalent Citation(s):

2014 JX(Guj) 839 : 2014 AIJEL_HC 231844

JUDGMENT :-

1 The applicant herein has proposed to file an appeal against the judgment and order dated 16.5.2014 by the Principal District Judge, Kheda at Nadiad in Civil Misc.Application no.181 of 2013. Such Civil Misc.Application was preferred by present respondent no.1 as Manager of Dakor Temple Committee for appointment of trustee of such Dakor Temple Committee pursuant to the Dakor Temple Committee Scheme approved by the judicial order in First Appeal no.47 of 1903 with First Appeal no.105 of 1903 by judgment and order dated 12.9.1906, which was ultimately confirmed by judgment and order dated 14.5.1912. Pursuant to such scheme, when Manager of the Committee has filed an application before the District Court, the District Court has initiated the proceeding by issuing public notice to call upon the general public for their appointment or proposal to be appointed as a trustee. After scrutiny of all applications and materials submitted by such proposed applicants, the District Court has appointed present respondent no.2, namely, Birenabhai Dipakbhai Parikh as one of the trustees of the Dakor Temple Committee. For such appointment, the District Court has relied upon the original scheme and similar proceeding initiated before 10 years for appointment of the trustee. So far as present applicant is concerned, he being one of the applicants, who proposes to be appointed as a trustee, has been aggrieved by such appointment of respondent no.2 and, therefore, he has challenged such order, initially by filing Special Civil Application no.9482 of 2014 wherein notice was issued by the Court (Coram: Hon'ble Smt.Justice Abhilasha Kumari) on 8.7.2014. However, on 12.9.2014, learned advocate Mr.Kirtidev R.Dave for the petitioner in such Special Civil Application, who is also appearing for the same litigant as applicant in the present petition, sought permission to withdraw that petition with liberty to file appropriate proceeding and with a request to continue interim relief. Pursuant to such statement made at bar, the Court (Coram: Hon'ble Mr.Justice S.H.Vora) disposed of the petition as withdrawn and discharged the notice. However, interim relief was extended till 16.9.2014. Thereafter, present application is filed on 15.9.2014 seeking leave to appeal against the impugned judgment.

2 Both the parties have argued at length on different issues like maintainability of First Appeal and validity of the impugned judgment.

3 However, it is also clear and admitted by both the parties that the impugned judgment was already challenged by one another applicant, namely, Darshanbhai Jayantikumar Sevak in Special Civil Application no.9203 of 2014, which is dismissed by this High Court (Coram:

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Hon'ble Mr.Justice S.H.Vora) on merits on the same day i.e. 12.9.2014 when present applicant has withdrawn his Special Civil Application no.9482 of 2014 before the same Court, with a disclosure that he may be permitted to file appropriate proceeding. However, there is no endorsement regarding any such liberty granted by the Court, though all the litigants have liberty to initiate appropriate judicial proceeding if law so permits.

4 In any case, the fact remains that the issue involved in the present Civil Application and First Appeal has been considered by the co- ordinate Bench (Coram: Hon'ble Mr.Justice S.H.Vora) in Special Civil Application no.9203 of 2014 and by reasoned order, when such Special Civil Application was dismissed and when on the same day present petitioner sought permission to withdraw his similar petition and files such First Appeal with leave to appeal within three days and seeks similar relief, it becomes clear that this is nothing, but a practice to take a chance before different Bench by filing different type of litigation, which certainly requires to be condemned and it may be one of the reasons to refuse the leave to appeal.

5 However, even if we go into the merits of the case, the fact remains that there is no reason or substance either in the leave to appeal application or in the first appeal memo to deviate from the reasoned order dated 12.9.2014 in Special Civil Application no.9203 of 2014, wherein the co-ordinate Bench has confirmed that selection of a trustee under the scheme is the prerogative of the authority, who is empowered to for such selection and, therefore, when Principal District Judge, Kheda at Nadiad has selected respondent no.2 after scrutiny of all relevant materials and documents before it, and when there is no illegality, irregularity, perverseness or arbitrariness in the impugned order, there is no reason for interfering in such selection. If we peruse the impugned judgment, it becomes clear that the Principal District Judge has taken care of all materials placed before it with reference to all the applicants. Even an opportunity was offered to all the applicants to cross-examine other applicants when some objections are filed against some of them. All the applicants have decided not to cross-examine any of the applicants, the Principal District Judge has scrutinized all available record and given his reasons for selection of respondent no.2. It is obvious that in such process, it would not be appropriate to give reasons for non-selection of any of the applicants, since it would not be proper to discuss the negative side of all the applicants, since it is not warranted, when authority has only to select the suitable person as a trustee of the public trust.

6 However, it cannot be ignored that so far as present applicant is concerned, he is facing the criminal case no.1457 of 2010 u/ss.420 and 465 of the IPC as admitted by himself in his affidavit before the District Court and, therefore, even if there is no condition in selection process that a person, who is facing criminal or other litigation, cannot be appointed as a trustee, it cannot be said that though applicant is facing such charges, he is the only suitable person to be appointed as a trustee. The selection process certainly permits the authority to select the best person and when there is nothing against the respondent no.2, and when applicant is facing criminal charges, it can never be said that applicant would be a good choice against respondent no.2. It is also clear that such appointment is not for life time, hence applicant may get chance when other trustee retires, if he is otherwise suitable.

7 Therefore, I do not see any reason to deviate from the judgment dated 12.9.2014 in Special Civil Application no.9203 of 2014 so as to interfere in the impugned judgment and, therefore, to grant leave to appeal to the applicant to challenge the same order, which is already confirmed in above-referred litigation.

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8 However, before parting with the matter, it would be appropriate to recollect here that every litigant has a right to agitate his grievance in appropriate manner and no order of any judicial authority is final unless it is so provided in the statute and, therefore, the impugned order is certainly challengeable in appropriate proceeding. But, unfortunately, in the present case, it seems that applicant has to chase the issue right from District Court till the Hon'ble Supreme Court even for production of original scheme by the Dakor Temple Committee on record. Surprisingly, the orders with reference to such issues, copies of which are produced in the paper-book, results into disturbing position inasmuch as for the production of original scheme of the trust, applicant has to apply before the District Court and District Court has rejected such application. Applicant has to agitate such issue till Hon'ble Supreme Court. Therefore, though leave to appeal is dismissed, I have no option but to observe that it would be appropriate for the public authority and public trust to be more vigilant and fair in their action and they must come before the Court with all relevant documents and shall not try to defeat the interest of justice merely on technicalities. Suffice it to say that the copy of the scheme is already available in the public record in the form of original judgments and, therefore, there is nothing wrong for the trust to produce such copy before the Court, which is otherwise now produced before this Court in this litigation.

9 So far as maintainability of First Appeal is concerned, since some other litigations of other applicants challenging the same impugned order are pending for hearing, it would be appropriate to keep such issue open so as to enable both the sides and the concerned Court to decide it in accordance with facts and law. Therefore, the issue regarding maintainability of First Appeal is kept open.

10 In view of above facts and circumstances, when there is no substance in the application on factual merits, present Civil Application seeking leave to appeal is dismissed. In view of order in Civil Application, First Appeal (Stamp Number) and its connected Civil Applications also do not survive and stand disposed of accordingly.

Further Order Date: 13.10.2014 Learned advocate Mr.K.R.Dave for the applicant requests to extend the interim relief, which is in force till date. However, considering the facts and circumstances, there is no reason to extend any such relief as prayed for. Hence, request is rejected.

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