

Abdul Karim Khan And Ors vs Municipal Committee, Raipur on 8 March, 1965

Equivalent citations: 1965 AIR 1744, 1965 SCR (3) 300

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, Raghubar Dayal, V. Ramaswami

PETITIONER:

ABDUL KARIM KHAN AND ORS.

Vs.

RESPONDENT:

MUNICIPAL COMMITTEE, RAIPUR

DATE OF JUDGMENT:

08/03/1965

BENCH:

GAJENDRAGADKAR, P.B. (CJ)

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GAJENDRAGADKAR, P.B. (CJ)

DAYAL, RAGHUBAR

RAMASWAMI, V.

CITATION:

1965 AIR 1744

1965 SCR (3) 300

ACT:

Madhya Pradesh Public Trusts Act (30 of 1951)--Entry by Registrar that property belongs to Public trust--if conclusive against real owner.

HEADNOTE:

The first appellant, who was the Mutawalli of a public trust, filed a representative suit for an injunction restraining the respondent from committing acts of encroachment on the suit property, on the ground that the property was that of the trust and had been so registered by the Registrar of Public Trusts, under the Madhya Pradesh Public Trusts Act, 1951. The suit was dismissed by the trial court and also on appeal.

In their appeal to the Supreme Court the appellants contended that, since the respondent did not avail itself of the right to file a suit within the specified time, the

order passed by the Registrar must be held to be final and conclusive against the respondent.

HELD: The fact that the property in suit was added to the list of the properties belonging to the trust, could not affect the respondent's title to it. [306 A-B]

The enquiry which the Act contemplates is an enquiry into the question as to whether a trust is public or private and does not take within its sweep questions as to whether a property belongs to a private individual and is not the subject matter of any trust at all. The only persons who are required to file their objections in proceedings before the Registrar are persons interested in the public trust--not persons who dispute the existence of the trust or who challenge the allegation that any property belongs to the said trust. Inasmuch as the respondent was not a party to the proceedings and could not have filed any objections in the proceedings the respondent was not bound to file an appeal under s. 4(5) of the Act or a suit under s. 8(1), challenging order of the Registrar. Therefore, the finality given to the finding of the Registrar could not be availed of by the appellant as against the respondent. [304 G; 305 A-B, D-E]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 871 of 1962.

Appeal by special leave from the judgment and decree dated August 13, 1959, of the Madhya Pradesh High Court in Second Appeal No. 294 of 1959.

S.P. Sinha and M. 1. Khawaja, for the appellant. S.T. Desai and A. G. Ratnaparkhi, for the respondent. The Judgment of the Court was delivered by Gajendragadkar. C.J. This appeal arises from a suit filed by the appellants who are the representatives of residents of Nayapara Ward in particular and of the Muslim community of Raipur in general, in which they claimed an injunction restraining the respondent, Municipal Committee of Raipur, from committing acts of encroachment on their rights and the rights of the Muslim community in holding Urs and other ceremonies on the plot in suit. It appears that at Raipur, there is a piece of land called "Fazle Karim's Bada" Khasra No. 649 measuring 4.62 acres. Inside this Bada, there are three or four Municipal Schools. The office of the Electric Power House is also located in one corner of the land. Behind the School, there is a Pakka platform known as "Syed Baba's Mazar". Near the Electric Power House, there is a raised earth platform on which there is a flag. This flag is called "Madar Sahib's Jhanda". Surrounding this land, there is a brick wall which was made by the respondent several years past. According to the plaint, Urs function is held every year in front of Syed Baba's Mazar for the last several years. On or about the 22nd October, 1956, the employees of the respondent started digging foundation at the places A, B, C and D shown on the map attached to the plaint. These digging operations were commenced under the directions of the respondent. because the respondent intended to construct another school building on the plot. The appellants then served a notice on the respondent to desist

from carrying on the digging operations on the ground that the property on which the said operations were being carried out, was a part of the wakf property. When the respondent did not comply with the requisition contained in the said notice, the present suit was filed by the appellants on October 29, 1956. This suit has been filed under O.1 r. 8 of the Code of Civil Procedure. The case of the appellants is that the plot of land in suit was old Kabrasthan known as "Chuchu's Takia", and is a permanent inalienable wakf property. On this plot are tombs of renowned saints like Syed Baba. and Madar Sahib's Jhanda. On a part of the plot. every year Urs and other religious functions are performed. In fact, the land has been registered under the Madhya Pradesh Public Trusts Act (No. 30 of 1951) (hereinafter called the Act) as trust property; as such, the respondent can claim no right or title to the said land. That is the basis on which the appellants claimed injunction against the respondent.

The respondent disputed this claim. It was urged in the written statement filed by the respondent that the land was never and could never be wakf property. There was no tomb on the land. There are only two so-called tombs. but they have no significance. The Urs is of very recent origin and it is allowed to be held with the licence of the respondent. The plot originally, belonged to private persons and had been acquired by the Government in land acquisition proceedings in 1910-11. The respondent got the said land from the Government in 1922. In 1932-33. the Deputy Commissioner fixed rent of the land which is being paid by the respondent ever since. On this land, the respondent has constructed some schools, and a part of the land which is lying vacant is allowed to be used by the people of the neighbourhood for traffic. The respondent thus has full right to construct on its own plot of land. The representative character of the appellants was disputed by the respondent and their right to file the present suit was challenged. On these pleadings, several. issues were framed by the learned trial Judge. They covered the title of appellants, the title of the respondent, and the right of the appellants to file the suit. The issue with which we are concerned in the present appeal related to the registration of the plot in the register kept under the relevant provisions of the Act and its effect. The appellants' contention was that the said registration was conclusive against the respondent and in favour of the appellants' claim. This contention was rejected by the trial Judge, with the result that the appellants' suit was dismissed. With the findings recorded by the learned trial Judge on the other issues we are not concerned in the present appeal.

The matter then went in appeal. and the appellate Court confirmed the conclusions recorded by the trial Court and dismissed the appeal. The appellants challenged the correctness of the said appellate decree by preferring a second appeal in the High Court of Madhya Pradesh. but the second appeal also failed. and that has brought the appellants to this Court by special leave. Thus. it would be noticed that the appellants have failed on the merits of their claim in all the courts below. and the technical point raised by them that the registration of the plot under the relevant provisions of the Act concluded the matter. has also been rejected. It is this last point which has been urged before us by Mr. Sinha on behalf of the appellants. Before we deal with this point. however, it would be relevant to mention how the property came to be entered in the register kept under the relevant provisions of the Act. The record shows that the Masjid Nayapara. Raipur had been entered in the register as a public trust on June 25. 1954 in Case No. 23XXXiii/7 of 1952-53. certain properties were entered in the said register in respect of this trust. In 1956. Abdul Karim. Mutawali Masjid Naypara Raipur applied to the SubDivisional Officer. Raipur alleging that the property now in suit

also belonged to the public trust and should be included amongst its properties. On this application, public notice was issued calling upon persons interested in the property to show cause why it should not be added to the properties of the wakf. No objection was, however, received and on October 23, 1956, the Sub-Divisional Officer reported that the property be shown against the trust. The said report was sanctioned by the Registrar. Public Trusts on April 22, 1957. That is how the property came to be registered as belonging to the public trust, and it is on this entry that the whole argument of the appellants is based.

In considering the validity of the contention raised by Mr. Sinha before us, it is necessary to examine broadly the scheme of the Act and the material provisions on which Mr. Sinha relies. The Act was passed in 1951 to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Madhya Pradesh. Section 2(4) of the Act defines a "public trust", and s. 2(8) defines a "wakf". 'Working trustee' is defined by s. 2(9). Section 3(1) provides that the Deputy Commissioner shall be the Registrar of public trusts in respect of every public trust; and s. 3(2) imposes on the Registrar the obligation to maintain a register of public trusts, and such other books and registers and in such form as may be prescribed. Section 4(1) deals with the registration of public trusts and requires that within three months from the date on which the said section comes into force in any area or from the date on which a public trust is created, whichever is later, the working trustee of every public trust shall apply to the Registrar having jurisdiction for the registration of the public trust. Section 4(3) lays down the particulars which have to be stated by the application which is required to be made under s. 4(1). All these particulars are in relation to the nature of the trust, its properties, the mode of succession to the office of the trustees, and other allied matters. Section 4(4) empowers the Registrar to decide the merits of the application, while s. 4(5) provides for an appeal against his decision which is required to be filed within 30 days of the order. Mr. Sinha relies on a specific provision contained in s. 4(5) which says that subject to the decision in such appeal, the order of the Registrar under sub-section (4) shall be final. Section 4(6) requires the signing and verification of the application in the manner laid down in the code of Civil Procedure for signing and verifying plaints.

That takes us to s. 5 which deals with the enquiry to be held by the Registrar on the application made before him under s. 4(1). Eight points are set down under s. 5(1) which the Registrar has to consider. Section 5(2) lays down that the Registrar shall give in the prescribed manner public notice of the inquiry proposed to be made under sub-section (1) and invite all persons interested in the public trust under inquiry to prefer objections, if any, in respect of such trust. Under s. 6, the Registrar has to make his findings on the point specified by s. 5(1); and under s. 7, the Registrar causes entries to be made in the Register in accordance with his findings. Section 7(2) naturally lays down that the entries made under s. 7(1) shall be final and conclusive. Section 8(1) allows a civil suit to be filed against the findings of the Registrar within six months from the date of the publication of the notice under s. 7(2); such a suit can be filed by a working trustee or a person having interest in a public trust or any property found to be trust property. Section 9 permits applications to be made for change in the entries recorded in the register. It will be recalled that the application which was made in 1956 by Abdul Karim was under the provisions of s. 9(1). If an application is made for change in the entries as, for instance, for adding to the list of properties belonging to the trust, a proceeding has to be taken for making the said change and this is prescribed by s. 9(2). Section 9(3)

makes the provisions of s. 8 applicable to any finding under s. 9 as they would apply to a finding under s. 6. These provisions are contained in Chapter II of the Act. Chapter III deals with the management of trust property; Ch. IV with the problem of audit; Ch. V with control; and Ch. VI contains miscellaneous provisions, including s. 35 which confers the rule-making power on the State Government. That, broadly stated, is the nature of the scheme of the Act and the material provisions which fall to be considered in the present appeal.

Mr. Sinha relies on the fact that under s. 4(5) of the Act, the decision of the Registrar is made final, subject to the appellate decision, if any; and he also refers to the right of instituting a suit reserved by s. 8. His argument is that if any person who claims interest in the property which is alleged to be trust property fails to satisfy the Registrar about his claim, he can file a suit under s. 8(1). Section 8(1) allows a suit to be filed, subject to the conditions prescribed by it, and the right to file such a suit is given to a working trustee, or a person having interest in a public trust or any property found to be trust property. The respondent is interested in the property in suit which is found to be trust property, and since it did not avail itself of the right to file a suit within the specified time, the order passed by the Registrar must be held to be final and conclusive against its claim. If finality does not attach to such an order even after six months have expired within the meaning of s. 8(1), then the provision contained in s. 4(5) will serve no purpose whatever. That is the manner in which Mr. Sinha has presented his case before us.

We are not impressed by this argument. In testing the validity of this argument, we must bear in mind the important fact that the Act is concerned with the registration of public, religious and charitable trusts in the State of Madhya Pradesh, and the enquiry which its relevant provisions contemplate is an enquiry into the question as to whether the trust in question is public or private. The enquiry permitted by the said provisions does not take within its sweep questions as to whether the property belongs to a private individual and is not the subject matter of any trust at all. It cannot be ignored that the Registrar who, no doubt, is given the powers of a civil court under s. 28 of the Act, holds a kind of summary enquiry and the points which can fall within his jurisdiction are indicated by clauses (i) to (x) of s. 4(3). Therefore, *prima facie*, it appears unreasonable to suggest that contested questions of title, such as those which have arisen in the present case, can be said to fall within the enquiry which the Registrar is authorised to hold under s. 5 of the Act.

Besides, it is significant that the only persons who are required to file their objections in response to a notice issued by the Registrar on receiving an application made under s. 4(1), are persons interested in the public trust--not persons who dispute the existence of the trust or who challenge the allegation that any property belongs to the said trust. It is only persons interested in the public trust, such as beneficiaries or others who claim a right to manage the trust, who can file objections, and it is objections of this character proceeding from persons belonging to this limited class that fall to be considered by the Registrar. It cannot be said that the respondent falls within this class; and so, it would be idle to contend that it was the duty of the respondent to have filed objections under s. 3(2). It is true, s. 8(1) permits a suit to be filed by a person having interest in the public trust or any property found to be trust property. The interest to which this section refers must be read in the light of s. 5(2) to be the interest of a beneficiary or the interest of a person who claims the right to maintain the trust or any other interest of a similar character. It is not the interest which is adverse

to the trust set up by a party who does not claim any relation with the trust at all. That is why we think the finality on which Mr. Sinha's argument is based cannot avail him against the respondent inasmuch the respondent was not a party to the proceedings and could not have filed any objections in the said proceedings.

Then again, the right to file a suit to which s. 8(1) refers is given to persons who are aggrieved by any finding of the Registrar. Having regard to the fact that the proceedings before the Registrar are in the nature of proceedings before a civil court, it would be illogical to hold that the respondent who was not a party to the proceedings can be said to be aggrieved by the findings of the Registrar. The normal judicial concept of a person aggrieved by any order necessarily postulates that the said person must be a party to the proceedings in which the order was passed and by which he feels aggrieved. It is unnecessary to emphasise that it would be plainly unreasonable to assume that though a person is not a party to the proceedings and cannot participate in them by way of filing objections, he would still be bound to file a suit within the period prescribed by s. 8(1) if the property in which he claims an exclusive title is held by the Registrar to belong to a public trust.

Similarly, the right to prefer an appeal against the Registrar's order prescribed by s. 4(5) necessarily implies that the person must be a party to the proceedings before the Registrar; otherwise how would he know about the order? Like s. 8(1), s. 4(5) also seems to be confined in its operation to persons who are before the Registrar, or who could have appeared before the Registrar under s. 5(2). The whole scheme is clear, the Registrar enquires into the question as to whether a trust is private or public, and deals with the points specifically enumerated by s. 4(3). Therefore, we have no hesitation in holding that the courts below were right in coming to the conclusion that the fact that the property now in suit was added to the list of properties belonging to the wakf, cannot affect the respondent's title to it. On the merits, all the courts below have rejected the appellants' case and have upheld the pleas raised by the respondent in defence.

The result is, the appeal fails and is dismissed with costs. Appeal dismissed.