Badrul Islam vs The Sunni Central Board Of Waqf, U.P., ... on 21 January, 1954

Equivalent citations: AIR1954ALL459, AIR 1954 ALLAHABAD 459

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal J.

1. Hafiz Abdul Karim executed three waqf deeds in 1917 and 1918. Notification was issued by the Central Board constituted under the Muslim Waqfs Act (U. P. Act NO. 13 of 1936) on 26-2-1944, under Section 5, Sub-section (1) of the Act, that the provisions of the Act would apply to these three waqfs. Badrul Islam, the mutwalli under the three waqf deeds, instituted a suit against the Sunni Central Boards of Waqfs for a declaration that these waqfs were exempt from the operation of the Muslim Waqfs Act. The Civil Judge did not agree with the contention for the plaintiff and dismissed the suit.

2. The plaintiff submits to the decree with respect to one of the waqfs, which was created by a deed, dated 11-5-1917. He challenges the decree of the court below with respect to the other two deeds executed on 20-3-1917, and 11-6-1918, respectively.

3. Badrul Islam, the plaintiff, has migrated to Pakistan and the Custodian of Evacuee Property has been given notice of this appeal in view of Section 50, Administration of Evacuee Property Act (Act No. 31 of 1950). He has not applied to be impleaded and we did not consider it necessary to implead him in the exercise of our powers under Section 50, Sub-section (2) of the Act.

4. Exemption is sought for the first deed, dated 20-3-1917, as supplemented by a deed, dated 3-7-1919, on the ground that under the terms of the deed creating the waqf more than 75 per cent, of the total income after deduction of land revenue and cesses payable to the State Government of the property covered by the deed of waqf was payable for the benefit of the waqif or his descendants or any member of his family and that, therefore, this Act did not apply in view of Section 2, Sub-section (2), Clause (i) of the Act. Parties agreed that this wakf would be exempted from the operation of the Act in case it was held that Rs. 600 made payable to the mutwalli under the terms of the waqf deed amounted to a payment for the benefit of the descendants of the waqif.

Paragraph 4 of the waqf deed executed on 20-3-1917, is:

> "The details of expenses: "The income from the waqf property after deducting the expenses like income-tax, house tax, repairs and salaries of the employees, etc., shall

be spent in this manner:

> "Rupees six hundred shall be paid to Badrul Islam Mutwalli and thereafter to each Mutwalli for the time being annually and Rs. 1,200 for the spiritual benefit of the waqif, Rs. 300 per annum to Must. Sahibunnisa, wife of the waqif .....in all Rs. 3,120 shall be spent annually and the balance shall equally be divided! amongst the five sons."

5. Paragraphs 1 and 2 of the wakf deed relate to the appointment of mutwalli and provide that the waqif would be the first mutwalli for his lifetime and after his death his eldest son Badrul Islam shall be the mutwalli and after his death mutwalliship shall devolve upon Mishahul Islam and thereafter would be devolving on the eldest son living. It is only in the absence of any male descendant that a mutwalli would be appointed from among competent and honest Muslims.

6. The contention for the appellant is that, as, a mutwalli would be one of the descendants of the waqif till a certain contingency comes into existence, this payment of Rs. 600 to the mutwalli will always be a payment to one of the descendants of the waqif and that, therefore, this amount should be taken to be a payment for the benefit of the waqif's descendants or a member of his family. We are not prepared to agree with this contention. It is clear from the provisions of para. 4 of the waqf deed that the payment to the sons is from the balance after the payment "of Rs. 3,120 has been made to others. The waqif does not say in the deed that the eldest male member of the family, who, according to the terms of the deed, would be the mutwalli, would get any larger share in the balance left after the other payments are made.

The payment of Rs. 600 is not to such eldest son or member of the family on account of his having that relationship with the waqif but is on account of another character filled in by that particular member of the family and that character is of being a mutwalli. The payment is, therefore, to a mutwalli and not to a descendant or a member of the family, even though at a certain point of time the mutwalli happens to be a member of the family or a descendant of the waqif. In this connection it may be mentioned that every person who gets a benefit under the waqf would answer the definition of a beneficiary and that a beneficiary and a mutwalli are separately defined in the Act itself. It should be inferred therefore that any payment to the mutwalli even though he be a member of the family is not a payment to him for his benefit in the sense in which the word 'benefit' is used in Clause (i), Sub-section (2) of 3. 2 of the Act. We are, therefore, of opinion that the court below was right in holding that the sum of Rs. "600 should not be taken to amount to a payment for the benefit of the waqif's descendant and that in view of the agreement between the parties the waqf cannot be said to be outside the operation of the Muslim Waqfs Act of 1936.

7. The wakf dead, dated 11-6-1918, related to a house situate at Delhi and cash of over a lac of rupees invested in a tannery at Kanpur. This amount, according to the plaintiff himself, remained invested at Kanpur till 1943 when the shares in the Kanpur tannery were sold and the proceeds equivalent to the amount mentioned in the waqt were invested in a business at Delhi, which was owned by the plaintiff solely. The contention for the plaintiff, therefore, is that the Muslim Waqfs Act of 1936 does not apply to this waqf in view of the provisions of Sub-section (1) of Section 2 of the Act.

This Sub-section (1) is :

> "Save as herein otherwise specifically stated, this Act shall apply to all waqfs, whether created before or after this Act comes into force, any part of the property of which is situate In the Uttar Pradesh."

There can be no doubt that part of the property included in the waqf deed was situate in U. P. till 1943 according to the plaintiff's own allegation and that, therefore, when Section 2 of the Act came into force on the enforcement of the Act, this waqf became subject to this Act. There is no provision in the Act that a waqf which has become subject to the Act will cease to be so subject when none of the property included in the waqf deed is situate in the Uttar Pradesh. It would follow, therefore, that when once this waqf became subject to the Act it would continue to be subject to it even if the plaintiff's allegation that the cash had been withdrawn from the Kanpur tannery and had been invested at Delhi be correct.

8. The contention for the appellant really is that at the time when the Central Board issued the notification in February 1944 no property included in the waqf deed was situate in U. P. and therefore the Muslim Waqfs Act cannot apply to this waqf. No provision in the Muslim Waqfs Act of 1936 fixes the date of the notification under 3. 5 (1) by the Central Board to be a relevant date for the purpose of determining whether a particular waqf would be subject to the Act or not. It is true that the provisions of Sections 5 to 71 of the Act did not come in force till some time in 1941. This fact has no bearing because it appears that the late enforcement of these provisions was due to the fact that what was provided by these provisions could not have been given effect to till the Central Board had found on investigation through proper agency the waqfs which were subject to the Act. It was no use enforcing these provisions which could not have been given effect to. It was for this reason that these sections were later enforced.

9. Lastly, it was urged for the appellant that the Muslim Waqt's Act of 1936 was beyond the legislative powers of the U. P. Legislature under the Government of India Act, 1919, as it affected the property situate outside the territorial limits of the United Provinces as this province was called at the time.

It is true that under Section 80-A, Government of India Act of 1919 the local legislature oi' a province had power to make laws for the peace and good government of the territories for the time being constituting that province. It could enact laws which could regulate any central subject with the previous sanction of the Governor-General. The Muslim Waqfs Act of 1936 was enacted after obtaining such sanction. That may not give power to the legislature to make laws which may affect the territories outside the particular province. But we find nothing in the Act which can be construed to affect the peace and good government of the territories beyond the limits of the United Provinces. The Act, in brief, provides for a sort of supervision over the mutwalli for the better management of the waqfs. Whatever powers the mutwalli had under the waqf or under any law do not appear to have been curtailed. In the circumstances, we do not consider that this Act was beyond the legislative power of the U. P. Legislature.

10. In view of the above we are of opinion that this appeal should fail. We accordingly dismiss it with costs.