Supreme Court of India
Director Of Endowments ... vs Akram Ali on 22 April, 1955
Author: Bose
Bench: B.K. Mukherjee (Cj), V. Bose, B. Jagannadhadas, T.L.V. Aiyyar, S.J.

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                CASE NO.:
       Appeal (civil)  19 of 1955

       PETITIONER:
       DIRECTOR OF ENDOWMENTS GOVERNMENT OF HYDERABAD & ORS.

       RESPONDENT:
       AKRAM ALI

       DATE OF JUDGMENT: 22/04/1955

       BENCH:
       B.K. MUKHERJEE (CJ) & V. BOSE & B. JAGANNADHADAS & T.L.V. AIYYAR & S.J.
       IMAM

       JUDGMENT:
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JUDGMENT AIR 1956 SC 60 Bose, J.

1. The respondent filed a petition under Article 226 of the Constitution in the High Court of Judicature at Hyderabad asking for a 'mandamus' against the Director of Endowments of the Hyderabad Government. His prayer was that the Director be ordered to hand over the management and possession of a certain Dargah called the Dargah of Jehangir and Burhanud-din Piran and also the adjoining "hereditary lands" together with the income and profits, to the respondent.

2. The High Court granted the writ and the State of Hyderabad appeals.

3. The respondent's case is that the Dargah contains the tomb of one of his ancestors and that he and his ancestors have been the hereditary Sajjadas and Mutawallis of the Dargah for generations. In the year 1914, when the respondent's brother Syed Hussain was in possession, the Ecclesiastical Department of the State stepped in and entrusted the supervision of the Dargah to one Azam Ali.

He was removed in 1920 and the Ecclesiastical Department took over the supervision under a Firman of the Nizam which directed the Department to supervise the Dargah until the rights of the parties have been enquired into and decided. The respondent states that these rights were investigated by the civil Courts. The matter went up to the High Court and the decision all through was in his favour. Despite this he has not been given possession and he seeks a 'mandamus' against the Director and asks that the Director be ordered to hand over the management and possession to him.

4. The High Court granted his prayer, Shripat Rao, J. held that the Firman of the Nizam ceased to be valid after the Constitution, therefore, the possession of Government after that date was unlawful. He also held that the Ecclesiastical Department took possession from the respondent and so it was

bound to hand the Dargah back to him. The other learned Judge Mir Siadat Ali Khan, J. held that the Firman had served its purpose, therefore, as the Dargah was not wakf property, the supervision of the Department should be brought to an end.

Consequently, as the respondent's opponent was worsted in the civil litigation, and as the respondent had been out of possession for a generation and so could be assumed to have learnt a lesson, he should be placed in possession,

5. The learned Attorney-General, who appeared for the appellants challenged the accuracy of most of the facts on which the learned High Court Judges founded but we do not think it necessary to go into that. We were taken through the documents in great detail by the respondent's learned counsel and he sought to establish from them his possession and that of his ancestors for generations, and also that the Ecclesiastical Department took over possession from him.

He also said that his descent from at least Syed Mir Saheb, his grandfather, was proved and that it was also established that Syed Mir Saheb was a hereditary Sajjada of the Dargah. All this is, in our opinion, beside the point. The petition and the appeal can be disposed of very shortly on another ground.

6. We do not intend to say anything about the facts of title and possession lest it prejudice future litigation, should there be any. We will assume, without deciding, that all that the respondent says about his hereditary rights and his possession is true. But whether he was in possession or not, whatever rights to possession he may have had were held in abeyance by the Firman of 31-12-1920 and there is no subsequent order of the Civil Courts removing the bar.

Therefore, as he has no 'present' right to possession, no 'mandamus' can be issued. We do not mean to imply that a writ would be the appropriate remedy if and when the respondent can establish a right to possession: that is a question that does not arise because in fact he has no present right to possession.

7. The facts that led up to the passing of the Firman are as follows. Disputes about the right to possession and supervision of the Dargah seem to have started about the year 1914, for it is the respondent's case, as set out in his petition, that the supervision was handed over to Azam Ali by the Ecclesiastical Department in or about the year 1914. Further trouble arose in 1918 and a complaint seems to have been made to the First Taluqdar about undue police interference.

This occasioned a letter from the Director of the Ecclesiastical Department to the Home Secretary on 8-9-1918 in which the Director suggested that the Dargah and its income should be kept under Government supervision till one or other of the various claimants established his right.

8. On 27-1-1920 the same Director delivered what has been called a judgment. He set out the disputes between the various claimants and said that as the dispute was about title it would have to be decided by a Court of law and not by the Ecclesiastical Department of the State. He, therefore, directed that whoever was out of possession should go to the Courts to establish his rights.

Then he proceeded to consider who were in possession and held that Mahbubali, Syed Hussain (the respondent's brother) and Mohammed Jahangir, 'Mujawirs', were in possession before they were dispossessed and so decided that these three persons should be given possession and that the person out of possession should be directed to seek his remedy in a Court of law.

9. The matter seems to have been sent up to the Nizam by the Ecclesiastical Department because on 31-12-1920 he issued the following Firman in pursuance of a petition from that Department --

"Pending enquiry of the case the said Maash need not be handed over to anyone. Let it remain in the supervision of the Government. I should be informed of whatever the results of the enquiry establishes so that proper orders may be passed".

10. Now the Nizam was an absolute sovereign regarding all domestic matters at that time and his word was law. It does not matter whether this be called legislation or an executive act or a judicial determination because there is in fact no clear cut dividing line between the various functions of an absolute ruler whose will is law. Whatever he proclaimed through his Firmans had the combined effect of law and the decree of a court: see the judgment of this Court in --'Ameerunnissa Begum v. Mahboob Begum', AIR1955SC352 .

Therefore, the effect of this Firman was to deprive the respondent and all other claimants of all rights to possession "pending enquiry of the case". Exactly what this means is not clear but, taken in conjunction with the surrounding circumstances and with the decision of the Director of the Ecclesiastical Department to which we have referred, it is fair to assume that it means, pending the enquiry by the civil Courts about which the Director had twice spoken, that is to say, if there was a right to possession it was held in abeyance till established by the civil Courts.

11. Now, as we have said, the Nizam was at that time an absolute ruler and could do what he pleased. His will, as expressed in his Firman, was the law of the land. Therefore, even if it be assumed that the respondent was in possession, his rights to immediate possession, whatever they may have been, were taken away and held in abeyance till he could establish them in the civil Courts.

The question now arises whether this enured after the Constitution and whether the respondent's right to possession, assuming he had any, revived when the Constitution came into being. We are clear that the Constitution effected no change.

12. It was conceded that the Nizam had power to confiscate the property and to take it away from the respondent 'in toto' and it was conceded that if he had done so the rights so destroyed would not have revived because the Constitution only guarantees to a citizen such rights as he had at the date it came into force; it does not alter them or add to them: all it guarantees is that he shall not be deprived of such rights as he has except in such ways as the Constitution allows. But if the Nizam could take away every vestige of right by a Firman he could equally take away a part of them and at the date of the passing of the Constitution the respondent would only have the balance of the rights left to him and not the whole, for what applies to the whole applies equally to the part.

Therefore, even if we accept all the respondent's facts, the position would still be that at the date the Constitution came into force he had no right to immediate possession; the utmost he had was a right to be restored to possession if and when he established his rights in a Court of law.

13. The High Court has relied on a decision of this Court in -- 'Ameerunnissa Begum v. Mahboob Begum', : [1953]4SCR404 , and has held that the Firmans of the Nizam that conflict with the Constitution are 'ultra vires'. But the learned Judges have failed to observe that in that case the Firman was issued after the Constitution and not before. But it was argued that even if that decision does not apply there are others that do and they hold that a law which would have been bad if it had been passed after the Constitution ceases to have effect after that date.

The decisions referred to were considered in -- 'Syed Qasim Razi v. State of Hyderabad', : 1953CriLJ862 and the law laid down by the majority was this (page 161).

"The effect of Article 13(1) of the Constitution is not to obliterate the entire operation of the inconsistent laws or to wipe them out altogether from the statute book; for to do so will be to give them retrospective effect which they do not possess. Such laws must be held to be valid for all past transactions 'and for enforcing rights and liabilities accrued before the advent of the Constitution' ".

That, in our opinion concludes the matter.

14. The only question that remains is whether the respondent has obtained a decision in the civil Courts confirming his right to get possession of the Dargah plus whatever else the Ecclesiastical Department took over under the Firman. As we have already indicated, the matter was agitated in the civil Courts. We need not trace the history of this litigation nor need we examine its fortunes from stage to stage. All we are concerned with is the final judgment which was given by the High Court.

15. The suit was filed by Azam Ali who had been entrusted with the supervision of the Dargah by the Ecclesiastical Department in 1914 and who was removed in 1920. The present respondent Akram Ali was one of the defendants. When the matter reached the High Court the learned Judges found as follows :

"The fact of the plaintiff" (Azam Ali) "or his ancestors or any of the descendants of the saint of the Dargah being a Sajjada is not established by the evidence. It is also not proved that there has been 'any other Sajjada' in respect of this Dargah and that the office of Sajjadagi has been founded or continued there....in our opinion the Sajjadagi of none of the defendants is proved.

In fact, for the very reasons as given by us above none of the defendants is proved to be entitled to the office of Sajadagi. In the result, it is not proved that any one of the parties is entitled to the Sajjadagi. The objections to the evidence of the plaintiff apply equally to the evidence of the defendants and when the very existence of Sajjadagi in the Dargah Sharif is not proved, no question remains as to who is the Sajjada .....

It cannot be gainsaid that the evidence of the plaintiff is stronger and more weighty than the evidence of the defendants.... ....If we were obliged to hold any one of the parties as Sajjada on the evidence produced, our judgment would have been in plaintiff's favour".

The decisions of the lower Courts dismissing the plaintiff's suit were accordingly upheld.

16. The learned counsel for the defendant-respondent argued that this judgment does not come in the way of his client because, even if he is not the Sajjada, that would make no difference. He insists that his client was in possession at all relevant times, that is to say, he equates the brother's possession to that of his client and contends that now that the civil litigation has ended unfavourably to his opponent Azam Ali, the respondent must be restored to possession.

But that is not what the Firman says. The respondent's rights, if any, at the date of the Constitution, and now, are that he must establish his right to possession in a civil Court before he can ask to be put in possession. There is no decision of a civil Court declaring the respondent's right to possession, therefore, on that short ground he cannot get the writ he seeks.

17. The appeal is allowed. The decision of the High Court is set aside and the respondent's petition for a writ is dismissed.

There will be no order about costs in any of the Courts.