Kumar Pashupati Nath Mullah (Dead) By L. Rs,

Vs

State of West Bengal

Civil Appeal No. 1838 of 1967

(K. K. Mathew, A. Alagiriswami JJ)

05.03.1974

JUDGMENT

ALAGIRISWAMI, J. -

1. Gobinda Prosad Pandit, the founder of the Searsole Raj Estate died in the year 1861 leaving a will. After his death in a suit between his widow and certain other claimants regarding the title to the estate it was held that a charge had been created upon the entire estate for the maintenance and seva puja of the family deity and for the performance of certain specified charitable purposes. In 1928 the appellant, his brother and their father who succeeded to the estate executed an arpannamah in favour of the family deity reiterating the charge created by Gobinda Prosad Pandit. On October 12, 1953 the appellant executed a document whereby a half share in a part of the estate was set apart exclusively for the purpose for which the charge had been created earlier, and the rest of the property was to be treated as absolutely free and absolved from the claims in respect of the religious and charitable purposes. The appellant appointed himself as the trustee. The West Bengal Estates Acquisition Act, 1953 came into force on February 12, 1954. Under that Act, the main provisions of which, in so far as they are relevant for the purposes of this appeal, we shall refer to later, the estate vested in the State on April 14, 1955. Subsequently the Act was amended by introducing Section 5A therein with retrospective effect from May 5, 953, the date prior to that on which the bill, which later became the West Bengal Estates Acquisition Act, was published in the Gazette. After an enquiry the Settlement Officer held that the document executed by the appellant on October 12, 1953 was not bona-fide. The appeal against this decision to the Special Judge failed and so also a petition filed before the High Court under Art. 227 of the Constitution. This appeal has been filed in pursuance of the special leave granted by this Court.

2. We shall now set forth the provisions of the Act in brief.

3. Under Section 4(1) of the Act a notification may be issued by the State Government that all estates and the rights of every intermediary in each such estate shall vest in the State free from all incumbrances. Under Section 5(1) upon the publication of such a notification the estates and the rights of intermediaries in the estates shall vest in the State free from all incumbrances. It may be stated even at this stage that the appellant is an intermediary. Under Section 5-A the State Government may enquire into any case of transfer of any land by an intermediary made between the 5th day of May, 1953 and the date of vesting, if in its opinion there are prima facie reasons for believing that such transfer was not bona-fide, and if after such an enquiry the State Government finds that such transfer was not bona-fide, and if after such an enquiry the State Government finds that such transfer was not bona-fide, it shall make an order to that effect and thereupon the transfer shall stand cancelled as from the date on which it was made or purported to have been made.

Against an order passed by the Statement Government an appeal lies to a Special Judge. Sub-section (7) of this Section lays down that a transfer shall be held to be not bona-fide if it was made principally or partially with the object of increasing the amount of land which a person may retain, or principally or partially with the object of increasing the amount of compensation payable. `Transfer' means a transfer by sale, mortgage, lease, exchange or gift.

4. Under Section 6 an intermediary is entitled to retain various categories of land, of which it is only necessary to refer to the category mentioned in Section 6(1) (i) which reads :

> "where the intermediary is a corporation or an institution established exclusively for a religious or a charitable purpose or both, or is a person holding under a trust or an endowment or other legal obligation exclusively for a purpose which is charitable or religious or both - land held in khas by such corporation or institution, or person, for such purpose including land held any person, not being a tenant, by leave or licence of such corporation or institution or person;"

5. Section 16 provides for the calculation of the gross income and net income of an intermediary. Among the items which have to be deducted from the gross income in order to arrive at the net income is the one under Section 16(1) (b) (vi) which reads as follows :

> "any sum payable by such intermediary out of the income of an estate or interest which has vested in the State under Section 5, to a corporation or an institution established exclusively for a religious or a charitable purpose or both, or to a person holding under a trust or an endowment or other legal obligation exclusively for a purpose which is charitable or religious or both, where such estate or interest was held partly for charitable purpose and partly for a purpose other than religious or charitable.

6. Section 17 provides for the determination of the amount of compensation payable to intermediaries.

7. The Settlement Officer held that "a charitable trust is exhypothesi a voluntary transfer by way of gift and it has been held that one of the various modes of giving property for religious purpose is to give it to the trustees" and therefore it has a transfer. Before the Special Judge it was argued that there was no transfer at all inasmuch as it was not in act of conveying the property from one living person to another, and that it was not at all a gift since there was no transfer. The learned Special Judge rejected that contention. Similar arguments were repeated before the High Court which, also rejected that contention. We are of opinion that the High Court as well as the authorities below were right in this conclusion. The definition of the term 'transfer' odes not attract all the definitions given in the Transfer of Property Act for the transactions which are defined as transfers in the Act. If the substance of the transaction by which properties are endowed in factor of a deity is looked into we do not see why it cannot be called a gift. In Champa Bibi v. Panchiram Nahata a Division Bench of the Calcutta High Court held that "a transfer of property by dedication to a Hindu deity is a transfer by gift within the meaning of Section 5A (7) (iii) of the West Bengal Estates Acquisition Act."

8. As regards the second point whether the transfer was bona-fide or not the Settlement Officer did not apply his mind to the provisions of the act which lay down what transfers would be held to be not bona-fide. He did not consider whether the transfer was made principally or partially with the object of increasing the amount of land which the transferor may retain or increasing the amount of

compensation payable to him. He only took into consideration the fact that certain lands were transferred to the appellant's son and his wife and held that it was clear from them that the deed was made principally or partially with the object of increasing the amount of land which the appellant could retain, and also with the object of increasing the amount of compensation payable under the Act. He did not go into the facts of the case but merely repeated the words of the Section. It is found from that order itself that the total expenditure on the seva and charitable purposes was Rs. 30,000 and the appellant's share therein would be Rs. 15,000. It is also found that the income of the land absolutely transferred under the deed of October 12, 1953 is Rs. 23,000. But for the execution of the document the appellant would have been in possession of the whole of the estate with only a charge amounting to Rs. 15,000. As a result of the document land yielding a larger income was transferred absolutely to the deity. The Settlement Officer should, therefore, have given his reasons as to how he arrived at the conclusion that the transfer would enable the appellant to retain a larger extent of land or entitle him to a larger amount of compensation. The Special Judge merely considered that it was difficult to understand how the appellant who inherited the moiety share of the estate subject to the charge was legally competent to free a portion of the estate from the charge and confine the charge to only a portion of the estate. But that does not affected the question whether the transfer was bona-fide in terms of the Act. He took the view that the Act considered alongwith the fact that the appellant transferred his interest in the remaining portion of the estate to his son and wife clearly established want of bona-fide in terms of the Act. He took the view that the Act considered along with the fact that the appellant transferred his interest in the remaining portion of the estate to his son and wife clearly established want of bona-fide on the part of the appellant, and that it was done to defeat the purpose of legislation. It would be noticed that he has also not gone into the question whether the impugned transaction enables the appellant to retain a larger extent of land or claim a larger amount of compensation. The High Court did not go into this question at all.

9. We do not consider that the facts of this case raise any question under Section 6(1) (i) at all. That can arise only with regard to the situation as it existed before the execution of the impugned document and under the unamended Act. The earlier document of 1928 as well as the prior decree would not bring the lands under this Section at all, as was held by this Court in Fazlul Rabbi Pradhan v. State of West Bengal.

10. In the result this appeal is allowed. The High court will dispose of the matter afresh in accordance with law. There will be no order as to costs.

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