

A.P. Wakf Board and Others

Vs

Mirza Nizamuddin Baig and Others

Civil Appeals Nos. 3971-76 of 1982 With 4183-85 of 1982

(CJI Ranganath Misra, M.H. Kania JJ)

06.11.1990

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RANGANATH MISRA, C.J.:-

1. These are, appeals by special leave and are directed against the decision of the Andhra Pradesh High Court dated 2nd of March, 1982, in three connected matters arising out of proceedings taken before the Principal Subordinate Judge at Vijayawada in a scheme proceeding passed in O.S. No. 113 of 1913.
2. The Subordinate Judge at Vijayawada was moved in O.S. No. 113 of 1913 under Section 92 of the Code of Civil Procedure for the framing of a scheme for the administration of the Jumma Masjid Wakf located at Vijayawada. On 30th of September, 1915, the scheme decree was made providing for a life time trustee from the family of the founder and five worshippers functioning as panchayats. Abul Hakim was the first life trustee under the scheme. It is maintained that Abdul Hakim died in October, 1945. The Wakf Act (29 of 1954) came into force in May, 1954, and after the completion of survey operations, the register of wakfs, as contemplated under Section 26 of the Act was drawn up where in the Jumma Masjid Wakf in question was included. The Wakf Board under the statute maintains that it took over the control of the Wakf as stipulated by the Act in June, 1962. It is alleged that the wakf appointed by the Wakf Board
3. In 1973 the Mutwalli initiated eviction proceedings against Krishna Rice Mills, a tenant of certain wakf property in O.S. 73 of 1973. Eviction was decreed in January, 1976, and tenant carried an appeal to the High Court. Abdul Rahim died in 1977 whereafter Abul Gafoor was appointed Mutwaill by the Board in his place. Gafoor died in August, 1980.
4. The eviction appeal before the Andhra Pradesh High Court was compromised on 15-9-1980 after the Government of Andhra Pradesh accorded approval to the terms and in substitution of the decree for eviction enhanced rent was accepted. The High Court while recording the compromise found that the interest of the Wakf had been protected and it was appropriately represented in the settlement.
5. Two proceedings were taken before the learned Subordinate Judge in the scheme suit -- one asking for annulling the settlement and the other for appointment of a receiver. An application was made by Shah Zahoor, one of the respondents before us for impleading him in the application filed by the worshippers. He maintained that he was a descendant of the creator of the Wakf and was entitled to succeed as a life trustee under the scheme as vacancy had arisen by death. The Subordinate Judge without holding any enquiry accepted his petition overlooking the fact that

management of the Wakf had been taken over by the Board as claimed by it and without examining the legal position as to whether after the 1954 Act the scheme decree remained operative and entitled the Court to make its orders. The Subordinate Judge also set aside the compromise in the eviction proceedings by holding that it had not been entered into by the appropriate parties.

6. Appeals were taken to the High Court and the High Court sustained the orders of the Subordinate Judge. That is how these appeals have been carried to this Court by special leave.

7. We have heard learned counsel for the parties at some length. Counsel in support of the appeals contended that with the coming into force of the 1954 Act the scheme framed in 1915 came to an end and the Management got vested in the Wakf Board. According to him, the Board had appointed a Mutwalli to be incharge and an executive officer was responsible for the day-to-day Management of the Wakf. He also submitted that in the absence of an appropriate enquiry, merely on the basis of the petition supported by an affidavit the claim of Shah Zahoor to be a life trustee should not have been accepted and the order vacating the compromise was without application of mind. Mr. Vankataramani contended that the Courts below had rightly come to their conclusions and the appeals appear to deserve to be dismissed.

8. We have gone into the records and are of the view that before the learned Subordinate Judge disputes of fact and law had been raised which should not have been disposed of in a summary manner. The Subordinate Judge should have required evidence to be placed in support of Shah Zahoor's claim for life trusteeship on the basis that he was in the line of the creator of the wakf and the Board's contention that it was in physical Management and the settlement could not be knocked off in a miscellaneous proceeding and the other aspect, namely, that the scheme had come to terminate with the coming into force of the 1954 Act should have been thoroughly examined. The High Court should have noticed these defects and remitted the matter to the learned Subordinate Judge.

9. We accordingly allow these appeals, set aside the order of the learned Subordinate Judge as confirmed by the High Court and remit the matters to the Subordinate Judge for fresh disposal. All parties shall be given full opportunity for supporting their respective stand and the learned Subordinate Judge must come to his conclusions on fact and law on the basis of materials placed before him.

10. Costs shall abide the event.

Appeals allowed.

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