

Hazarat Pirmahomed Shah Saheb Roza ... vs Commissioner Of Income-Tax, Gujarat on 27 October, 1966

Equivalent citations: [1967]63ITR490(SC)

Author: J.C. Shah

Bench: J.C. Shah

JUDGMENT

Ramaswami, J.

1. These appeals are brought, by certificate, from the judgment of the High Court of Gujarat, dated September 25, 1964, in Income-tax Reference No. 22 of 1963.

2. Hazrat Pirmahomed Shah Saheb was a renowned Muslim saint who lived in Gujarat in the early half of the eighteenth Century. At the time of his death he left a large number of followers. During his lifetime he initiated some of his followers as his disciples and those so initiated came to be known as Murids. At the time of the demise of the saint, the number of Murids was about 400. The descendants of the Murids also became Murids. Thus the class of Murids consists of the descendants of the Murids initiated by the saint in his lifetime. After the death of the saint in 1742, his disciples and devotees subscribed moneys and collected donations for the purpose of building a Roza or Dargah (mausoleum) to commemorate his memory. Besides the Roza, a mosque was also built for the purpose of offering Fatiahs and prayers. In accordance with Islamic doctrine, all Muslims, whether Murids or non-Murids, had unrestricted access to the Roza and the mosque. Now the maintenance of the Roza and the mosque required moneys and so also did the observance of festive occasions such as Urs, death anniversaries, etc., at these institutions. Several gifts of properties were, therefore, made by Murids for these purposes and certain properties were also purchased by persons in management out of offerings made at these institutions. All these properties were treated as properties of the Roza and the income from these properties after payment of municipal taxes, insurance premia and other out-goings in respect of the properties was utilised for maintenance of the Roza and the mosque and observance of festive occasions such as Urs, death anniversaries, etc. It appears from the statement of receipts and expenditure for the years 1942-43 to 1956-57 produced before the Appellate Tribunal, which is annexure "L" to the statement of case, that during those years a part of the surplus income of the properties after meeting this expenditure on the maintenance of the Roza and the mosque and the observance of festive occasions such as Urs, death anniversaries, etc., was also utilised for running madrassas, library and payment of expenses on items, such as longer and bhandar for giving food to pilgrims attending the Roza and the mosque on festive occasions. The surplus income was at no time utilised for the personal benefit of the Murids. The Murids, however, had two kinds of rights in the properties of the Roza. Some of the Murids who

had contributed to the cost of construction of certain rooms per entitled to reside in those rooms when they came to the Roza. Then there were certain date trees in the premises of Roza and the Murids were entitled to the dates from those trees. The earliest records available are the records of the first survey operations carried out between 1870 and 1880 and they show that at that time the Roza and the mosque were recognised as wakf and were entered as such in the revenue records. The properties which were purchased for the Roza from time to time were also described as sold to the wakf in the revenue records. There was no evidence to show how the properties of Roza were managed prior to 1888 but the minutes of the meeting of the Murids held on October 15, 1888, indicate that until then the management of the properties was being looked after by the general body of Murids through certain appointed agents. At this meeting resolutions were passed by the general body of Murids laying down certain rules in connection with the management and administration of the Roza properties. In these resolutions, the properties were described as belonging to the Roza and a committee was appointed to manage and administer the Roza properties. The committee was enjoined to look after the properties of the Roza, maintain the Roza and the mosque and defray the expenses incurred on Urs and other functions in the Roza. The committee (hereinafter called the "Roza Committee") thereafter carried on the management and administration of the Roza properties. In 1923, the Mussalman Wakf Act was passed which gave rise to considerable litigation between the Roza Committee on the one hand and the Anjuman-i-Islam representing the Muslim community in general. With a view to prevent interference in the management of the Roza Committee by the Muslims in general, the Roza Committee took up the stand that the Mussalman Wakf Act did not apply to their case. While the litigation was pending, the Bombay Public Trusts Act, 1950, came into force on January 21, 1952. Since the Act required applications to be made for registration of all public trusts, the Roza Committee made an application to the Charity Commissioner on May 30, 1952, for registration of the wakf. The application was made under protest since the contention of the Roza Committee was that the wakf was not a wakf for the benefit of the public but was a wakf merely for the benefit of the Murids and was, therefore, not liable to be registered as a public trust. The application was, however, withdrawn on November 2, 1953. The Assistant Charity Commissioner thereupon started a suo motu inquiry under the Act but before this inquiry was concluded, the Roza Committee made another application for registration of the wakf to the Charity Commissioner on April 28, 1955. In this application the Roza Committee conceded that the wakf was for the benefit of the public and was, therefore, liable to be registered as a public trust. The Assistant Charity Commissioner thereupon made an order dated April 29, 1955, registering the wakf as a public trust. In the meantime, on March 28, 1953, the Income-tax Officer issued notices to the Roza Committee under section 44(1)(a) for the assessment years 1944-45 to 1948-49, the corresponding accounting years being Samvat years 1999 to 2003. The notices were issued on the ground that by reason of the failure of the appellant to make a return of its income under section 22 of the Income-tax Act, 1922 (hereinafter called the "Act"), the income of the appellant for those assessment years had escaped assessment. The appellant contended that the income derived from the Roza properties was exempt from tax under section 4(3)(i) of the Act. The claim for exemption was rejected by the Income-tax Officer whose order was affirmed by the Assistant Commissioner in appeal. The appellant took the matter in further appeal to the Appellate Tribunal. The Tribunal held, in the first place, that the Roza properties were wakf properties were held under a legal obligation for a private religious purpose and not for a public religious purpose. The Tribunal also examined the question whether the properties were held by the Roza Committee

for a charitable purpose and took the view that the class of Murids could not be regarded as a section of the community and, therefore, the Roza properties were not held under a legal obligation for a wholly charitable purpose. The Tribunal accordingly rejected the claim of the appellant for exemption from taxation under section 4(3)(i) of the Act. As directed by the High Court, the Appellate Tribunal stated a case on the following questions of law :

"1. Whether, on the facts and in the circumstances of the case, the properties of the Hazrat Pir Mohamed Shah Saheb Roza Committee are held under trust or other legal obligation for public, religious or charitable object ?

2. Whether the income from the wakf properties for the relevant assessment years is entitled to exemption under section 4(3)(i) and/or 4(3)(ii) of the Indian Income-tax Act ?"

3. The High Court answered both the questions against the appellant, holding that, upon the evidence given, the purpose of the wakf included the maintenance of madrasas and the library which as not proved to be a wholly religious purpose. The High Court also held that the class of Murids did not constitute a section of the community so as to satisfy the test of public benefit involved in a charitable purpose, but was merely a fluctuating body of private individuals and, therefore, rejected the claim for exemption on the basis that the wakf was a wakf wholly for a charitable purpose. In support of this view the High Court relied upon the decision of the House of Lords in *Oppenheim v. Tobacco Securities Trust Co. Ltd.*

4. Section 4(3)(i) of the Act, as it stood at the material time, was to the following effect :

"4. (3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them :

(i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto....

In this sub-section 'charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility, but nothing contained in clause (i), clause (ia) or clause (ii) shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not ensure for the benefit of the public."

5. The main question presented for determination in these appeals is whether the Roza properties were held in trust or under a legal obligation wholly for a religious purpose. The Appellate Tribunal elaborately examined this question and found that the wakf was for a wholly religious purpose. In support of this finding the Appellate Tribunal observed that the purpose of the wakf was the maintenance of the Roza and the mosque and the observance of festive occasions such as the Urs, death anniversaries, etc., at these institutions. It was also pointed out that, in accordance with

Islamic doctrine, all Muslims, whether Murids or non-Murids, had unrestricted access to the Roza and the mosque. It was further held that the income of the Roza properties after payment of municipal taxes, insurance premia, etc., was utilised for maintenance of the Roza and the mosque and the observance of the festive occasions such as Urs, death anniversaries, etc. It appears from the statement of receipts and expenditure for the years 1942-43 to 1956-57 produced before the Appellate Tribunal that a part of the surplus income of the properties was also utilised for running madrassas, library and for langar and bhandar for giving food to pilgrims attending the Roza and the mosque on festive occasions. There was, however, no evidence before the Appellate Tribunal to show that any portion of the income of the wakf was utilised for madrassas or library prior to the year 1942-43. The Tribunal therefore held that the original purpose of the wakf was confined to the maintenance of the Roza and the mosque and celebration of festive occasions and therefore the wakf was established for a wholly religious purpose. At the hearing of the reference, the High Court has interfered with the finding of the Tribunal on this point. The High Court considered that the maintenance of madrassas and the library must be taken to be one of the original purposes of the wakf and the finding of the Tribunal that the wakf was wholly for a religious purpose must be overruled. It is manifest that the question as to what was the object of the wakf is essentially a question of fact and the High Court had, therefore, no justification for interfering with the finding of the Tribunal on this point. It was pointed out by this court in *India Cements Ltd. v. Commissioner of Income-tax* that in a reference under section 66 of the Act the High Court must accept the findings of fact made by the Appellate Tribunal, and it is not open to the High Court to reopen the findings of fact unless the party concerned has applied for a reference to challenge those findings first by an application under section 66(1) of the Act. If he has failed to file an application expressly raising the question about the validity of the findings of fact, he is not entitled to urge before the High Court that the findings are vitiated for one reason or another. Similarly, in another case, *Commissioner of Income-tax v. M. Ganapathi Mudaliar*, it has been pointed out that, even if the question referred to the High Court is regarding the existence of material to support a finding of fact arrived at by the Appellate Tribunal, the High Court should not act as an appellate court and consider whether the finding was justified or not. In the present case, we think that there was no warrant for the High Court to interfere within the finding of the Appellate Tribunal that the purpose of the wakf was wholly religious and the maintenance of madrassas and library from 1942-43 onwards was not the original purpose for which the properties were gifted by the Murids, and that the allotment of money for the maintenance of madrassas and library did not alter the original character of the wakf which was established for a wholly religious purpose, viz., for the maintenance of the Roza and the mosque and the observance of festive occasions such as Urs and death anniversaries, etc., at these institutions. It has been stated by the Appellate Tribunal that the benefit of the wakf was available to all Muslims whether Murids or non-Murids who had unrestricted access to the Roza and mosque and the festivities celebrated therein. Upon the facts found by the Appellate Tribunal we are of opinion that the Roza properties were held for a wholly religious purpose of a public character and therefore the income of the Roza properties was exempt from assessment under section 4(3)(i) of the Act.

6. On behalf of the appellant an alternative argument was presented that the class of Murids constituted an appreciable section of the Sunni Bohra community and the income from the Roza properties was exempt from assessment on the ground that the Roza properties are held under a

legal obligation for wholly charitable purposes. The opposite view- point was put forward on behalf of the respondent and it was said that the class of Murids did not constitute a section of the community but was merely fluctuating body of private individuals. In support of this argument reference was made to the decision of the House of Lords in *Oppenheim v. Tobacco Securities Trust Co. Ltd.*, where it was held that, though the group of persons indicated was numerous, the nexus between them was employment by particular employers, and accordingly the trust did not satisfy the test of public benefit requisite to establish it as charitable. Reference was also made to a later decision in *Mohamed Falil Abdul Gaffoor and Others (Trustees of the Abdul Caffoor Trust) v. Commissioner of Income-tax, Colombo*, in which it was held by the Judicial Committee that in view of the absolute priority to the benefit of the trust income which was conferred on the grantors own family by clause (2)(b)(i) of the trust deed, this was a family trust and not a trust of a public character wholly for charitable purpose, and income thereof was accordingly not entitled to the exemption claimed by the appellant. In our opinion, it is not necessary to express any concluded opinion on this aspect of the case, because we have already held that the appellant is entitled to exemption from being taxed on the ground that the income was derived from property held under a legal obligation wholly for a religious purpose.

7. For these reasons we hold that the judgment of the High Court should be set aside and the questions referred to the High Court must be answered in the affirmative and in favour of the assessee. We accordingly allow these appeals with costs. There will be one consolidated hearing fee.

8. Appeals allowed.