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AJENDRAPRASADJI NARENDRAPRASADJI PANDEY

v.

SWAMI K. NARAYANDASJI AND ORS.

MAY 13, 2005

B

[RUMA PAL, ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

*Code of Civil Procedure, 1908; O.7, R.11 and O.39, R. 1 and and 2:*

C *Removal of appellant from the post of Acharya and appointment of another person on the basis of a resolution passed by a religious body—Challenge to—Allowed by trial Court—Affirmed by High Court—On appeal, Held: High Court did not hear the connected appeals together—Had both the appeals been taken up together, the stand of the parties would have become clearer—Judgment of the High Court lacks clarity, analysis and precision—D Hence, remitted to High Court for hearing afresh along with other connected appeals—Practice and Procedure.*

E *Issuance of Injunction against removal of the appellant—Acharya—Held: While deciding the issue of injunction, Courts have to consider the cumulative effect of the factors viz. **prima facie** case, balance of convenience and irreparable loss—High Court failed to consider all these factors—Hence, this issue also remitted to the High Court for fresh consideration.*

F *The questions which arose for determination in these appeals were as to whether removal of the appellant-Acharya of a religious institution on the basis of a purported resolution passed by a religious body, Satsangha Mahasabha, was valid and also the legality of the appointment of its successor-Acharya by the same body.*

**Disposing of the appeals, the Court**

G *HELD: 1. A lot of confusion has been created and requisite care has not been taken by the High Court to ensure that all the connected matters were taken up together for effective adjudication by the High Court. The impugned judgment which forms the subject matter in the appeal lacks clarity, analysis and precision. The basic issues have not been addressed. On this score alone, High Court is directed to hear the matter afresh along*

with the other connected appeal. [396-G, H]

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2. While deciding the issue of injunction the Courts have to consider the cumulative factors i.e. *prima facie* case, balance of convenience and irreparable loss. Definite findings have to be given on these aspects on a *prima facie* basis. The impugned judgment of the High Court which forms the subject matter of appeal does not meet the requirements. Therefore, without expressing any opinion on the merits and the acceptability of the various issues, the matter is remitted to the High Court for fresh consideration. No opinion is expressed on the merits. [397-A, B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3380 of 2005.

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From the Judgment and Order dated 6.5.2004 of the Gujarat High Court in Appeal from Order No. 421 of 2002.

WITH

C.A. Nos. 3381 and 3381 of 2005.

D

Harish N. Salve, S.B. Vakil, C.A. Sundaram, Hasmukh Parikh, P.H. Parekh, Hemang Parikh, Ms. Shakun Sharma, Ms. Meenakshi Roy, E.C. Agrawala, Mahesh Agarwal, Rishi Agrawal, B.V. Desai, H.M. Parekh, H.H. Parekh, Sanjeev Kr. Singh, Pradeep Kr. Malik and Ms. Sheenam Parwanda with them for the Appellants.

E

K. Parasaran, K.K. Venugopal, Ashok K. Desai, Anip Sachthey, Hari N.P. Raval, P.G. Desai, Murgen Purohit, Shrinivas R. Khalap, E.Venu Kumar, H. Ahmadi, Pradeep Ranjan Tiwari, Ms. J.S. Wad, Ashish Wad, Ms. Surabhi Madan and Neeraj Kumar with them for the Respondents.

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The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J.** Leave granted.

When litigants come before courts raising disputes as to who shall function as Head of a religious or financial institutions, and they travel through the corridors of various courts and come before this Court, one wonders when do these persons get time to think of purity sublime essences of religion and their duties as religious leaders. It has a sad reflection on the credibility of the religious institutions. Materialistic pursuits increasingly replace divine

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A pursuits. The present case at hand is no exception.

The dispute centres round the question as to whether the removal of Ajendraprasadji Narendraprasadji Pandey from the post of Acharya on the basis of a purported resolution dated 11.5.2002 passed by a body calling itself Satsangha Maha Sabha was valid. Intimately linked with this core issue

B is the legality of the action taken to install Rakesh Prasadji Mahendra Prasadji. The dispute relates to Shri Swaminarayan Sampradaya, Vadtal Gaddi. The concerned suit was filed before the 3rd Joint Civil Judge, Senior Division, Nadiad numbered as Special Civil Suit No.156/2002. An application in terms of Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (in short the 'CPC') was filed and the same was allowed by order dated 1.10.2002 with the following directions:

"The application Exh.5 filed by the plaintiff against the defendant is hereby allowed till final disposal of the application and I pass further order that the defendant herein himself or his supporters be restrained from entering in the Temple at Vadtal and subordinate Temples-Gadhada, Junagadh. Moreover, they shall not arrange any meeting without prior permission of the Government. Moreover, the defendant No.1 is removed from the post of Acharya therefore he shall not perform duty of Acharya.

E The aforesaid interim order is granted till the final disposal of the suit.

Further, I pass order that the defendant, his relatives or his followers shall not enter in any temple of the Vadtal Trustee Board to perform "Darshan" or "Puja". Further, they are directed not to act against the aforesaid order. They can perform "Darshan" like other common man. They cannot perform "Darshan" or "Puja" in the capacity of Acharya."

G It is to be noted that an application in terms of Order 7 Rule 11 CPC was filed which was rejected by the common order dated 1.10.2002. An appeal was filed before the Gujarat High Court for staying operation of the order of the Trial Court and seeking injunction restraining the appointment of any other person as Acharya of the Southern Diocese. The appeal was admitted but no interim protection was given. In the meantime, on 31.1.2003 the new Acharya was appointed by the Committee constituted pursuant to the resolution on 11.5.2002. An application was filed questioning the appointment

of the new Acharya i.e. RakeshprasadJi Mahendraprasadji. Certain Satsanghis filed Special Civil Suit No.17 of 2003 questioning appointment of the new Acharya. A

Special Leave Petition (C) No.3351 of 2003 was filed before this Court questioning order of the Gujarat High Court in C.A. No.7520 of 2002 in A.O. No.421 of 2002. This Court requested the Hon'ble Chief Justice of the Gujarat High Court to ensure early disposal of the appeal. The Appeal from Order No.421/2002, Appeal from Order No.69/2003 and Civil Application No.611/2003 and other miscellaneous applications were filed and by the impugned judgment the Appeal from Order No.421/2002 was dismissed while no order was passed on other applications. B

In support of the appeals, primary stand taken is that the suit is misconceived in view of the provisions contained in the Bombay Public Trust Act, 1950 (in short the 'Act'), more particularly in the background of Sections 50 and 51 of the said Act. The purported resolution of 11.5.2002 has no legal sanctity and the removal of the erstwhile Acharya was done without any authority by a group of people who were small in number compared to the large number of devotees and persons belonging to the Sampradaya. The plaintiff had not established *prima facie* case to show that the so-called body which had passed the resolution had any authority or power to remove an Acharya. The High Court did not express any view in those aspects and held that it was not the proper stage to decide the issues. Though the present appellant's application in terms of Order 7 Rule 11 CPC was rejected that cannot and has not been taken as a ground to grant injunction. As the order was a combined one, the appeal can be said to be against the order rejecting the application in terms of Order 7 Rule 11 CPC. The High Court's order suffers from various infirmities as the earlier direction given to take up all the connected matters together was not kept in view. While disposing of the matter, the High Court did not decide the points raised by a group of Satsanghis in the connected matters. C

Learned counsel appearing for the respondents pointed out that the two courts have been satisfied about the *prima facie* case and the suit which has been filed by the group of Satsanghis supporting the erstwhile Acharya is a red-herring to confuse the issues. The concerned appeal i.e. A.O.69/2003 was on board when the appeal filed by Ajendraprasadji i.e. A.O.421/2002 was taken up. This according to them is not a matter where any interference is called for under Article 136 of the Constitution of India, 1950. G

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**A** It is to be noted that the legality of the appointment of Rakeshprasadji as Acharya was questioned. So, as noted above the basic controversy revolves round the question of the legality of the decision taken to remove Ajendraprasadji and the legality of the appointment of Rakeshprasadji.

It has been argued by learned counsel for the appellant that the trial

**B** Court and the High Court did not even examine the authority of the group of persons calling itself Satsangh Mahasabha who passed the resolution to remove Ajendraprasadji. It has been submitted by learned counsel for the respondents that in the past it has been done by the Satsangh Mahasabha and, therefore, the plea that the resolution was without authority cannot be sustained.

**C** In any event, the previous Acharya - Ajendraprasadji himself had written a letter wanting opportunity to place his side of the version before the body. It was pointed out by learned counsel for the appellant that the letter in no way indicated a concession to the position that the meeting convened could take a decision to remove the Acharya. Even if it is accepted that the body passing the resolution could in a given case adopt a resolution to remove the

**D** Acharya, the modalities and the nature of the exercise of the power has to be proved by evidence. This position appears to have been highlighted in the suit which forms the subject matter of A.O.69/2003 before the High Court. Unfortunately, the High Court contrary to its earlier directions that the connected matters are to be heard together does not appear to have dealt with the pleas raised in that appeal.

**E** Had both the appeals been taken up together, the stand of the parties would have become clearer before the High Court. Additionally the High Court does not appear to have dealt with the relevant aspects while affirming the order passed by the trial Court.

**F** The appellant in appeal relating to SLP(C) NO.17836/2004 submitted that the arguments were heard in respect of the appeal A.O.69/2003 but no findings have been recorded. The High Court on the said appeal had practically rendered the same infructuous by its decision in AO No.421/2003. We find that lot of confusion has been created and the requisite care has not been

**G** taken to ensure that all the connected matters were taken up together for effective adjudication. The impugned judgment which forms the subject matter in appeal relating to SLP(C) No.15386/2004 lacks clarity, analysis and precision. The basic issues have not been addressed. On this score alone, we think it appropriate to direct the High Court to hear the matter afresh along with the appeal AO No.69/2003.

**H**

It is needless to note that while deciding the issue of injunction the Courts have to consider the cumulative factors i.e. *prima facie* case, balance of convenience and irreparable loss. Definite findings have to be given on these aspects, on a *prima facie* basis. The impugned judgment of the High Court which forms the subject matter of appeal relating to SLP(C) No.15386/2004 does not meet the requirements. Therefore, without expressing any opinion on the merits and the acceptability of the various issues, we deem it appropriate to remit the matter to the High Court for fresh consideration. A  
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Since the controversy is continuing unabated, it would be in the interest of the parties if the appeals and connected matters are disposed of by the end of September, 2005. It would also be proper for the trial Court to dispose of the matter as was directed by the High Court earlier to dispose of the matter expeditiously preferably by the end of November, 2005. Learned counsel for the parties had assured us that they shall cooperate for early disposal of the suits. We make it clear, as noted above, we have not expressed any opinion on the merits and we have interfered primarily on the ground that the impugned order of the High Court has been passed without taking note of the relevant aspects and, therefore, deserves to be set aside for fresh consideration. C  
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The appeals are disposed of with no order as to costs.

S.K.S.

Appeals disposed of.