

Gujarat High Court

Chairman vs Learned on 16 September, 2010

Author: Mr.S.J.Mukhopadhaya,&NbspHonourable Mr.Justice Kureshi,&Nbsp

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LPA/1653/2010 3/ 3 ORDER

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS

PATENT APPEAL No. 1653 of 2010

In

SPECIAL

CIVIL APPLICATION No. 8375 of 2010

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ROSHANBEN

NEVIL DUMASIA

CHAIRMAN

& TRUSTEE & 3 - Appellant(s)

Versus

LEARNED

JOINT CHARITY COMMISSIONER IN CHARGE OF SURAT REGION & 3 -
Respondent(s)

=====

Appearance :

MR

AJ YAGNIK for Appellant(s) : 1 - 4.

MR CB UPADHYAYA for

Respondent(s) : 1,

MR HIMANSHU J MEHTA for Respondent(s) :

2,

NOTICE SERVED BY DS for Respondent(s) : 3 -

4.

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CORAM

:

HONOURABLE

THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA

and

HONOURABLE

MR.JUSTICE AKIL KURESHI

Date

: 16/09/2010

ORAL
ORDER

(Per : HONOURABLE MR JUSTICE AKIL KURESHI) The appellants are original petitioners. In the writ petition they challenged a show cause notice dated 14.6.2010 at Annexure A issued by the learned Charity Commissioner, Surat on Misc. Application No. 11 of 2010 filed by respondent No.2 in the main petition as well as in this LPA.

The said respondent No.2 had approached the Charity Commissioner praying for the relief that the other co-trustees of the Trust in which he himself is a trustee, should not create hindrance in his opening a school and to direct them to extend all co-operation for the said purpose. On this application, the Joint Charity Commissioner issued the impugned notice.

The petitioners, who are also the trustees of the said Trust, challenged the show cause notice before the learned Single Judge in SCA No. 8375 of 2010. Learned Single Judge by passing an order dated 21.7.2010, relegated the petitioners before the Joint Charity Commissioner and required the Joint Charity Commissioner to decide the issue of jurisdiction as a preliminary issue. It is against this order that the appellants have filed the present LPA.

Counsel for the appellants primarily contended that under Section 41-A of the Bombay Public Trusts Act, Joint Charity Commissioner has no power to entertain the application of the respondent No.2 for the prayers made therein. He therefore, submitted that there would be no purpose in going before the Joint Charity Commissioner.

Learned counsel for respondent No.2 opposed the appeal and contended that prayer of the original applicant was for reviving the school in which the other trustees were creating hindrance.

Learned counsel for the Joint Charity Commissioner stated that only show cause notice is issued and all the aspects are yet to be examined.

Having heard learned Advocate for the parties and having perused the application filed by respondent No.2 before the Joint Charity Commissioner and the prayer made therein, we are of the opinion that Section 41-A of the Bombay Public Trusts Act does not confer power on the Joint Charity Commissioner to entertain any such prayer. Under Section 41-A of the Act, it is the power of the Charity Commissioner to issue from time to time directions to any trustee of a public trust or any person connected therewith to ensure that such 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. Whether a new school is to be started or whether an existing school is to be revived or not, are the issues first to be decided by the Trust through proper resolutions passed during the meeting with majority opinion, and such an issue cannot be decided by the Joint Charity Commissioner. If the original applicant has any grievance about mis-management of the Trust or misappropriation of the funds by other Trustees, such an issue has not been raised in the application in question and it would be open to the aggrieved trustee to take steps, with regard to which we express no opinion. So far as the application pending before the Joint Charity Commissioner is concerned, we are of the opinion that the Joint Charity Commissioner lacks jurisdiction to decide

the said application. LPA is therefore, allowed. Proceedings arising out of the said application No. 11 of 2009 are quashed. Order of learned Single Judge dated 21.7.2010 is set aside. Appeal stands allowed accordingly.

(S.J.

Mukhopadhyaya, C.J.) (Akil Kureshi, J.) */Mohandas Top