SUPREME COURT OF INDIA

Kalimata Thakurani of Kalighat

Vs.

Jibandhan Mukherjee

C.A.No.289 of 1960

(B. P. Sinha, C.J.I., J. L. Kapur, M. Hidayatullah, J. C. Shah and J. R. Mudholkar, JJ.)

01.11.1961

JUDGEMENT

MUDHOLKAR, J.:

1. This is an appeal on a certificate granted by the High Court of Calcutta under Art. 133 (1)(a) and (b) of the Constitution by the first defendant to the suit, Sree Sree Kalimata Thakurani of Kalighat represented by her next friend Manik Lal Mukherjee.

2. The suit out of which the appeal arises was instituted by the plaintiffs who are respondents 1 to 5 to the appeal, under S. 92 of the code of Civil Procedure for the purpose of framing a scheme for the proper management of the seva puja of Sree Sree Kalimata Thakurani and her associated deities and, for the proper management of the properties, declared to be debuttar proparties in a previous suit. The District Judge, Alipur in whose Court the suit had been instituted settled a scheme with respect to the aforesaid matters but upon appeal by the appellant the High Court amended that scheme. The main grievance of the appellant in this appeal is regarding certain amendments to the scheme made by the High Court.

3. According to Mr. Bhattacharji, learned counsel, for the appellant, the amended scheme is defective in four respects. He contends that in the first place the scheme does not specify that 595 odd bighas of land of Kalighat are also debuttar property. In the second place it was not proper to include any shebait at all in the managing commit- tee of the endowment. Then according to him the provision made in the scheme with respect to the remuneration of the shebaits is wholly improper. Finally, that the scheme is defective as it does not make any provision reserving liberty to the parties to apply to the District Judge for directions.

4. Taking the first point, the direction made by the High Court in the scheme with respect to the properties belonging to the deity is as follows:

"The properties enumerated in Schedules A and B belong to Sree Sree KaliMata Thakurani and the associated deities of Kalimata together with such other properties as may be acquired by purchase, dedication, gift or as offerings or in any manner whatsoever are hereinafter called the Debuttar. Estate and appertain to a Hindu Public Religious Endowment. Any other property which may hereafter be found by a competent Court to belong to the Deity will a so be part of the Debuttar Estate".

Mr. Bhattacharji points out that 595 odd bighas of land in Kalighat which belong to the deity are not enumerated in either schedule A or B and says that the shebaits and their predecessors in interest, laying claims to this land, have alienated more than 90% of it. The shebaits being, merely trustees of the deity cannot be permitted to assert a claim adverse to the deity and any alienations made by them are not binding on the deity. According to him the title to these lands still remains with the deity, and therefore, they should have been mentioned at least in a separate schedule to the scheme as being the properties of the deity. On the question whether these lands belong to the deity or not there is a dispute between the parties before us. The shebaits whom Mr. Viswanatha Sastri represents deny that these lands belong to the deity and said that they were granted to the shebaits for worshipping the deity and maintaining the temple etc. In our opinion in a suit for the settlement of the scheme for the management of a temple it is not appropriate for the court to investigate questions of title to property about which there is dispute.

5. Mr. Bhattacharji then refers us to a previous litigation to which the deity was a party and in which the question of the deity's title to the lands in question was raised. The decision of the High Court in that case was reported in Iswari Kalimata v. Manager, Bijni Raj Court of Wards Estate, ILR (1949) 2 Cal 587. : (AIR 1952 Cal 387 (2)). In particular he relies upon two observations contained in that judgment of the High Court. The first was at p. 593 (of ILR Cal) : (at p. 390 of AIR) and runs thus:

"The rubokari shows that the shebaits who took part in those proceedings made unqalified admission that the whole of 595 big as 9 cottas mentioned in Mr. Heysham's list was the absolute debuttar property of the Deity".

And then the other observation at pp. 593- 594 (of ILR Cal.) : (at p. 390 of AIR) :

"There are documents from 1842 onwards showing transfers by the Haldars of some items of property included in Heysham's list. But, in our opinion, those acts cannot outweigh the evidence, which we have discussed, which establish almost conclusively that the lands released from the resumption proceedings were the Deity's absolute property. These transfers by the Shgbaits can only be regarded as breaches of the trust on their part."

On the basis of these observations learned counsel contends that the deity's title to the 595 bighas being beyond dispute, at any rate so far as shebaits are concerned, it would be only fit and proper to specify them along with other property. He admits that most of these lands have passed out of the hands of shebaits but he says that the managing committee would be able to recover them easily by instituting suits if they are included in the schedule to the scheme. It seems to us, however, that the provision made by the High Court in the scheme with respect to properties other than those described in Schedules A and B to the plaint is sufficient for that purpose. We may also point out that in another litigation to which the deity as well as some of the shebaits were parties, the subordinate judge had granted a declaration of the deity's title to these very lands but that declaration was set aside by the High Court. The reasons given by the High Court for setting it aside are stated thus :

"The parties had led evidence bearing upon the question of title to that area. That defect could have been removed even now by allowing the plaint to be amended at this stage. But the plaintiff cannot have the declaration because all persons who would have been affected by the declaration are not before the Court, not being made parties at all. It is the common case of the parties that most part of that area has been sold to outsiders. These transferees are not parties to the suit, and defendants 1 to 13 cannot represent in the suit these outsiders, for according to the plaintiff they were sued on the

footing that they were to represent only the shebaits of the deity and none else. It is of fundamental importance that a Court should not make a declaratory decree which would be useless. We accordingly discharge that part of the decree by which he declared the title of the deity Sri Sri Kalimata to the whole of the said area of 595 bighas and 9 cottahs odd of land."

As we have already stated the bulk of the lands are in the hands of transferees who are not parties to the proceeding under S. 92 of the Code of Civil Procedure and of course are not parties to the appeal either. Their inclusion in the schedules to the scheme as being debuttar property will d not affect the rights of those persons in any way and the fact that they are debuttar properties will have to be established if and when appropriate proceedings are taken for obtaining their possession. We, therefore, decline to interfere with the direction made by the High Court in the scheme respecting the properties.

6. Mr. Bhattacharji then contends that the present shebaits are not de jure shebaits but only de facto shebaits and that, therefore, they have no right to be included in the managing committee. Referring to the pedigree appended to the appellant's Statement of the case he pointed out that the first shebait about whom anything is known was Brahmananda Giri, a sanyasi and upon his death he was succeeded by his chela Atmaram Brahmachari, also a sanyasi. This person in his turn was succeeded by his chela Ananda Giri who was succeeded by his chela Bhubaneswar Giri. After succeeding to the shebaitship Bhubaneswar Giri gave up sanyasa and married a Bhairavi, Smt. Jogmaya, from whom he had a daughter Smt. Uma. The present shebaits are the descendants of Smt. Uma. According to him only a sanyasi could be a de jure shebait of the deity and that though the plaintiffs-respondents and their ancestors have been functioning as shebaits, they could in law only be de facto shebaits and not de jure shebaits. Whatever that may be, we cannot ignore the fact that the present shebaits and their predecessors have been functioning as shebaits for a very long period and their rights in that regard have not been called in question ever before. In these circumstances we cannot accept the contention of learned counsel that they should be completely excluded from the management of the temple.

7. The other contention of learned counsel on this point is that the present shebaits and their predecessors having alienated debuttar property, it would be against the interest of the deity to allow them to have any share in the management. We cannot decide this question without going into the question of title to the property which is said to have been alienated by the shebaits. As we have already stated it would be wholly inappropriate to consider that question in these proceedings. In the circumstances this contention must be rejected.

8. We, however, agree with learned counsel that the shebaits are over-represented in the proposed managing committee. The precise direction of the High Court with regard to this matter is in Cl. 17 of the scheme which runs thus:

> "Kalighat Temple Committee:
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> There shall be a Committee of Management called the Kalighat Temple Committee consisting of 18 members constituted in the following manner :
>
> (A) Twelve persons to be elected by the Council of Shebaits from amongst themselves in the manner indicated below.
>
> (B) Six members, who shall be other than Shebaits, to be appointed as follows:

(a) Two Hindus to be nominated by the District Judge, Twenty-four Paraganas.

(b) One Hindu member of the Bharat Chamber of Commerce, Calcutta, to be nominated by the Executive Body of the Chamber.

(c) One Hindu member to he selected by the

(i) President, Bangiya Sanskriti Siksha Parishad, Calcutta,

(ii) Vice-Chancellor, Calcutta University,

(iii) Principal, Government Sanskrit College, Calcutta. If at the time of selection one of them is not available the other two may make the selection.

(d) One Hindu member to be nominated by the Executive Body of the Bharat Sevasram Sangha of Rashbehari Avenue, Calcutta.

(e) One Hindu member of the Calcutta Corporation to be elected by the said Corporation."

Admittedly, there are five groups of shebaits and it would, in our judgment, be quite sufficient to permit them to choose five of their number to work as members of the managing committee and to reduce the total number of members of the committee of Management from 18 to 11. In our view the majority of the members of the committee should be from outside the body of shebaits and while we agree with the High Court that the number of outsiders should be six, we direct it to substitute for sub-cl. (B) of Cl. 17 the following:

"Six Hindu members who shall not be shebaits to be appointed as follows :

One nominated by each of the following;

1. The District Judge, Twenty-four Paraganas, who will also be the chairman of the Managing committee and have a casting vote in addition to the right to vote;

2. the Bharat Chamber of commerce, Calcutta to be nominated by the Executive Body of the Chamber;

3. the Vice-Chancellor, Calcutta University;

4. the Executive Body of the Bharat Sevasram Sangha of Rashbehari Avenue, Calcutta; and

5. the Calcutta Corporation.

In addition, one jointly nominated by the President,Bangiya Sanskriti Siksha Parishad, Calcutta and the Principal, Government Sanskrit College, Calcutta.

In case of the failure of any of them to nominate a person within one month of being called upon by the Secretary to do so, by the District Judge, Twenty-four Paraganas."

9. We further direct the High Court to amend the scheme and in particular Cl. 18 and other parts of Cl. 17 for bringing them in conformity with our aforesaid directions. If a Committee has already been constituted it would be necessary to dissolve it and constitute a new one. We direct the High

Court to take appropriate stem for this purpose.

10. With regard to the remuneration payable to the shebaits learned counsel contended that they are in fact nothing more than pujaris or archakas and should at best be allowed to receive only dakshina and not a share in the offerings as directed by the High Court. The portion of Cl. 48 of the scheme to which objection was taken by learned counsel runs thus:

"48. To reimburse the expenses incurred by the Shebaits Paladar for Bhog Rag and Sheba of Sri Sri Kalimata and as remuneration, the said Shebait Paladar will receive and be paid by the Kalighat Temple Committee:-

A. Out of the daily offerings only within the main, temple of and to Sri Sri Kalimata.

(a) One half of the offering in the shape of cash money."

It is wrong to call shebaits as mere pujaris or archakas. A shebait as has been pointed out by Mukherjea J. (as he them was), in his Tagore Law Lectures on Hindu Lady of Religious and Charitable Trusts, is a human ministrant of the deity while a pujari is appointed by de founder or the shebait to conduct worship. Pujari thus is a servant of the shebait. Shebaitship is not mere office it is property as well. The present body of shebaits and their predecessors have been functioning as such without question, as already stated, for a long time. They have been in fact managing the property, that is, doing something which no pujari or archaka can claim to do. Therefore, they cannot be treated as mere pujaris or archakas even assuming that they are not de jure shebaits. They have in fact, to bear the expenses for bhog, rag and seva of Sree Sree Kalimata and are thus entitled to be reimbursed not only for the service they perform but for the expenses which they incur. The High Court, which must be cognisant of the local situation, was in a more advantageous position than this Court can be to judge what would be the proper measure of recompense for the service rendered and expenses incurred by the shebaits whose turn it is to perform the worship of the deity. In the circumstances we decline to interfere with the direction in this regard made by the High Court in the scheme.

11. The next point urged by learned counsel was that there was no direction in the scheme reserving liberty to the parties to apply to the District Judge for directions in regard to matters comprised in the scheme about which any difficulty arose or in regard to matters which are not dealt with in the scheme. Mr. Viswanatha Sastri fairly agrees that there should be such a direction. There are precedents in this matter and to mention one, the case of Sevak Kirpashankar Daji v. Gopalrao Manohar, 15 Bom. LR 13 (PC). As was done there we direct that the following be added as cl. 56-A to the scheme:-

"56-A. The provisions of the scheme may be altered, modified or added to by application to the District Judge. Twentyfour Paraganas."

12. Three further points were raised by Mr. Bhattacharji. One of them is regarding costs. According to him the Court should have directed that the appellant's next friend should have been allowed his costs from the debuttar estate as between attorney and client and not merely quantified costs as ordered by the High Court. The High Courts direction is that the deity represented by her next friend will be entitled to recoupment of a consolidated amount of Rs. 600 from the debuttar estate. That was a matter within the discretion of the High Court and we see no reason to interfere with it.

13. The second point is that shebaits, whose turn it is to perform the worship, transfer their turns for

consideration to others and that this is impermissible because shebaitship being an office is not transferable. He also says that shebaitship terminates on death and is not heritable and that consequently appropriate directions in regard to these matters should have been made in the scheme. It is sufficient to say that these are not matters with respect to which any direction should be made in the scheme. The right of shebait as already stated, is a right in property and if any person wants to challenge the right of a person to act as a shebait it is open to him to pursue such remedy as may be available to him at law.

14. Finally he said that the High Court was not justified in modifying cl. 8 of the scheme prepared by the District Judge. It is not necessary to reproduce the clause in the scheme prepared by the District Judge nor the clause as amended by the High Court. We have read these clauses and we find that there is no substantial difference between them.

15. Subject to the modifications already indicated we affirm the judgment of the High Court and the scheme sanctioned by it and dismiss the appeal. There will be no order as to costs in this Court.

Appeal dismissed.

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