The Bihar State Board of Religious Trusts

Vs

Bhubneshwar Prasad Choudhary and Another

Civil Appeal No. 1871 of 1967

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

09.04.1974

JUDGMENT

ALAGIRISWAMI, J. -

1. The question for decision in this appeal is whether the temple of Shree Maharaja Ram Janki Lacchuman Maharaj in the village of Mauza Deogan in the State of Bihar is a religious trust within the meaning of the term in Section 2, clause (1) of the Bihar Hindu Religious Trusts Act, or a private endowment.

2. Two brothers, Ram Adhikari Choudhary and Ram Lochan Choudhary, and Amir Prasad Choudhary, son of their brother, for himself and as guardian of Ramakant Prasad Choudhary, who were all members of a joint Hindi family executed on June 17, 1921 a samarpannama by which they dedicated certain properties to the above mentioned temple. By that deed of dedication they completely divested themselves of any interest in the properties except that they and the members of their families were to be shebaits. By the same deed five persons, who were absolute strangers to the family, were appointed panches

to take the rendition of account of the income and expenditure from the manager, shebait for the time being year after year on the death of the executants. .... If in the opinion of the said panches the manager and shebait for the time being be found (illeg) and extravagant or there be any loss in respect of the income of the dedicated property or the dedicated property which is at present or be acquired in future, in that case they should discharge the manager shebait for the time being and (appoint) other deserving manager, shebait, who be deemed according to the conditions mentioned above, in his place from among the members of the family of the executants.

The panches were given power to fill up vacancies in their ranks.

3. On December 7, 1928 Ram Adhikari Choudhary alone executed another samarpannama endowing some further properties in favour of the temple, containing similar terms as in the earlier samparannama; but in place of five panches mentioned in the earlier deed he appointed a fresh set of five panches, of whom only one belonged to the earlier set of panches. In this deed also it was provided that

if any future shebait fails to manage the dedicated properties, arrange ragbhog to the aforesaid deities properly, show negligence, spoil the property, and incur (un)-necessary expenses, the said panches will be competent to dismiss the said shebait and appoint another one out of the members of the family of me, the executant, who happens to be honest and capable.

4. On July 14, 1934 Ram Adhikari Choudhary executed another deed called 'ekrarnama' referring to the fact that he had adopted Bhagwat Prasad Choudhary, the present first respondent, and that he had been appointed shebait and manager of all the dedicated properties covered by the earlier two samarpannamas. He also directed that

the stipulations contained in the samarpannama dated December 7, 1928 in respect of maintenance of account of income and expenditure of the dedicated property, shall hold good in respect of the management of the dedicated property and maintenance of the account of income and expenditure.

He mentioned nothing about the panches mentioned in the earlier deed, but provided that

as (to) the appointment of shebaits in future, the practice to be followed will be that the shebait in office shall be fully competent to (appoint) during his life or that after him he who amongst his sons be alive and most capable shall be appointed shebait of the said deities one after another. In case there be no male issue in the family of the shebait in office, firstly, amongst the male issue or in case there be no capable man amongst the children of the aforesaid persons, the shebait in office shall be competent to appoint a shebait amongst the children of my cousin (father's brother's sons) brothers, deemed to be capable. But the shebait in office is and shall not be competent to appoint a shebait from the family of other persons.

5. It is unnecessary for the purpose of this case to go into the question whether by executing the samarpannama of December 7, 1928 and ekrarnama of July 14, 1934 Ram Adhikari Choudhary was competent to change the provisions of 1921 document. It is not even clear whether by this document he had intended to do away with the provisions contained in the earlier documents regarding the panches and their powers. Be that as it may, we are of opinion that the main point regarding all these documents is the fact that the executants had completely divested themselves of any title to or interest in the dedicated properties which thereby became the properties of the deity. The only power which the members of the family thereafter had was to be shebaits and managers of the temple.

6. The Subordinate Judge who tried this suit considered that the 1921 document created a trust in which the public were interested. But in this to some extent he seems to have been influenced by a wrong reading of Section 2(g)(i) of the Act, especially the words "to participate in any religious or charitable ministration under such trust". He mistook the word 'ministration' to be administration. The difference between the words would make all the difference as to whether any member of the public could be said to be interested in the religious trust. We have called for and perused the copy of the Act as printed in the official publication and we find that the word used in 'ministration' and not 'administration'. The question for decision in this case, therefore, has to be decided on the grounds other than the supposed presence of the word 'administration' in Section 2(g)(i).

7. The learned Judges of the High Court on the other hand took the view that the mere fact that the temple was situated within independent compound walls, though near the house of the founders, could not by itself indicate that the temple was meant for public purposes. They further took the view that "the cost over faqirs, sadhus and the occasional festivals would be ancillary to the main purpose, that is, for puja of the deity". As regards the Panches mentioned in the documents they were of opinion that they had no opportunity to function or take any part in the affairs of the temple and the trust properties, and that there was nothing to indicate that the founder or founders of the trust intended that members of the public should be associated with the management of the temple and the trust properties and the puja. They also held that :

the mere fact that some other members of the public might be attending festivals like Ram Navami, Janmashtami, etc. does not justify the inference that the trust or temple was created for the benefit or worship of the public at large or of some considerable portion of it.

8. We find ourselves unable to agree with the learned Judges of the High Court. We are of opinion that the judgment of the High Court proceeds from failure to appreciate the effect of the judgment of this Court in Deoki Nandan v. Murlidhar ((1965) SCR 756 : AIR 1975 SC 138 : 1975 SCJ 75). In that case the dedication of the properties was not as complete and as categorical as in the present case. Only in the absence of male issue, the entire immovable property was to stand endowed in the name of the deity. Half of the income from the properties was to be taken by the two wives of the testator for their maintenance during their lifetime. If a son was born to the testator then the properties were to be divided between the son and the temple. A committee of four persons was appointed to look after the management of the temple and its properties, and of these, two were not the relations of the testator. The committee "may appoint the testator's nephew as Mutawalli by their unanimous opinion". The documents in the present case are only slightly different in that they provide for the members of the family being shebaits. But the panches are all outsiders. In Deoki Nandan v. Murlidhar (supra) this Court referred to certain facts as indicating that the endowment is to the public :

Firstly, there is the fact that the idol was installed not within the precincts of residential quarters but in a separate building constructed for that very purpose on a vacant site. And as pointed out in Delroos Banoo Begum v. Nawab Syud Ashgur Ally Khan ((1875) 15 Beng LR 167, 186 : 23 WR 453), it is a factor to be taken into account in deciding whether an endowment is private or public, whether the place of worship is located inside a private house or a public building. Secondly, it is admitted that some of the idols are permanently installed on a pedestal within the temple precincts. That is more consistent with the endowment being public rather than private. Thirdly, the puja in the temple is performed by an archaka appointed from time to time.

In the present case the first factor is present. There is no evidence about the second. There is also provision for appointment and dismissal of pujaris. Though there is no evidence in this case, as in that case, that the temple was built at the request of the public we do not think that it makes much difference. We are particularly of the view that the as the only right which the family had was to have a member of the family as a manager or shebait and the shebait was subject to superintendence and control by a body of outsiders, who were given the power to remove the shebait if he did not act properly, it is decisive of the question as to the public character of the temple. There could be no better indication of the fact that the members of the public were associated with the management of the temple and interest in its management was created in them, thus bringing the matter directly within clause (g) of Section 2 of the Act. The fact that this provision regarding the panches was to come into effect only after the death of the executants of the deed, does not affect the merits of the question. We are also of opinion that the learned Judges of the High Court were not correct in their view that the fact that members of the public took part in the worship in the temple and the provision for faqirs etc. was of no significance, and in relying upon the decision of the Privy Council in Bhagwan Din v. Har Saroop (AIR 1940 PC 7 : 67 IA 1 : (1940) 1 Mad LJ 1) for this purpose. In that case the properties were granted not in favour of an idol or temple but in favour of a private individual, who was maintaining a temple, and his heirs. The contention in that case was that subsequent to the grant the family of the grantee must be held to have dedicated the temple to the public for purposes of worship and it was this contention that was repelled by the Privy Council by observing that as the grant was initially to an individual, a plea that it was subsequently dedicated by the family to the public required to be clearly made out and it was not made out merely by showing

that the public was allowed to worship at the temple. But in the present case, as in the case of Deoki Nandan v. Murlidhar (supra), the endowment is in favour of the idol itself and in such circumstances proof of user by the public without interference would be cogent evidence that dedication was in favour of the public. The decision of the Division Bench of the Patna High Court in Ramsaran Das v. Jai Ram Das (AIR 1943 Pat 135 : ILR 21 Pat 815) that "a mere provision for the service of sadhus, occasional guests and wayfarers in a dedication to an idol does not render the dedication substantially for public purpose" must be understood in the background of that case where the properties originally stood in the names of various mahants and the property was to be held by the grantee generation after generation and the Court held that the gift was to the mahant personally.

9. We are, therefore, satisfied that on the facts of this case the trust should be deemed to be a religious trust as the public are interested in it. The appeal is allowed and the judgment and decree of the High Court set aside, restoring the judgment of the learned Subordinate Judge. The 1st respondent will pay the costs of the appellant. The C.M.P. No. 3132 of 1973 is allowed.

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