

Sardarkhan Rajadarkhan

Vs

Charity Commissioner and Others

Civil Appeals Nos. 786 and 787 of 1971

(Sujata V. Manohar, M. M. Punchhi JJ)

21.11.1995

JUDGMENT

SMT. SUJATA V. MANOHAR, J. –

1. Application for substitution is allowed.

2. The Charity Commissioner, Maharashtra State, Bombay filed a suit under Section 50 of the Bombay Public Trusts Act, 1950 in respect of a Public Trust known as Dargah of Sayad Ishak alias Shri Pir Mirawalisahab situated at Mirawali Pahad, Kapurwadi, Taluka Ahmednagar, District Ahmednagar. The suit was for framing a proper scheme for the management of the said Dargah and for the removal of the Mutawalli and the Mujawars of the said Dargah. The first defendant who is the appellant before us was the Mutawalli of the said Dargah holding a hereditary post for several generations. Defendants 2 to 7 and one Shaikh Hasan Shaikh Sultan (since deceased) were registered as the Mujawars of the said Dargah. The object of the Trust was to protect the said Dargah and the Masjid and to maintain worship at it. The properties of the Trust were described in Schedules 'A' and 'B' to the plaint. Properties in Schedule 'A' were in the possession of Defendant 1 while those in Schedule 'B' were, at that time, in the possession of the Receiver who was joined as Defendant 9.

3. There had been considerable litigation between the Mutawalli and the Mujawars of the Dargah in respect of their rights and obligations. Ultimately, in Civil Suit No. 712 of 1945, the rights and obligations of the Mutawalli and the Mujawars were crystallised and the court held in that suit that Defendant 1 was a hereditary Mutawalli while the predecessors of Defendants 2 to 6 and Defendant 7 as also the deceased Shaikh Hasan were Kadimi Mujawars having the right to act as attendants and servants of the said Dargah and to carry on their traditional duties under the supervision and control of the Mutawalli. Under the decree of the court, the general management and possession of the Dargah and its properties were to remain with the Mutawalli who had to control the Mujawars in the discharge of their duties. The court also laid down the remuneration to be paid to the Mutawalli and the Mujawars. The court said that the Mutawalli was entitled to one-fourth of the gross income of the Dargah while the Mujawars were entitled to the remaining three-fourth income after deducting the necessary and traditional expenses of the management and upkeep of the Dargah.

4. The Charity Commissioner, however, contended that the Mutawalli and the Mujawars were not discharging their duties properly and were not prepared to cooperate and carry out their respective duties. He, therefore, filed the above suit and prayed that both the Mutawalli and the Mujawars should be removed and a suitable scheme for the management of the Dargah should be framed by the court. The trial court held that it would not be proper to remove the Mutawalli or the Mujawars

who held hereditary officers. But a suitable scheme was required to be framed for the proper management of the Dargah. The court accordingly framed a scheme which was annexed as Schedule 'A' to the judgment and decree. Under the scheme, the court, inter alia, provided that the Dargah should be looked after by a Board of Trustees. The scheme provided that the number of trustees shall be three and one of the trustees shall be the Mutawalli, that is to say, Defendant 1. Two other nominated trustees were Professor Abdul Karim Kamaruddin and Shri G.G. Khan, Advocate. The scheme provided that one of the three trustees shall be, as far as possible, from the lineal descendants of the present Defendant 1. Clause 2 of the scheme provided for payment of management expenses and other expenses. After providing for various expenses in connection with the maintenance of the Dargah and providing for a reserve fund for the purpose of repairs, renovation or rebuilding of the immovable properties belonging to the trust, the scheme provided that out of the balance left, the Mujawars be paid in a body 60% of the income and the remaining 40% should be paid as remuneration to the trustees. The amount so paid shall be divided equally amongst the Mujawars and the trustees.

5. The Charity Commissioner did not file any appeal from this judgment and decree. The Mutawalli and the Mujawars, however, filed separate appeals from this judgment and decree before the High Court. The High Court came to the conclusion that the Mutawalli had not rendered proper accounts and hence he should not be one of the trustees under the said scheme. The High Court, therefore, passed an order modifying the scheme whereby the name of the first defendant was deleted as one of the trustees of the said Trust and the right of the lineal descendants of the first defendant to be on the Board of Trustees under the scheme was also taken away. The court also made some other minor alterations such as permitting the Mujawars to take away sherni or prasad of a perishable nature. However, the value of the sherni was to be accounted for in the amounts to be paid to the Mujawars. The court directed that remuneration to be paid to the Mujawars not exceeding 60% of the balance after taking into account the value of sherni would be fixed by the Board of Trustees in consultation with the District Judge. It also gave some incidental directions.

6. The present appeals are filed by the original Defendant 1, and Mutawalli of the said Dargah. He has contended before us that he is the hereditary Mutawalli of the Dargah and has looked after the management of the Dargah for several generations. This hereditary right to act as the Mutawalli ought not to have been taken away by the High Court. We find considerable force in this submission. The Charity Commissioner did not object to the Mutawalli being nominated as one of the trustees of the Trust under the scheme framed by the District Judge. The High Court suo motu has come to the conclusion that the Mutawalli should not be associated with the management of the Dargah. We do not find sufficient grounds for depriving the Mutawalli of his hereditary right as well as of his entitled to the remuneration fixed under the scheme. The Mutawalli did render accounts as directed by the High Court. The High Court has found some fault with these accounts. The accounts, however, have been audited by a Chartered Accountant. The amounts involved are small. The High Court has doubted some of the entries, particularly those showing Himmatkhan as a tenant of some of the lands and the rent received from him. If the High Court had found the accounts to be unsatisfactory it could have given appropriate directions for their finalisation, giving the Mutawalli an opportunity to explain or rectify the accounts. The court, however, has taken the drastic step of totally depriving the Mutawalli of his hereditary entitlement to the management of the Trust by excluding him from the Board of Trustees. The High Court also deprived him of all remuneration. The High Court also did not take into account the fact that the Mutawalli was going to be only one of the three trustees appointed under the scheme framed by the court and that his right to receive payment under the scheme so framed would be only after the trustees had provided for the various expenses and contingencies which are set out in clause 21 of the scheme. In our view, the scheme as

framed by the trial Judge provided adequate safeguards for the proper management of the scheme. The scheme also preserved to a suitable extent, consistent with proper management, the hereditary rights claimed by both the Mutawalli as well as the Mujawars, taking into account with suitable modifications, the decree in the civil suit which had determined their respective duties and obligations as well as their respective rights to receive remuneration. The High Court also did not take into account the fact that the Mutawalli had never made any claim which was adverse to the Trust and had shown his readiness and willingness to submit himself to such directions regarding the maintenance of accounts as the court would direct.

7. Looking to all these circumstances, the directions of the High Court removing the Mutawalli as a trustee of the said Trust as well as taking away the provision in the scheme which prescribes that at least one of the trustees shall be a lineal descendant of Defendant 1, are not warranted. The High Court also, in our view, was not justified in taking away the right of the Mutawalli to receive remuneration as provided in the scheme framed by the trial Judge. These directions of the High Court modifying the scheme are, therefore, set aside and the provisions of the original scheme in this regard are restored.

8. The appeals are accordingly allowed. In the circumstances, however, there will be no order as to costs.