SUPREME COURT OF INDIA

Radakanta Deb

Vs.

Commissioner of Hindu Religious Endowments, Orissa

C.A.Nos.310 of 1963 and 121 of 1964

(K. Subba Rao, K. N. Wanchoo, J. C. Shah, S. M. Sikri and V. Ramaswami, JJ.)

10.09.1965

JUDGEMENT

RAMASWAMI, J.:

1. This appeal is brought by a certificate on behalf of the plaintiff against the judgment and decree of the Orissa High Court, dated November 22, 1961.

2. In the suit which is the subject-matter of this appeal the plaintiff alleged that his ancestor - Dayanidhi Mahapatra - constructed a temple out of his own funds and established a family deity and made endowments for the maintenance of Seba-Puja of the deity. After the death of Dayanidhi the plaintiff became the Manager and Shebait of the family deity. The case of the plaintiff was that the temple and the endowments were never dedicated to the public nor had the public any kind of right in the temple or the endowed properties, but that respondent No. 1, acting under the provisions of S. 49 of the Orissa Hindu Religious Endowment Act (hereinafter referred to as the 'Act') realised a sum of Rs. 386 as the annual contribution from the plaintiff. Consequently Sri Baman Mahapatra filed an application under S. 64 (1) of the Act for a declaration that the temple in question was a private one

and did not fall within the purview of the Act. On November 1, 1953, respondent No. 1 rejected the contention of the plaintiff and declared the temple as a "public excepted temple" within the meaning of S. 6 (5) of the Act and appointed members of the plaintiff's family as the hereditary trustees. Thereafter Sri Baman Mahapatra filed a suit in the Court of Subordinate Judge, Puri, under S. 64 (2) of the Act for a declaration that the order passed by respondent No. 1 was illegal and should be set aside. Respondent No. 1 filed a Written Statement in that suit and after hearing the evidence on behalf of both the parties the Subordinate Judge held that the temple was a private temple belonging to the family of the plaintiff and defendants No. 2 and 3 and not a public excepted temple as erroneously held by respondent No. 1 in his order, dated November 1, 1953. Aggrieved by this judgment respondent No. 1 filed an appeal before the Orissa High Court which allowed the appeal on the preliminary ground that the suit was not maintainable as the plaintiff had not impleaded the public in accordance with the requirements of O. 1, R. 8 of the C. P. C. The High Court took the view that the omission to implead the public in a suit under S. 64 (2) of the Act was fatal and the suit as framed was, therefore, not maintainable and should be dismissed. In taking this view the High Court followed its previous decision in Padma Charan v. Commr., Hindu Religious Endowments. Orissa ILR (1961) Cut 183.

3. The question of law involved in this appeal is whether the High Court is right in its view that in a suit brought under S. 64 (2) of the Act the public should be impleaded as necessary parties under O. 1, R. 8 of the C. P. C.

4. Section 6 (13) of the Act defines a "temple" as "a place, by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community, or any Section thereof, as a place of religious worship". Section 6 (5) defines an "excepted temple" to mean and include "a temple the right of succession to the office of trustee or the offices of all the trustees (where there are more trustees than one) whereof has been hereditary, or the succession to the trusteeship whereof has been specially provided for by the founder".

5. Section 64 of the Act states:

"64. (1) If any dispute arises as to whether an institution is a math or temple as defined in this Act or whether a temple is an excepted temple, such dispute shall be decided by the commissioner.

(2) Any person affected by a decision under sub-s. (1) may, within one year, institute a suit in the Court to modify or set aside such decision; but subject to the result of such suit, the order of the commissioner shall be final."

6. The right of instituting a suit conferred by S. 64 (2) on any person affected by the decision of the

commissioner is a statutory right and there is nothing in that Section which makes it incumbent upon the plaintiff to make the public as party-defendants to the suit or to take recourse to the procedure prescribed under O. 1, R. 8, C. P. C. It was conceded by the Solicitor-General on behalf of respondent No. 1 that there is also nothing in the rules framed under S. 52 of the Act requiring the commissioner to give public notice and invite objections from the members of the public interested in the temple in a proceeding under S. 64 (1) of the Act. If the Commissioner is not required to give public notice or to grant a hearing to members of the public before making an order under S. 64 (1) of the Act, there is no reason why the person affected by the decision of the Commissioner should be compelled to implead members of the public as party-defendants in a suit brought under S. 64 (2) of the Act. In our opinion, the suit brought under Section 64 (2) is not a suit of the nature contemplated by O. 1, R. 8, of the C. P. C. Having regard to the scheme and object of the Act it is manifest that the commissioner represents the interest of the public and he is the only person who is entitled to take proceedings on behalf of the religious and charitable trust and individual members of the public have no locus standi in the matter. Reference may be made in this connection to S. 54 of the Act which states:

"54. (1) The Commissioner or any person having interest and having obtained the consent of the Commissioner may institute a suit in the Court of obtain a decree -

(a) to recover possession of property, comprised in a religious endowment;

(b) appointing or removing the trustee of a math or excepted temple or of a specific endowment attached to a math or excepted temple;

(c) vesting any property in a trustee;

(d) declaring what proportion of the endowed property or of the interest therein shall be allocated to any particular object of the endowment;

(e) directing account and enquiries; or

(f) granting such further or other relief as the nature of the case may require.

(2) Sections 92 and 93 and R. 8 of O. 1 of the First Schedule of the Code of Civil Procedure, 1908,

shall have no application to any suit claiming any relief in respect of the administration or management of a religious endowment and no suit in respect of such administration or management shall be instituted, except as provided by this Act.

(3) All suits or other legal proceedings by or against the Commissioner under this Act shall be instituted by or against him in his name."

The principle underlying the Section is based, to some extent, upon the principle of English law for enforcement of charitable trusts in the interest of general public. In English law the Crown as parens patriae is the constitutional protector of all property, subject to charitable trusts, such trusts being essentially matters of public concern - A. G. v. Brown, (1818) 1 Swan 265; and the Attorney-General, who represents the Crown for all legal purposes, is accordingly the proper person to take proceedings on this behalf and to protect charities - Eyre v. Countess of Shaftsbury, (1724) 2 P Wms 103. Whenever an action is necessary to enforce the execution of a charitable purpose, to remedy any abuse or misapplication of charitable funds, or to administer a charity, the Attorney-General is the proper plaintiff, whether he is acting alone ex officio as the officer of he Crown and as such the protector of charities, or ex relatione, that is to say at the request of a private individual who thinks that the charity is being or has been abused. The same principle is, to some extent, the basis of different legislative enactments in our country with regard to enforcement of public religious and charitable trusts. We are, therefore, of opinion that the High Court was in error in holding that in the suit brought by the plaintiff under S. 64 (2) of the Act the members of the public were necessary parties and it was incumbent on the plaintiff to follow the provisions of O. 1, R. 8, C. P. C. and the view of the High Court on this point should be overruled.

7. For the reasons expressed we hold that this appeal should be allowed and the judgment and decree of the High Court of Orissa in First Appeal No. 53 of 1956, dated November 22, 1961 should be set aside and the appeal should be remanded to the High Court for being dealt with and decided in accordance with law. Both the parties will bear their own costs up to this stage.

In Civil Appeal No. 121 of 1964.

8. This appeal is brought by a certificate against the judgment and decree of the High Court of Orissa, dated November 16, 1961 and the question of law involved in this appeal is identical with the one involved in Civil Appeal No. 310 of 1963. For reasons given in that case we allow this appeal, set aside the judgment and decree of the Orissa High Court in First Appeal No. 78 of 1958, dated November 16, 1961 and order that the appeal should go back in remand to the High Court for being dealt with and determined in accordance with law. Both the parties will bear their own costs up to this stage.

Appeals allowed.