

Sayed Mohomed Baquir El-Edroos (Dead) by Lrss.

Vs

State of Gujarat

Civil Appeal No. 2132 of 1977

(A. D. Koshal Ali, V. B. Eradi, R. B. Misra JJ)

01.10.1981

JUDGMENT

MISRA, J. -

1. The present appeal by special leave is directed against the Full Bench decision of the High Court of Gujarat at Ahmedabad dated September 23, 1976. The sole question for consideration in this appeal is whether civil court has jurisdiction to entertain and decide the suit giving rise to the present appeal.

2. There is an old institution known as Edroos Dargah of Hazrat Sayedina Mohomed-Bin Abdulla El-Edroos at Surat. Village Orma is an inam village held by the said institution. The dispute in the present case relates to the property of the said village Orma comprising its soil, trees, lanes, roads together with cultivated lands of about 1093 acres with land revenue alienated Rs. 2,747.10.5. Pursuant to the Bombay Personal Inams Abolition Act, 1952 (Act 42 of 1953) hereinafter referred to as the 1952 Act, the State of Bombay and after the re-organisation of States, the State of Gujarat, declared that the said Act was applicable to Village Orma from August 1, 1955, and therefore, the exemption from the payment of land revenue was extinguished from August 1, 1955. Accordingly the State of Bombay through its Mamlatdar of Olpad send a notice to the Sajiadanashin of the institution to that effect and also demanded the village records from his possession. He also proceeded to take further and consequential action and declared that the rights of the institution in public roads, lanes, village site and land etc. are extinguished. In the circumstances the Sajjadanashin was obliged to file the suit which was later on numbered as Suit No. 9 of 1956.

3. The stand of the plaintiff is that Village Orma was an inam village held by the religious institution of Edroos Dargah and the provisions of Section 4 of the 1952 Act have no application in view of clause (2) of section 3 of the said Act. The defendant-State contested the suit on grounds inter alia that the village in question was a personal inam within the meaning of Section 2(1)(a) of the 1952 Act and the State Government alone is competent to decide the question whether the grant is a personal inam or not and the civil court has no jurisdiction to decide the question.

4. The pleadings of the parties gave rise to fourteen issues and the trial court decides all the substantial issues against the plaintiff. Consequently it dismissed the suit holding that the inam in question was personal inam.

5. Feeling aggrieved, the plaintiff went up in appeal to the High Court. The appeal came up for hearing before a learned Single Judge. He took up the question of jurisdiction first. The stand of the plaintiff-appellant was that the civil court had the jurisdiction to entertain the suit and in support of

his contention he placed reliance on Sayed Mohamed Baquir El-Edroos v. State of Bombay [(1966) 7 GLR 217]. The learned Single Judge, however, doubted the correctness of the proposition laid down in that case and referred the case to a larger Bench and it was eventually decided by a Full Bench of that Court.

6. It appears that during the pendency of the appeal another Act was passed known as the Gujarat Devasthan Inams Abolition Act, 1969 (Act 16 of 1969) herein referred to as 1969 Act. It came into force on November 15, 1969. By this Act devasthan inams or inams held by religious and charitable institution were also abolished. The inevitable result of the 1969 Act is that whether the inam in question is a personal inam or a devasthan inam it cannot subsist. The plea of the plaintiff, on the basis of which he filed the suit, was no more available to him after the passing of the latter Act. But the question was still to be enquired into because if the plaintiff succeeds in establishing that the inam in question was a religious or charitable inam, it would be abolished only by the 1969 Act and, therefore, the plaintiff will be entitled to all benefits of devasthan inam open to him till the enforcement of that Act. The High Court, therefore, proceeded to hear the appeal despite the passing of the 1969 Act and by its judgment dated September 23, 1976 came to the conclusion that the exclusive jurisdiction to decide the question was with the State Government and the civil court has no jurisdiction to entertain the suit. In view of its findings on the question of jurisdiction, the High Court did not think it necessary to enter into other issues involved in the case. The plaintiff has now come to challenge the judgment of the Full bench on obtaining special leave of this Court to appeal.

7. In the present appeal the plaintiff again reiterates that the civil court has jurisdiction to entertain the suit. In order to appreciate the contentions of the counsel of the parties on the question of jurisdiction, it will be appropriate to refer to the relevant provisions of the 1952 Act. Section 2(1)(e) defines personal inams. Insofar as it is material, it reads :

2. (1) In this Act, unless there is anything repugnant in the subject or context, -

(e) "personal inam" means, -

(i) a grant of a village, portion of a village, land or total or partial exemption from the payment of land revenue entered as personal inam in the alienation register kept under Section 53 of the Code.

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Explanation I. - If any question arises whether any grant is a personal inam such question shall be referred to the State Government and the decision of the State Government shall be final and the entry, if any, in respect of such grant in the alienation register kept under Section 53 of the Code shall be deemed to have been amended accordingly.

#Explanation II. - * * *###

The expression "Code" has been defined in Section 2(1)(b) of the Act as the Bombay Land Revenue Code, 1879 (Bombay 5 of 1879). Section 3 of the Act insofar as it is material, reads :

3. Act not to apply to certain inams and grants. - Nothing in this Act shall apply to -

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(2) devasthan inams or inams held by religious or charitable institutions;

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Explanation. - For the purposes of this section inams held by religious or charitable institutions means Devasthan or Dharmadaya inams granted or recognised by the ruling authority for the time being for a religious or charitable institution and entered as such in the alienation register kept under Section 53 of the Code or in the records kept under the rules made under the Pensions Act, 1871 (23 of 1871).

Section 4 of the Act reads :

4. Abolition of personal inams and rights in respect of such inams. - Notwithstanding anything contained in any usage, settlement, grant, sanad or order or a decree or order of a court or any law for the time being in force, with effect from and on the appointed date -

(i) all personal inams shall be deemed to have been extinguished;

(ii) save as expressly provided by or under the provisions of this Act, all rights legally subsisting on the said date in respect of such personal inams shall be deemed to have been extinguished :

Provided that in the case of a personal inam consisting of exemption from the payment of land revenue only, either wholly or in part, such exemption shall be deemed to have been extinguished -

(a) if the amount of such exemption is or exceeds Rs. 5000 with effect from the 1st day of August, 1953; and

(b) in all other cases, with effect from the 1st day of August, 1955.

8. Mr. D.V. Patel, senior counsel for the appellant, assisted by Mr. G. Subramaniam, has contended that the High Court has gravely erred in holding that the civil court had no jurisdiction to deal with the suit. According to the learned counsel unless the jurisdiction of the civil court is barred specifically or by necessary implication the civil court would have jurisdiction. Admittedly there is no specific bar under the 1952 Act. No provision has been brought to our notice specifically excluding the jurisdiction of the civil court. Now the question is whether the jurisdiction of the civil court has been excluded by necessary implication. The only bar is provided by Explanation I to Section 2(1)(e). Explanation I provides that if any question arises whether any grant is personal inam, such question shall be referred to the State Government and the decision of the State Government shall be final. Whether Explanation I to Section 2(1)(e) excludes the jurisdiction of the civil court by necessary implication is the question for consideration. The finality of the decision of the State Government contemplated by the explanation, says the learned counsel, is only for the purpose of the Act, namely, the 1952 Act, and this finality cannot stand in the way of the civil court to entertain the suit. In support of his contention the learned counsel has strongly relied upon two decisions : Secretary of State, Represented by the Collector of South Arcot v. Mask and Company [(1939-40) 67 IA 222 : AIR 1940 PC 105 : 188 IC 231] and Dhulabhai v. State of Madhya Pradesh [(1968) 3 SCR 662 : AIR 1969 SC 78 : (1969) 1 SCJ 925] In the first case the Privy Council dealing with the jurisdiction of the civil court observed as follows (at IA page 236) :

It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

In Dhulabhai case [(1968) 3 SCR 662 : AIR 1969 SC 78 : (1969) 1 SCJ 925] Hidayatullah, C. J., speaking for the Court, on an analysis of the various decisions cited before the Court expressing diverse views, laid down the following propositions :

(1) Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred

unless the conditions above set down apply.

9. If we consider the present case, in the light of the principles laid down by the Supreme Court in the above noted case, in our opinion the finality of the decision of the Government as contemplated by Explanation I to Section 2(1)(e) cannot exclude the jurisdiction of the civil court. Except for the Explanation, there is no other provision in the Act touching upon the jurisdiction of the civil court and none has been referred to before us by either party. The Act does not give any details about the reference to and the enquiry by the Government. No appeal has been provided for and it cannot be said that the case of the plaintiff has been considered by the Government in the same way as it would have been considered if the case had been filed before a civil court.

10. The very first principle laid down in the case of Dhulabhai [(1968) 3 SCR 662 : AIR 1969 SC 78 : (1969) 1 SCJ 925] postulates that where a statute gives a finality to the orders of the special tribunal the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. From a perusal of the provisions of the Act it cannot be said that there is adequate remedy available to the plaintiffs on reference made to the Government. Even according to the second principle laid down by the Supreme Court where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find out the adequacy or the sufficiency of the remedies provided may be relevant. The Act does not give any details about the reference to be made to the Government, the procedure to be followed by the Government, the opportunity to be afforded to the aggrieved party. In the absence of any such details in the Act it is not possible to hold that the use of the expression "finality of the decision of the Government" in Explanation I to the Section 2(1)(e) of the 1952 Act was meant to bar the jurisdiction of the civil court.

11. The High Court in our opinion has committed a manifest error in travelling beyond the 1952 Act and referring to the provisions of the 1969 Act. The High Court referred to Section 4 of the 1969 Act, which exclusively vests the power to decide whether any village, portion of any village, or land is held in devasthan inam, in the authorised officer, and the State Government is empowered to authorise any officer under the proviso to Section 4(1) to decide questions arising under clauses (a), (b) or (c) of Section 4. Sub-section (2) of Section 4 of the said Act enables the person aggrieved by the decision of the authorised officer to go up in appeal to the State Government within sixty days from the date of the decision. The High Court also referred to Section 20 of the 1969 Act which specifically bars the jurisdiction of the civil court. It reads :

No civil court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with, by the officer authorised under the proviso to sub-section (1) of Section 4 or Section 25 or the Collector, the Gujarat Revenue Tribunal in appeal, or the state Government in appeal or revision or in exercise of their powers of control.

On the basis of the provisions of the 1969 Act the High Court came to the conclusion that Explanation I to section 2(1)(e) of the 1952 Act and Section 20 of the 1969 Act put beyond the pale of any doubt that the jurisdiction of the civil court had been taken away by the legislature to determine the question whether a particular inam is a personal or a devasthan inam.

12. We are concerned in the present case with the provision of the 1952 Act. There is no corresponding provision like Section 20 of the 1969 Act in the 1952 Act nor is there any detailed procedure of appeal and revision in that Act as contemplated by the 1969 Act. The High Court in

our opinion was not justified in invoking the provisions of the 1969 Act while deciding the case under the 1952 Act.

13. The counsel for the State of Gujarat on the other hand referred to the definition of personal inam as given in Section 2(1)(e) of the 1952 Act and according to the learned counsel the inam in question is a personal inam in view of the definition itself which says :

Personal inam means a grant of a village, portion of a village, land or total partial exemption from the payment of land revenue entered as personal inam in the alienation register kept under Section 53 of the Code.

So, entry of the nature of the inam in the alienation register is a decisive factor. In the instant case the inam in question has been entered as personal inam in the alienation register. Therefore, perforce it has to be taken as a personal inam and the plaintiff cannot escape the definition of the expression "personal inam" as given in Section 2(1)(e). Likewise, for a devasthan inam also it is necessary to be so entered in the alienation register kept under Section 53 of the Code in view of Explanation to Section 3 of the 1952 Act. The counsel for the appellant on the other hand referred to Explanation I to Section 2(1)(e) of the 1952 Act which indicates that the entry in the register is not an essential part of the definition of the personal inam but it is only descriptive. If the Government decides the case contrary to the entry in the alienation register, the alienation register shall be deemed to have been amended accordingly. This part or the Explanation takes away the rigour of the entry in the alienation register. If the entry in the alienation register will be deemed to have been automatically amended by the decision of the Government on the question whether it is a personal inam or a devasthan inam there is no sanctity attached to such entry which is mainly intended to serve the purpose of realisation of land revenue. The entry cannot be said to be so sacrosanct that it cannot be changed. Indeed the Explanation itself contemplates a change in view of the decision of the Government on the question.

14. It was next contended for the State that the Revenue Court alone has exclusive jurisdiction to correct the entries in the revenue records and the counsel referred to Section 53 of the Bombay Land Revenue Code. It reads :

A register shall be kept by the Collector in such form as may from time to time be prescribed by the State Government of all lands, the alienation of which has been established or recognized under the provisions of any law for the time being in force; and when it shall be shown to the satisfaction of the Collector that any sanad granted in relation to any such alienated lands has been permanently lost or destroyed, he may, subject to the rules and the payment of the fees prescribed by the State Government under Section 213, grant to any person whom he may deem entitled to the same a certified extract from the said Register, which shall be endorsed by the Collector to the effect that it has been issued in lieu of the sanad said to have been lost or destroyed, and shall be deemed to be as valid a proof of title as the said sanad.

Section 203 of the said Code provides for appeal from any order passed by the Revenue Officer to his superior and on the strength of these provisions it is sought to be argued that the plaintiff could have gone up in appeal against the decision of the officer under Section 53 of the Code and the jurisdiction of the civil court is completely barred. If we refer to Section 212 of the Code, the argument of the counsel for the State cannot be accepted. Section 212 contemplates that whenever in this Code it is declared that a decision or order shall be final such expression shall be deemed to

mean that no appeal lies from such decision or order. If this is what finality means under Section 212 it cannot be argued with any force on behalf of the State that the jurisdiction of the civil court is barred.

15. For the foregoing discussion the decision of the Full Bench of the High Court cannot be sustained. We accordingly accept the appeal, set aside the judgment of the High Court dated September 23, 1976 and remand the case to the High Court for deciding other points involved in the case. The parties shall, however, bear their own costs.

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