Anant Prasad Lakshminivas Generiwal

Vs

State of Andhra Pradesh and Others

Civil Appeal No. 140/62

(CJI B. P. Sinha, P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta, J. C. Shah JJ)

02.11.1962

JUDGMENT

WANCHOO, J. –

The appeal is by special leave from the order of the Andhra Pradesh High Court. The appellant has also filed a writ petition and as the two matters are connected, they will be dealt with together.

The appellant is Anant Prasad Lakshminivas Generiwal. He is also the petitioner in the writ petition and will hereafter be referred to as the appellant. The main respondents, who are also opposite parties in the writ petition, are the State of Andhra Pradesh and the Director of Endowments, Hyderabad. They will be referred to hereinafter as the respondents. The appellant claims to be the sole hereditary trustee and Mutwalli of the temple of Shri Sitaram Maharaj Sansthan and the subsidiary deity Shri Varadarajaswami, situate at Sitaram Bagh, in Hyderabad. In the earlier part of the nineteenth century, an ancestor of the appellant migrated to Hyderabad and carried on business there. He obviously prospered and in or about 1833 he built a temple at a cost of two lakhs of rupees and installed in it the idols of Shri Rama and other ancillary or subsidiary deities and consecrated the temple for public benefit and worship. In 1841, one Maharaja Chandulal, a minister to the then Nizam, granted a jagir consisting of the villages of Akolee and Bordee in Berar for the upkeep and maintenance of the temple. Later, however, these villages were resumed by the Nizam and two other villages were granted instead to the temple. It appears that these two other villages were also resumed, and the village of Bulgaon was granted to the temple in 1850. It also appears that though village Akolee was resumed, the resumption order was not carried out and that village continued in the possession of the temple, so that since 1850 the temple has been in possession of the two villages for its upkeep and maintenance. In 1853, Berar was transferred to the British Government of India by the Nizam and these two villages therefore came under the administration of the Government of India. In 1859, some doubts arose about the title of the temple to the villages and there were enquiries under the Berar Inam Rules. Eventually, it was decided that the title of the temple was good and the villages had been assigned with the rest of Berar to the Government of India for administration and that they had been granted in jagir for a religious object and their devolution was governed by Rule IV of the Berar Inam Rules. Thereafter inam certificates were issued with respect to these two villages in the name of Ramlal, son of Hargopal, who was described as the Manager of the jagirdar, Shri Sitaramji Maharaj of Akolee and Bulgaon. The purpose of the jagir was mentioned as "for charitable expenses of the temple of Shri Sitaram Maharaj situated in the Sitaram Bagh, at Hyderabad". In the twentieth century there was considerable litigation between the members of the family of the founder as to the right of management of the temple. Eventually, it was decided in 1932 that Lakshminivas Generiwal, father of the appellant, was to be the manager of the jagirdar, and this decision was finally confirmed in 1933 by the Governor of the Central

Provinces. The Government of Hyderabad was trying all along to find out how the income of this jagir was being spent. But it was decided that it was the Government of the Central Provinces alone which had the right to call for accounts of the villages and was responsible to see that the conditions of the grant were fulfilled, and in 1941 this position seems to have been accepted by the Government of Hyderabad.

After the Constitution came into force from January 26, 1950, the State of Madhya Pradesh took the place of the old Central Provinces and Berar. The State of Madhya Pradesh enacted a law known as the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, No. 1 of 1951. In consequence of this law, the two villages were taken over by the State and statutory compensation was awarded. In addition, an annual cash grant of Rs. 8,470/- was sanctioned by the State for the upkeep of the temple. Besides this grant, there was a large area of home farm land in the two villages, which was in the possession of the trustee for the benefit of the trust, and it is said that an income of Rs. 1,30,000/- was being realised by the trustee from this home farm land. It further appears that there are hereditary pujaris and mahants of the temple, and these persons had been complaining to various authorities in Hyderabad that Lakshminivas Generiwal was misappropriating temple funds on a large scale and neglecting his duties as a trustee and otherwise committing breaches of trust. In 1951, three of the hereditary pujaris filed a complaint before the Government of Hyderabad alleging various acts of mismanagement on the part of the trustee. This was inquired into by the Home Minister of the State of Hyderabad and he directed that the temple should be managed by the a committee of five persons and this was said to have been done with the consent of Lakshminivas Generiwal. Later, however, Lakshminivas contended that he had never consented to the appointment of the committee, which would curtail his rights as hereditary trustee. Thereupon, the Home Minister directed the Director of Endowments to make a thorough inquiry into the matter. In the meantime, one of the hereditary pujaris filed a petition under s. 3 of the Charitable and Religious Trusts Act (No. 14 of 1920) alleging various acts of mismanagement and paying for an order directing rendition of accounts, before the City Civil Court, Hyderabad. In March, 1956, the court directed rendition of accounts and appointed an auditor to scrutinise them. The auditor went into the accounts and made a report showing several gross irregularities therein. In the meantime Lakshminivas Generiwal applied for the registration of the temple under the provisions of the Madhya Pradesh Public Trusts Act (No. 30 of 1951) and in June 1955, the Registrar of Public Trust directed the registration of Shri Sitaram Maharaj Sansthan, Sitaram Bagh, Hyderabad, as a public trust under s. 7(1) of the Madhya Pradesh Act No. 30 of 1951.

Hyderabad State also had a law for the purpose of providing for the proper administration of religious and public charities and for the due application of the income for the purpose of the trust. This law was known as the Hyderabad Endowments Regulations (hereinafter referred to as the Regulations) and it came into force in 1940. Section 2 thereof gives the definition of "endowment" as including "every transfer of property which any person may have made for religious purposes or for purposes of charity or public utility". It also provides for a "Book of Endowment" in which "all the estates or properties endowed" would be entered Section 2 also defines a "trustee" as meaning a person appointed by the maker of the endowment for purposes of management of the property and fulfilment of the objects thereof. Sections 3 to 11 provide for the compilation of the Book of Endowment; s. 12 for the management of the endowed property; s. 13 for the duties of the trustee; s. 14 for possession over endowed property; s. 15 for expenditure from the income of endowed property; s. 16 for framing of rules; s. 17 for appeals and s. 18 for revision. It may be added that a large body of rules as many as 478 in number have been framed under the rule-making power conferred by the Act; and the Director of Endowments Hyderabad is given the power to enforce the Regulations and the Rules. In exercise of his power under the Regulations and the Rules, the

Director of Endowments issued notice to Lakshminivas Generiwal on September 12, 1957, to show cause within a fortnight from the date of the receipt of the notice, why he should not be removed from the office of trustee of the temple and why the unauthorised trusteeship of the appellant should not be terminated, and six charges were levelled in this notice. Lakshminivas Generiwal replied to this notice on September 17, 1957, and pointed out that he was no longer the trustee and that his son, the appellant, had been appointed the trustee under the Madhya Pradesh Act, No. 30 of 1951 by order of the Deputy Commissioner Amravati in November 1956. He also denied the various charges levelled against him. On this reply, a notice was issued on December 31, 1957, to the appellant to the effect that the temple had to be registered under the Regulations, and he was also warned that if he failed to take steps to get the endowment registered, the property would be taken over under the supervision of the Government and no more objection would be heard form him. The appellant objected to this notice on February 1, 1958, and his main contention was that as the trust had been registered under the Madhya Pradesh Act No. 30 of 1951, the endowment was not liable to be registered under the Regulations and the Rules framed thereunder, and the State of Andhra Pradesh had no jurisdiction over the endowment and its property.

Soon after, the appellant filed a writ petition in the Andhra Pradesh High Court on February 3, 1958, challenging the notice dated December 31, 1957, and the following contentions were raised on his behalf :-

> (1) That by reason of the registration of the trust under s. 7(1) of the Madhya Pradesh Act No. 30 of 1951, including the temple, the operation of the Regulations was excluded, as the registration under the Madhya Pradesh Act had become final;
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> (2) That in any event, in applying the Regulations to the trust in question, the courts should bear in mind the principle of comity of nations and refuse to interfere with the jurisdiction lawfully exercised by another State, namely, the State of Madhya Pradesh (now Bombay after the States Reorganisation Act, 1956);
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> (3) That the Hyderabad Government had acquiesced in the control of the trust by the authorities in Berar and it was not open to it to repudiate that jurisdiction and claim to exercise the powers under the Regulations;
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> (4) That the Regulations were invalid inasmuch as they infringed the fundamental rights of the appellant under Arts. 14 and 19 of the Constitution.

The High Court repelled these contentions and by its order dated March 18, 1960, rejected the writ petition thus upholding the validity of the notice dated December 31, 1957. The appeal is from this order of the High Court by special leave.

After the High Court dismissed the writ petition, the Director of Endowments passed two orders. The first is dated June 13, 1960, and it says that as the trustee had not cared to appear before him, even though the judgment of the High Court had been given about three months before, the Directors considered in the interests of the institution, that the supervision should be taken over under r. 179 of the Endowment Rules. The second order was passed on June 14, 1960, and it stated that the temple with its buildings etc. situate at Hyderabad, had been taken under the supervision of the Government of Andhra Pradesh and the management of the temple would vest in the Director of Endowments, Hyderabad, from the date of the order, namely, June 14, 1960. The writ petition in this Court is directed against these two orders, and by it the appellant challenges the validity of the

Regulations and the various rules framed thereunder on the ground that they ar repugnant to Arts. 14 and 19 of the Constitution. In addition, it has been contended on behalf of the appellant that these orders are not justified even under the Regulations.

The State of Andhra Pradesh has opposed the petition, and it submits that the Director of Endowments waited till June 13, 1960, after the dismissal of the writ petition in the High Court, for the appellant to appear in compliance with the notice dated December 31, 1957, so that the endowment might be registered under the Regulations. As, however, the appellant did not appear in reply to the notice, and in view of the previous conduct of the trustees of this temple and the several complaints received against them and the evasion of the trustees even to disclose what the properties of the temple were, immediate action had to be taken under the Regulations and the Rules framed thereunder. Therefore, with a view to secure and preserve the trust property, immediate action was taken so that the property might not be secreted. It has also been contended that the Regulations and the Rules framed thereunder gave power to the State to take possession of the endowment and that the two orders were issued under the powers conferred under s. 4(b) and s. 12 of the Regulations. It is also submitted that the Regulations and the Rules framed thereunder are not ultra vires in view of Articles 14 and 19 of the Constitution.

Learned counsel for the appellant has submitted the following points for our consideration :-

> (1) By reason of the registration of this trust, including the temple, under s. 7 of the Madhya Pradesh Act No. 30 of 1951, the operation of the Regulations is excluded;
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> (2) The Regulations and the Rules framed thereunder are no longer in force as they must be deemed to have been repealed by the Part B States (Laws) Act, No. III of 1951;
>
> (3) The Regulations and the Rules framed thereunder are repugnant to Art. 14;
>
> (4) The Regulations and the Rules framed thereunder are repugnant to Art. 19;
>
> (5) In any case, the orders passed on June 13 and 14, 1960, cannot be supported under the Regulations.

It will be seen that the appeal is concerned only with the notice dated December 31, 1957, while the writ petition attacks the two orders passed on June 13 and 14, 1960. Though the attack on the notice as well as on the two orders is to a large extent common, we shall first deal with the attack on the notice dated December 31, 1957, which is contained in the first four points raised on behalf of the appellant before us. The fifth point concerns only the two orders of June, 1960, and will be dealt with later.

Re. (1).

The contention of the appellant in this connection is that as the trust has been registered under the Madhya Pradesh Act 30 of 1951, the Regulations cannot now be applied to it, and in any case the Regulations cannot affect property of the temple situate outside the State of Andhra Pradesh. We are of opinion that there is no force in this contention. It is true that the two villages (namely, Bulgaon and Akolee) are not situate within the State of Andhra Pradesh; but it is not in dispute that the temple is situate within the State of Andhra Pradesh, and some property of the temple in the shape of shops etc., besides the temple building itself, is situate in the State of Andhra Pradesh. Besides it

is common ground that offerings made by pilgrims to the temple also constitute a part of its income, and that is received in Hyderabad. As such, we cannot see how the Regulations and the Rules framed thereunder would not apply to this temple, which is admittedly situate in an area to which the Regulations apply. A similar question came to be considered by this Court in The State of Bihar v. Smt. Charusila Dasi [[1959] Supp. 2 S.C.R. 601]. In that case the temple was situate in Deoghar in the State of Bihar, though the major part of income yielding property endowed to the temple was situate in Calcutta. The question that arose for decision in that case was whether the Bihar law would apply to the temple and its properties. Section 3 of the Bihar Act made that Act applicable to all public religious and charitable institutions within the meaning of the definition clause in s. 2(1) of the Bihar Act, and the definition clause provided that the Act would apply to all religious trusts, whether created before or after the commencement of the Bihar Act, any part of the property of which was situate in the State of Bihar. It was held that -

> "where the trust is situate in Bihar the State has legislative power over it and also over its trustees or their servants and agents who must be in Bihar to administer the trust, and as the object of the Act is to provide for the better administration of Hindu Religious Trusts in the State of Bihar and for the protection of properties appertaining thereto, in respect of the property belonging to the trust outside the State the aim is sought to be achieved by exercising control over the trustees in personam, and there is really no question of the Act having extra-territorial operation."

It was further held that -

> "the circumstance that the temples where the deities were installed are situate in Bihar and that the hospital and charitable dispensary are to be established in Bihar for the benefit of the Hindu public in Bihar, gives enough territorial connection to enable the legislature of Bihar to make a law with respect to such trust.

This decision in our opinion makes it abundantly clear that, where the trust is situate in a particular State, the law of that state, will apply to the trust, even though any part of the trust property, whether large or small, is situate outside the state where the trust is situate.

We may also refer to the State of Bihar v. Bhabapritananda Ojha [[1959] Supp. 2 S.C.R. 624], where a question was raised with respect to the application of the same Bihar Act to a trust situate in Bihar, but in the case of which a scheme had been framed by the District Judge of Burdwan and confirmed by the Calcutta High Court, at a time when the State of Bihar was part of Bengal before the partition of 1911. In that case, it was urged that the Bihar Act did not apply to the temple by reason of the fact that the temple and its properties were administered under a scheme made by the court of the District Judge Burdwan and approved by the Calcutta High Court both of which were situate outside the territorial limits of Bihar, on the ground that the Bihar Act would otherwise by some of its provisions seek to interfere with the jurisdiction of courts which were outside Bihar and thereby get extra-territorial operation. It was held in that case that it was competent to the Bihar legislature to legislate in respect of religious trusts situate in Bihar though some of the properties belonging to the trust might be outside Bihar. And it was further held that s. 92 of the Code of Civil Procedure would no longer apply in view of s. 4(5) of the Bihar Act and consequently where was no question of extra-territorial operation, of the Bihar Act.

In the present case, the temple is situate in Hyderabad in the State of Andhra Pradesh. There is some property of the temple there, though the major part of the income yielding endowed property is

situate outside in the State of Madhya Pradesh. In view therefore of the decision in Smt. Charusila Dasi's case [[1959] Supp. 2 S.C.R. 601] the Regulations will apply to this trust as the trust is situate in the State of Andhra Pradesh and the fact that some of the endowed properties are not in Andhra Pradesh would make no difference. Further the fact that the trust has been registered under the Madhya Pradesh Act XXX of 1951 cannot exclude the operation of the Regulations in the case of this trust, for the trust is undoubtedly situate within the area where the Regulations are in force. A "public trust" has been defined in s. 2(4) of the Madhya Pradesh Act as meaning "an express or constructive trust for a public, religious or charitable purpose and includes a temple, a math, a mosque, a church, a wakf or any other religious or charitable endowment and a society formed for a religious or charitable purpose". Section 3 of the said Act provides that "the Deputy Commissioner shall be the Registrar of public trusts in respect of every public trust the principal office or the principal place of business of which as declared in the application made under sub-s. (3) of s. 4 is situate in his district", and he shall maintain a register of public trusts. Section 4 provides for the registration of public trusts. It is obvious that public trust as defined in s. 2(4) of the Madhya Pradesh Act XXX of 1951 must be a public trust situate in the State of Madhya Pradesh. Even though s. 2(4) does not say so in terms, the definition must be confined to public trusts situate in Madhya Pradesh for the Madhya Pradesh legislature could not, and obviously did not intend to, legislate with respect to public trusts situate outside Madhya Pradesh. Therefore, s. 2(4) must be interpreted to apply only to public trusts situate outside Madhya Pradesh. This conclusion is supported by s. 3, which clearly shows that the Registrar would have jurisdiction in respect of a public trust within his district. As to where a public trust is situate has to be determined in accordance with the decision of this Court in Smt. Charusila Dasi's case [[1959] Supp. 2 S.C.R. 601], and on that view the public trust in this case must be situate in Andhra Pradesh and not in Madhya Pradesh where only some of the endowed trust properties are. In the circumstances the registration of the trust under the Madhya Pradesh Act cannot be a bar against the enforcement of the relevant provisions of the Hyderabad Regulations because even if it may be necessary for the purpose of management of the property in Madhya Pradesh to register this trust also in Madhya Pradesh, that would not exclude the jurisdiction of the State of Andhra Pradesh to legislate with respect to this trust which is undoubtedly situate in Andhra Pradesh, though some property of the trust is in Madhya Pradesh. We therefore agree with the High Court that the trust in this case being situate in Andhra Pradesh, the Regulations will apply to it.

Re. (2).

The contention in this regard is that the Part B States (Laws) Act, 1951, applied certain Central Acts to the Part B State of Hyderabad, as it then was, from April 1, 1951, and s. 6 of this Act lays down that "if immediately before the appointed day, there is in force in any Part B State any law corresponding to any of the Acts or Ordinances now extended to that State, that law shall, save as otherwise expressly provided in this Act stand repealed." A large number of Central Acts, were applied to the Part B States, and reliance on behalf of the appellant is placed on two Acts in this connection to show that the Regulations have been repealed in consequence of the extension of those Acts, to the then Part B State of Hyderabad. These two Acts are, (i) The Charitable Endowments Act, No. VI of 1890, and (ii) The Charitable and Religious Trusts Act, No. XIV of 1920. It is urged that because of the application of these two Acts to then Part B State of Hyderabad, the Regulation must be deemed to have been repealed in view of s. 6 of this Act. We are of opinion that there is no force in this contention. Act No. VI of 1890 definitely excludes religious public trusts from it. The Regulations deal with two kinds of trusts, namely, public religious trusts and trusts for purposes of charity and public utility. In the present case we are concerned with a public religious trust, which is specifically excluded from the purview of Act VI of 1890. Therefore,

whatever may be the effect of Act VI of 1890, on that part of the Regulations which deals with public trusts other than religious trusts (on which we express no opinion, for we are here concerned with only religious trusts), there is no doubt that the Regulations insofar as they apply to religious trusts, cannot be held to have been repealed by the application of Act No. VI of 1890, to the then Part B State of Hyderabad, for the Regulations when they deal with religious trusts, would not be a law corresponding to Act No. VI of 1890.

As to Act XIV of 1920, it certainly applies to religious trusts as well as other trusts of a charitable nature created for public purposes, but a perusal of s. 3 of this Act would show that it is confined to a very limited purpose and that purpose is to give power to any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature to apply to the Court within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate to obtain an order directing the trustee to furnish the petitioner through the court with particulars as to the nature and objects of the trust, and of the value, condition, management and application of the subject-matter of the trust, and of the income belonging thereto and also directing that the accounts of the trust shall be examined and audited. This is all that Act XIV of 1920 is concerned with. The rest of the provisions of the Act are ancillary to the main provision contained in s. 3. The Regulations on the other hand are a much wider enactment and provide, as we have already indicated, for the compilation of a book of endowment, for the management of the endowed property, for the duties of trustees, for possession over endowed property, and for the control of expenses from the income of the property. None of these matters is comprised in Act XIV of 1920. Therefore, the application of Act XIV of 1920 to the then Part B State of Hyderabad cannot be said to have repealed the Regulations by virtue of s. 6 of the Part B States (Laws) Act, 1951.

Re. (3).

The contention under this head is that there are two laws in force in two parts of the State of Andhra Pradesh with respect to religious endowments, and these two laws are different in many matters, and therefore there is discrimination, which is hit by Art. 14 The State of Andhra Pradesh, as it came into existence after the States Re-organisation Act, 1956, consists of two areas one of which came to that State from the former Part A State of Madras in 1953 and the other from the former Part B State of Hyderabad in 1956. These two areas naturally had different laws. We are told that steps are being taken to assimilate the laws in the two parts of the State and bring them under one common pattern. But that naturally takes time and complete assimilation of all laws has not yet taken place. We are further told that the question of having one law for public trusts of religious or charitable nature, is under the active consideration of the State Government. In these circumstances it would not be right to strike down all laws prevailing in the two parts of the State, because of certain difference in them arising out of historical reasons because the two areas in the State were formerly in two different States, namely, the former Part A State of Madras and the former Part B State of Hyderabad. Our attention in this connection has been drawn to the State of Rajasthan v. Rao Manohar Singhji [[1954] S.C.R. 996]. In that case a law relating to management of jagir estates which applied to only a part of Rajasthan was struck down on the ground that there was nothing corresponding to that law in other parts of Rajasthan, and the basis of the decision was that" there was no real and substantial distinction why the Jagirdars of a particular area should continue to be treated with inequality as compared with the Jagirdars in another area of Rajasthan." As against this, the respondents rely on Bhaiyalal Shukla v. State of Madhya Pradesh [[1962] Supp. 2 S.C.R. 257]. In that case, the sales-tax laws in different parts of the new State of Madhya Pradesh, which came into existence after the States Reorganisation Act, 1956, were different in some respects, because

they were enacted by different legislatures. Under s. 119 of the States Reorganisation Act, all laws in force are to continue till repealed or altered by the appropriate legislature. It was therefore held that different though parallel laws in different parts of Madhya Pradesh could be sustained on the ground that the differentiation arose from historical reasons, and a geographical classification based on historical reasons could be upheld as being not contrary to the equal protection clause in Art. 14. We think the ratio of Bhaiyalal Shukla's case [[1962] Supp. 2 S.C.R. 257] applies in the present case and not the ratio of Rao Manohar Singhji's case [[1954] S.C.R. 996]. In the latter case, the Jagirdars of a particular area became singled out after the creation of the State of Rajasthan and management of their properties was taken away from them while the jagirdars of the rest of Rajasthan retained the management of their properties. It was in those circumstances when there was a pre-existing law in one part of Rajasthan to which there was nothing corresponding in the rest of Rajasthan that this Court held that the patent discrimination arising in that case was violative of Art. 14. In Bhaiyalal Shukla's case [[1962] Supp. 2 S.C.R. 257] both parts had the same kind of law relating to sales-tax, though there were some differences in their provisions. It was in these circumstances that parallel, though somewhat different, laws in two parts of the same State were upheld on the ground of "geographical classification based on historical reasons." The present case is similar to Bhaiyalal Shukla's case [[1962] Supp. 2 S.C.R. 257], for in both parts of Andhra Pradesh there are laws with respect to public trusts of religious nature, though there may be some differences in detail in their provisions. Therefore, the attack on the basis of violation of Art. 14 must be repelled in the present case on the authority of Bhaiyalal Shukla's case [[1962] Supp. 2 S.C.R. 257].

Re. (4).

This brings us to the question whether the Regulations are violative of Art. 19(1)(f) of the Constitution. We do not propose in the present case to examine the numerous Rules that have been framed under the Regulations and shall confine ourselves to the vires of that part of the Regulations which is concerned with registration of endowments, and some of the Rules in that behalf as the appeal is only concerned with registration. We have been told that some of the rules have been the target of attack in the former High Court of Hyderabad, and some of them have been struck down by that High Court (see Narayan Pershad, v. State of Hyderabad [A.I.R. [1955] Hy. 82]). The sections with respect to registration are s. 3 to s. 11. Section 3 lays down that a book of endowments will be prepared containing all the endowments which are in force on the date of the Regulations or which will be brought into force in future. Section 4(a) lays down that it will be the duty of every trustee or endower of an endowment to inform in writing with regard to an endowment the Director of Endowments concerned with respect to movable and immovable property of the endowment, and if there is a deed of endowment, submit the same or a certified copy thereof. Section 4(b) lays down that if any trustee neglects to discharge his duties referred to in s. 4(a), he can be deprived of the benefit or consideration of the endowment wholly or partly which he possesses under the endowment. Section 5 lays down that any person may inform the Director of Endowments with regard to an endowment which has not been entered in the book of endowments. Section 6 give power to the Director of Endowments to give notice for the registration of endowed property, howsoever he comes to know of it. Section 7 provides that if no objection is made within the time fixed in the notice, the endowed property shall be registered in case the endowment is found to be legal. Sections 8 and 9 provide for procedure for decision of objections where objections are filed. Section 10 provides that every person whose objections have been disallowed can file a suit for declaration in the civil court within one year of the dismissal of his objections whereby his rights might be decided and entries in the book of endowments will then be governed by the decision of the civil court. Section 10 further provides that no person who has not filed objections can file a civil suit. Section 11 provides for a presumption that entries made in the book of endowments are

correct unless otherwise held by the civil court.

It will be seen therefore, that provisions as to the compilation of book of endowments contained in ss. 3 to 11 (except s. 4(b)) provide for registration of endowed property and for carrying out the objects of the Act, namely, that the intention of endower may be carried out and the duties of the trustee may be discharged conveniently and efficiently for the benefit of humanity. These Regulations are clearly reasonable restrictions in the interests of the general public within the meaning of Art. 19(5) of the Constitution and are conceived with the purpose of having correct information as to the endowments existing in the State so that their management may be carried out efficiently and for the benefit of humanity according to the terms of the endowments. These provisions therefore (except s. 4(b)) as to the registration of endowments are not in any way ultra vires the fundamental right enshrined in Art. 19(1)(f). As to s. 4(b), we do not think it necessary to express any opinion in this case. Section 4(b) is a kind of penalty on the trustee for neglecting to carry out the provisions of s. 4(a), and lays down that the trustee can be deprived of the benefit arising to him under the endowment. In the present case it is not the contention of the appellant that there is any benefit arising to him under the endowment and therefore s. 4(b) would have no application.

In this connection we may also refer to r. 25, which lays down that "if any trustee does not derive any benefit or return from the endowment in accordance with r. 24, then in the event of non-discharge of duties he may be suspended from the post of trustee for a suitable period and the management will be carried on during this period by Government." This rule is being attacked as going beyond the rule-making power conferred on the Government. We do not think it necessary in the present case to decide the vires of this rule, as the impugned action is not under this rule. We should not however be taken to have upheld the vires of this rule when we uphold the validity of the provisions relating to registration in the Regulations and the Rules. We therefore uphold the validity of the provisions relating to registration of endowments (except s. 4(b) on which we express no opinion) and the Rules framed thereunder (except r. 25 and rules consequential thereon which we express no opinion) to carry out these provisions under which notice was given to the appellant on December 31, 1957. In view of our conclusions on these four points, the appeal must fail.

Re. 5.

This brings us to the consideration of the vires of the orders dated June 13 and 14, 1960. The attack on these two orders is two-fold. In the first place, it is urged that if these orders fall within the powers conferred by the Regulations and the Rules made thereunder, they should be struck down, as the Regulations and the Rules framed thereunder by which the trustee is deprived of his right of management are ultra vires Art. 19(1)(f). In the second place it is urged that these orders which purport to have been passed under r. 179 are bad as r. 179 itself goes beyond the powers conferred on the rule-making authority under the Regulations and in any case are contrary to the Rules. We do not think it necessary in the present case to consider whether the Regulations and the Rules framed thereunder with respect to removing a trustee from the management of the trust are unconstitutional. We shall confine ourselves to the second part of the argument in this behalf and consider whether the Regulations give power for the removal of the trustee under any circumstances and if so whether the removal in this case has taken place as provided under the Regulations and the Rules framed thereunder. It cannot be doubted that the two orders taken together amount to removal of the appellant from trusteeship.

The only provision which deals with the management of endowed property is to be found in s. 12,

which is as follows :-

> "With regard to the management of the endowed property, the trustee will be generally competent to exercise the powers which have been conferred on him by the endower. But if any trustee is not found to be competent, then the Minister for Endowments may frame rules and regulations for the realisation of the objects of the endowment and for the better management of the same by which the trustee will be duly bound or he may appoint a Superintendent under the rules."

Analysis of this section shows that it consists of three parts. Under the first part, the trustee is competent to exercise the powers which have been conferred on him by the endower, thereby recognising the right of the trustee to manage the trust property according to the terms of the endowment. The second part lays down that "if any trustee is not found to be competent, then the Minister for Endowments may frame rules and regulations for the realisation of the objects of the endowment and for the better management of the same by which the trustee will be duly bound." Here again the management clearly remains with the trustee and he is only subjected to control by means of rules and regulations framed for the better management of the particular trust under the orders of the Minister for Endowments. Then comes the third part of the section which gives power in the alternative to the Minister for Endowments in case of incompetence of the trustee to appoint a Superintendent under the Rules. A Superintendent is defined in s. 2 as meaning a person appointed by Government for purposes of management. Thus the last part of s. 12 gives power to Government to appoint a Superintendent for purposes of management. This necessarily implies that on the appointment of a Superintendent to manage the endowed property under s. 12, the trustee is deprived of the management of the property, and in effect is removed from trusteeship. This interpretation of the last part of s. 12 is supported by rules found under Chaps. XLIII, XLIV and XLV. Chapter XLIII deals with "Superintendence by Government", Chap. XLIV with "direct superintendence of Government" and Chap. XIV "with munthazim (manager)." It may be added that in the definition in s. 2, the word "munthazim" has been translated as "Superintendent" while in Chap. XLV that word has been translated as "manager". It is obvious that the Superintendent and the manager are the same thing. Rule 177 provides that if the Government takes over the endowed buildings under its superintendence, it shall have power to arrange for direct superintendence, or appoint any munthazim (Superintendent) or manage through any committee. Chapter XLIV then provides for direct superintendence by Government. Rule 182 in that Chapter shows that where direct superintendence is taken by Government the power of spending the recurring amounts as per the budget will be vested in the trustee in accordance with the powers possessed by him under these Rules and there is no removal of the trustee. It is only when a Superintendent is appointed under Chapter XLV that he has all the powers of a trustee mentioned in Chap. XXXI (see r. 187). The two orders of June 13 and 14, 1960, read together clearly show that even though they purport to be passed under r. 179, which refers to "direct superintendence by Government", the Government has gone further than provided in the rule when it decided to take over the management of the temple and vest the same in the Director of Endowments from June 14, 1960, with the result that the appellant has been deprived of the management and in effect removed from trusteeship. We presume that consequent on this a Superintendent would be appointed. The last part of s. 12 which provides for the appointment of a Superintendent under the rules in effect provides also for the deprivation of the trustee of his right of management and thus results in his removal. Now r. 67 deals with the removal of trustee and has laid down six conditions which would justify the removal of a trustee. The last of these conditions lays down that if any trustee is not fit for trusteeship due to some reason other than those contained in the first five conditions he would be removed from the post of trustee. But this removal can only take place if the matter is inquired into by a competent officer. Thus r. 67

contemplates that no trustee shall be removed from trusteeship unless an inquiry is held by a competent officer. This obviously means that the trustee will be given an opportunity to show cause why he should not be removed from trusteeship and it is only after a proper inquiry that a trustee can be removed from trusteeship. This provision is in consonance with the language of s. 12, where the words used are "if a trustee is not found to be competent". The use of the word "found" clearly shows that the legislature intended that action under the second and third part of the section would only be taken after a proper inquiry. Further, r. 68 provides that the power of removal of a trustee will be vested in the Minister for Endowments. Thus after an inquiry has been made by a competent officer, it is only the Minister for Endowments, which in the present set-up means the Government, which can remove the trustee. We have already pointed out that we do not think if necessary in the present case to consider the question whether these provisions as to the removal of the trustee by Government can be upheld as constitutional. But assuming that these provisions are constitutional, the question that arises is whether the two orders passed on June 13 and 14, 1960, which must be read together and in effect amount to removal of the appellant from trusteeship can be justified under the Regulations and the Rules. Clearly these two orders have been passed by the Member, Board of Revenue while r. 68 contemplates that the trustee would be removed only by the Minister for Endowments, which in the present set-up, can only mean the Government. Further, r. 67 provides that a trustee cannot be removed from trusteeship unless an inquiry has been made by a competent officer. That means that notice has to be issued to the trustee to show cause why he should not be removed for reasons shown therein and it is only after an inquiry has been made and one of the six conditions provided in r. 67 is established that the trustee can be removed. In the present case no notice was ever issued to the appellant to show cause why he should not be removed from the trusteeship. It is true that in the notice dated December 31, 1957, it was stated that in case the appellant failed to respond to the notice (which was with respect to registration of the endowed property) the case would be completed taking the property under the Government's supervision and no more objection would be heard thereafter. The consequence of non-appearance to such a notice is to be found in s. 7 which provides that if no objection is filed the endowment would be registered and in s. 10(b) which deprives a person who does not appear to object in response to the notice of any right to file a suit as provided in s. 10(a). But there is nothing in r. 67 which gives power to the Government to remove a trustee simply because he fails to appear in reply to a notice asking him to register the endowed property. The six conditions mentioned in r. 67 are : (i) insanity, (ii) contraction of a contageous disease of a certain type, (iii) conviction by a criminal court, (iv) going out of Hyderabad State without intimation for more than a month, (v) forsaking the religion with which the endowment is concerned, and (vi) unfitness for trusteeship due to some other reason. There is no provision therefore for removal of a trustee, merely because he has not appeared in answer to a notice under s. 6 of the Regulations for registration of the endowment. The orders therefore that were passed on June 13 and 14, 1960, which must be read together, cannot be justified under rr. 67 and 68, for the reasons that (i) no inquiry was held, (ii) the orders were not passed by the Minister of Endowments, i.e. the Government, and (iii) the removal in this case is for a reason which is not permissible therein. All that the Director of Endowments was entitled to do on the basis of the notice dated December 31, 1957, was to proceed to register the endowment, even if the appellant failed to appear in reply to that notice after making such inquiries as he thought proper and take such further action as may be justified by the other provisions of the Regulations. But on the basis of that notice it was not open to him to pass the orders which he did on June 13 and 14, 1960, which amounted to removal of the appellant from trusteeship and taking over of the management of the trust by the Government. These orders must therefore be set aside as ultra vires the Regulations and the Rules, assuming in the present case that the Regulations and the Rules providing for the removal of the trustee, are constitutional.

We therefore dismiss the appeal with costs. The writ petition is allowed with costs and orders dated June 13 and 14, 1960, are hereby set aside.

Appeal dismissed.

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