Hasan Nurani Malak

Vs

Assistant Charity Commissioner, Nagpur & Ors.

Civil Appeal No. 498 of 1964

(CJI K. Subha Rao, J. M. Shelat JJ)

22.08.1966

JUDGMENT

SHELAT, J.

This is an appeal by special leave against the Judgment and order of the High Court of Maharashtra dismissing the appellant's petition under Article 226 of the Constitution. The question arising in the appeal is whether the Assistant Charity Commissioner appointed under the Bombay Public Trusts Act, 1950 as extended to the area of Vidharbha has jurisdiction to hold an inquiry under section 19 of that Act in spite of a previous finding by the Registrar under the Madhya Pradesh Public Trusts Act, 30 of 1951 that the trust in question was not a public trust within the meaning of the latter Act. The facts leading to the writ petition may briefly be set out.

In October 1953, one Jaferbhai claiming to be a beneficiary applied under s. 5 of the M.P. Act to the Registrar that the trust known as Mehdibaug founded in Nagpur in 1891 and its properties which were and are admittedly in possession of and managed by the appellant was a public trust. As required by section 5(2) of that Act the Registrar directed that a proclamation in respect of the said application should be published in the next issue of Madhya Pradesh Gazette. The inquiry held by the Registrar ended in an order dated November 11, 1955 whereby he held that the trust was not public trust. Though the Registrar gave his aforesaid finding he did not cause an entry thereof to be made in the register maintained by him under the Act. On November 1, 1956 as a result of the reorganisation of States Vidharbha was merged in the then Bombay State. The Bombay legislature thereafter passed the Bombay Public Trusts (Unification Amendment) Act, 1959 and by a notification dated February 1, 1961 passed thereunder the Bombay Public Trusts Act 1950 was extended to the Vidharbha area. On March 2, 1962, respondents 2 to 5 filed an application under section 19 of the Bombay Act, 1950 before the Assistant Charity Commissioner for an inquiry as to whether the said trust was a public trust. The appellant contended that since the trust was already declared not to be a public trust under the M.P. Act the Assistant Charity Commissioner was precluded from holding the inquiry under the Bombay Act. On September 6, 1962, the Assistant Charity Commissioner rejected that contention. Thereupon the appellant filed the aforesaid petition in the High Court. The High Court as stated above dismissed the petition holding that the Assistant Charity Commissioner had jurisdiction to hold the inquiry. It is this order which is impugned in this appeal.

In view of the controversy between the parties as to the effect of certain provisions of the Bombay Act 1950 and the M.P. Act of 1951 it becomes necessary to briefly notice some of the relevant provisions of the two Acts. Section 2(4) of the M.P. Act defines "public trust" as meaning an express or constructive trust for a public, religious or charitable purpose and includes a temple etc. or any

other religious or charitable endowment and a society formed for a religious or charitable purpose. Sub-section 5 of that section defines "register" as meaning a register maintained under sub-section 2 of section 3 of the Act. Section 3(2) provides that the Registrar should maintain a register of public trusts and such other books and registers and in such form as may be prescribed. Section 4 provides for the registration of public trusts and lays down that the working trustee of every public trust should apply to the Registrar for its registration by an application in which certain particulars therein mentioned have to be set out. Section 5 provides that on receipt of such an application or upon an application made by any person having interest in a public trust or on his own motion, the Registrar shall make an inquiry in the prescribed manner for ascertaining amongst other things whether the trust in question is a public trust. Sub-section 2 of section 5 as aforesaid provides for giving a public notice of the inquiry proposed to be made inviting all persons interested in the public trust under inquiry to prefer objections, if any, in respect of such trust. Under section 6 the Registrar on completion of the inquiry has to record his findings with reasons therefor as to the matters set out in section 5(i) and under section 7(1) he has to cause entries to be made in the register in accordance with his findings and has to publish on the notice board of his office the entries so made. Sub-section 2 of section 7 reads as under :

> "The entries so made shall, subject to the provisions of this Act and subject to any change recorded under any provision of this Act or a rule made thereunder, be final and conclusive."
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> Section 8 provides that any working trustee or person having interest in a public trust or any property found to be trust property, aggrieved by any finding of the Registrar under section 6 may, within six months from the date of the publication of the notice under sub-section (1) of section 7, institute a suit in a civil court to have such finding set aside or modified. Sub-section 3 provides that on the final decision of the suit, the Registrar shall, if necessary, correct the entries made in the register in accordance with such decision.

It is clear from the provisions of section 8 that though the entries made by the Registrar are final and conclusive that finality is subject to the decision of the court in a suit challenging the findings of the Registrar. The cause of action for such a suit is thus the finding of the Registrar and not the entry. It is manifest that section 7 requires the making of the entry and its notification in order that the findings given by the Registrar are recorded and are given publicity so that an aggrieved party whether he is a working trustee or a person interested in the trust may file a suit within the prescribed time. Under section 35 of the Act the State Government framed rules prescribing inter alia for the maintenance of certain registers. Under the Act and the said Rules the Registrar had to maintain four registers, viz, (1) a register of public trusts, (2) a register of the properties of public trusts, (3) a register relating to immovable properties belonging to the trusts and (4) a register of decisions of courts relating to public trusts. These being the only registers prescribed either under the Act or the said rules there was no obligation on the Registrar to maintain any other register or book.

The Bombay Act, 1950 defines a public trust to mean an express or constructive trust for either a public, religious or charitable purpose or both and includes a temple, a math, a waqf, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860. Section 18 provides for registration of public trusts and is substantially in the same terms as section 4 of the M.P. Act. Section 19 similarly provides for an inquiry for ascertaining the matters set out therein which are

again in the same terms as in section 5 of the M.P. Act. Though the definition of the public trust in the Bombay Act is not exactly in the same terms as that in the M.P. Act the contents of both are substantially the same. In any event it is not the case of the respondents that that which is not a public trust or a property belonging to a public trust under the M.P. Act has been made a public trust or a property belonging to such trust under the Bombay Act. The inquiry under both the Acts and its scope are therefore the same. Section 86 of the Bombay Act inducted in the Act by Bombay Act 6 of 1960 contains both repeal and saving clauses. Under sub-sections 1 and 2 read with Bombay Act 6 of 1960 the M.P. Act of 1951 stands repealed. Sub-section 3 which is a saving provision provides that the repeal or cessation of the Acts under sub-sections 1 and 2 shall not in any way affect :

> "(a) anything duly done or suffered under the laws hereby repealed or ceasing to apply before the said date;
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> (b) any right, title, interest, obligation or liability already acquired, accrued or incurred before the said date under the laws hereby repealed or ceasing to apply;
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> (c) any legal proceedings or remedy in respect of such right, title, interest, obligation or liability."

Two contentions were raised by the appellant in the High Court in support of his petition. First, that the Registrar under the M.P. Act having found that the trust was not a public trust and six months having expired from the date of his finding that finding became final, that a right within the meaning of cl. (b) of section 86(3) of the Bombay Act vested in the appellant and that therefore the Assistant Charity Commissioner was not competent to reopen that finding and start an inquiry abrogating his said right and (2) that it was obligatory on the Registrar to make an entry in the register of public trusts maintained by him and that since he had not made such an entry the inquiry held by him was not completed; that that being so the inquiry was a pending proceeding saved by section 86(3) and therefore the only remedy which respondents 2 to 5 had was to proceed in that proceeding by calling upon the Registrar to make and notify such entry and if necessary to file a suit under section 8 of the M.P. Act challenging that finding. The High Court rejected both these contentions. The High Court held that the M.P. Act did not confer any finality to the Registrar's finding and that under that Act finality attached to an entry made by the Registrar in the register of public trust. It also held that when the Registrar's finding was a negative one it was not incumbent on him to make any entry as the only register he was enjoined upon to maintain was the one prescribed by the Act. The rules made under the Act not having prescribed any other register or book and the only register prescribed by the Act being the register of public trusts it was not obligatory upon him to enter a finding that the trust in question was not a public trust. No such entry having been made no right under section 86(3) of the Bombay Act vested in the appellant which would bar a fresh inquiry under the Bombay Act. The High Court further held that there being no obligation on the Registrar to make such a negative entry it could not be said that the proceedings before him was a pending proceeding saved under section 86(3). No finality therefore was given to the finding of the Registrar that the trust was not a public trust. As regards the suit under section 8 of the M.P. Act, the High Court held that on a true interpretation of sections 5, 6, 7 and 8 of that Act the suit contemplated was a suit for the purpose of correcting an entry made by the Registrar and that no such entry having been made no such suit lay and consequently respondents 2 to 5 could not have filed a suit under that section.

As aforesaid the preamble of the M.P. Act shows that the Act was enacted to regulate and to make better provision for the administration of the public, religious and charitable trusts in the then State

of Madhya Pradesh. With that end in view section 5 of that Act provides for an inquiry to be held by the Registrar for ascertaining among other things whether a trust under inquiry is a public trust or not. A public notice of such an inquiry was provided for under section 5(2) in order to enable persons interested in such trust to participate therein. Section 6 and 7 enjoin upon the Registrar to record his finding. Such a finding may either be that the trust is a public trust or it is not. Section 7(1) enjoins upon him to cause entries to be made in the register "in accordance with the findings recorded by him under section 6", and he is to publish the entries when made in the register. The register prescribed no doubt is a register of public trusts. If the finding of the Registrar is that a particular trust is not a public trust, does he not have to make an entry of his finding in the register or has he to make an entry in that register only when his finding is a positive one that the trust is a public trust ? It will be noticed that there is nothing in section 7(1) to show that he is required to make an entry only if the finding is in the affirmative. On the other hand sub-section 1 of section 7 expressly provides that he shall cause entries to be made in accordance with the finding recorded by him under section 6. Section 6 shows that he has to record his findings and the reasons therefor whatever the findings are, whether in the affirmative or in the negative. Since entries under section 7(1) are to be made in accordance with such findings, either positive or negative, it follows that entries have to be made irrespective of whether the trust is found to be a public trust or not. To say that he is required to make an entry of finding only if the finding is that the trust is a public trust would be contrary to the express language of sections 6 and 7 and would unnecessarily curtail the language and the scope of the two sections. This construction is also supported by section 8. Under that section, though it is the entry made under s. 7 which has been given finality a right of suit is conferred on both the working trustee and all persons having interest in the trust or any property belonging to it and who is aggrieved 'by any finding'. The section no doubt provides that such a suit has to be filed within six months from the date of the publication of the entry. But that provision is clearly one fixing limitation. That does not mean that the suit is to set aside the entry. The section in so many terms states that such a suit would be to set aside the finding given by the Registrar and where such a finding is set aside the Registrar has to correct the entry made in the register in accordance with his findings. The cause of section for such a suit thus is the finding and not the entry which is merely consequential. It is therefore not right to say that a suit cannot be filed unless the Registrar has made the entry. The legislature, besides, could not have left the right to file a suit to the mercy of the Registrar who may or may not make the entry. It is equally not correct to say that the Registrar has not to make an entry if his finding is in the negative. Suppose the Registrar in a given case gives his finding that the trust in question is not a public trust and does not make an entry on the ground that the register maintained by him is the register of public trusts and not of trusts which are not public trusts. What is a person interested in the trust or its properties to do if he is aggrieved by that finding ? Does it mean that he has no remedy by way of a suit ? That surely cannot be the meaning to be given to sections 7 and 8. If the making of the entry is the condition precedent for such a suit such a person would have no remedy of a suit under section 8. It is precisely to avoid such a result that the section provides in explicit language that any person, aggrieved by the finding and not the entry, has a right to file a suit and to have such a finding set aside, whether the finding is positive or negative. There is nothing in s. 8 which restricts the right of a suit in cases where the finding is in the affirmative. If that was so, giving a right to sue to a person interested in the trust would be superfluous as he would never be aggrieved by a finding that the trust is a public trust. The High Court was, therefore, in error when it held that the Registrar was not obliged to make the entry as his finding was in the negative. In our view, regarding sections 5, 6, 7 and 8 of the M.P. Act it is clear that the Registrar is enjoined upon to make an entry in the register of public trusts irrespective of whether his finding is in the affirmative or in the negative. For the entry he has to make is the entry "in accordance with his finding" whatever that finding is.

As regards the second contention urged before it, the High Court observed that if it was obligatory on the Registrar to cause an entry to be made in the register even if the finding was negative, the fact that he had not made such an entry would not deprive the appellant of his right and in that event it would have held that the proceeding before the Registrar was still pending and respondents 2 to 5 would in that case have to have recourse to the M.P. Act. But the High Court on the ground that there was no obligation on the Registrar to make the entry rejected this contention. Let us see whether there was justification in the contention that the inquiry is still pending and that respondents 2 to 5 have to proceed under that Act and not under s. 19 of the Bombay Act.

Mr. Desai for the appellant relied on sub-section 3 of section 86 and urged that all the three sub-clause, (a), (b) and (c) apply to the present case. He urged that the inquiry before the Registrar was a thing duly done under the M.P. Act and was therefore saved, that the Registrar's finding had become final on the expiry of six months from the date of that finding and its finality vested a right in the appellant which is saved by the sub-section and lastly that the legal proceeding, that is the enquiry, was still pending and in spite of the cessation of the M.P. Act, was saved. He contended that a fresh inquiry therefore could not be held as the proceeding before the Registrar was still pending and the competent authority to proceed with it was the Registrar and not the Assistant Charity Commissioner. The Assistant Charity Commissioner was therefore precluded from holding the impugned inquiry. Mr. Chatterjee, on the other hand, argued that no right can be said to have accrued to the appellant as no finality attached to the Registrar's finding, an entry of that finding not having been made by the Registrar. There was also no question of any legal proceeding being saved as the proceeding save is the one in respect of a right, title or interest vested in a party. Therefore, sub-cls. (b) and (c) according to him would not in any case apply. As regards sub-cl. (a) he argued that the inquiry before the Registrar was over so soon as he gave his finding and therefore that inquiry also cannot be said to have been saved.

The words "anything duly done" in sub-cl. (a) are very often used by the legislature in saving clauses such as we have in section 86(3). Section 6 of the General Clauses Act, 1897 also provides that unless a different intention appears the repeal of an Act would not affect anything duly done or suffered thereunder. The object of such a saving clause is to save what has been previously done under the statute repealed. The result of such a saving clause is that the pre-existing law continues to govern the thing done before a particular date from which the repeal of such a pre-existing law takes effect. In Universal Imports Agency v. Chief Controller ([1961] 1 S.C.R. 305.) construing the words "things done" used in para 6 of the French Establishments (Application of Laws) Order, 1954, this Court held that on a proper interpretation the expression "things done" was comprehensive enough to take in not only the things done but also the effect of the legal consequences flowing therefrom. The inquiry held by the Registrar under the M.P. Act was indisputably "a thing duly done" under that Act. The inquiry and its result having been saved by section 86(3)(a) they continue to be governed by the M.P. Act in spite of its ceasing to apply in Vidarbha. As we have already held it was obligatory on the Registrar to have made an entry of his finding in the register of public trusts maintained by him under that Act though the finding was that the trust was not a public trust. If any one was aggrieved by that finding he could have made the Registrar to cause an entry to be made and thereafter file a suit to set aside the finding and have the entry corrected. Respondents 2 to 5 would be such persons as they claim to be interested in the trust and are therefore persons aggrieved by that finding and interested in challenging it. The contention that that inquiry was completed is not correct because the Registrar had yet to make the entry of his finding which he was bound to make under section 7 of that Act. That being the position, the inquiry is saved by sub-cl. (a) of section 86(3) and it is still pending and is governed by the M.P. Act. In the result a fresh inquiry under the Bombay Act while the proceeding under the M.P. Act is still pending was not competent

and the Assistant Charity Commissioner was precluded from entertaining it. In this view it is not necessary to consider Mr. Desai's contention that clauses (b) and (c) also apply to the present case. Mr. Chatterjee however drew our attention to a decision of the High Court of Bombay in Ramalal v. Charity Commissioner (63 Bom. L.R. 418.). That decision cannot assist the respondents as the effect of a saving clause such as we have in section 86(3) or in the Bombay General Clauses Act was not considered there and the question of the proceeding being a pending one was neither raised nor considered. For the reasons aforesaid it is not possible to sustain the order passed by the High Court dismissing the petition.

We therefore set aside the order, allow the appeal and make the petition absolute. The respondents will pay the costs of the appellant both here and in the High Court.

R.K.P.S.

Appeal allowed.

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