

Salimbhai Mukhtar Jaferbhai Chimthanawala

Vs

Amiruddin

Civil Appeal No. 1710 of 1995

(S. Rajendra Babu, M. B. Shah JJ)

10.02.1999

JUDGMENT

M. B. Shah J

1. This appeal is filed against the judgment and order dated December 19, 1994 passed in Civil Revision Application No. 497 of 1993 by the Nagpur Bench of High Court of Bombay. By the impugned order, the Court allowed the Revision Application and set aside the order dated 2.4.93 passed by the Additional District Judge, Nagpur in Miscellaneous Civil Application No. 574 of 1992 whereby the respondent was required to render accounts in respect of the property referred to in document marked as Exhibit 249. Admittedly, the case has a chequered history. It is the contention of the appellant that on 7.10.1953, a member of the Atba-E-Malak, father of the appellant filed an application before the Registrar under the M.P. Public Trust Act, 1951 (hereinafter referred to as "the Act") for entering the trust in the register as a public trust. That application was rejected. Finally, a special civil suit No. 143 of 1967 was filed on 26th September, 1967 as provided under Section 8 of the Act for setting aside the findings that the trust was not a public trust. The Trial Court dismissed the suit on the ground that plaintiff had no locus standi. An appeal being Regular Civil Appeal No. 16 of 1987 was allowed by the Additional District Judge, Nagpur and it was held that the Trust was a public trust. Against that judgment and decree, Second Appeal No. 132 of 1992 was filed before the High Court. In the meantime, the Deputy Charity Commissioner had taken in his register the list of properties of the public trust as per Exhibit 249, the relinquishment deed as public trust properties. As the entry was registered, Respondent filed Contempt Petition No. 178 of 1990 in Civil Appeal No. 498 of 1964 before this Court wherein it was contended that Deputy Charity Commissioner has flouted the directions issued by this Court by Order dated 22nd August, 1966 in Civil Appeal No. 498 of 1964. By order dated 12.2.91, the Court rejected the said contempt application but for protecting the properties Shri Amiruddin Hassan Noorani Malak (Respondent No. 1) was appointed as Receiver. The Court further directed as under :-

"Since the litigation in respect of the said property is pending in the District Court, it is essential that during its pendency the properties which are stated to belong to the public trust should not be frittered away. With that objective in mind, we had suggested to the parties to evolve a workable formula which would ensure till the disposal of the appeal in the District Court. there was some controversy regarding the subject matter of the suit. Fortunately, the Trial court has summed up its conclusions in paragraph 30 of the judgment wherein reference has been made to certain properties which, in the opinion of the Trial Court, constituted the subject matter of dispute. We do not express any opinion in this behalf as the District Court is seized of

the controversy, *but for the limited purpose of identifying the properties which will be governed by this order, we have referred to paragraph 30 of the Trial Court's judgment.* The learned counsel for the petitioners has very frankly stated that the petitioners will not alienate the properties referred to in paragraph 30 of the Trial Court order. He has also consented to act as the Receiver of those properties during the pendency of the appeal in the District Court and render accounts to the District Court every three months. *By consent we appoint Shri Amiruddin Hasan Noorani Malak as the Receiver of the properties referred to in paragraph 30 of the Trial Court judgment.* He will render accounts to the District Court every three months and if any direction is necessary hereafter in regard to the management and administration of the said properties, he will approach the District Judge and seek appropriate orders." (Emphasis added). Therefore, by order dated 2nd April, 1993, third Additional District Judge, Nagpur directed respondent No. 1, Amiruddin s/o Hasan Noorani to render the account of all the properties including the properties covered by Exhibit 249 within period of one month from the date of the order. The Court held "on going through para 30, it appears to me when the Hon'ble Supreme Court has referred in para 30 of the Trial Court's Judgment, it had obviously reference to the property in Exhibit 249. A perusal of Exhibit 249 also clearly show that beside the property which was mentioned in the deed of 1894, Exhibit 554, several other properties were also mentioned as property of the Trust and the beneficiaries were giving up their rights over the Trust properties." That order is set aside by the High Court by the impugned order dated 19th December, 1994 by holding that the properties referred to in Exhibit 249 could not form the trust property for which the Respondent No. 1 was not under obligation to render account as a receiver. Hence the present appeal by special leave. In our view, the impugned order passed by the learned Judge appears on the face of it contrary to the directions issued by this Court on 12th February, 1991 in Contempt Petition No. 178 of 1990. Respondent No. 1, Amiruddin Hasan Noorani Malak was appointed as a Receiver of the property referred to in paragraph 30 of the Trial Court's judgment in Special Civil Suit No. 143 of 1967. Paragraph 30 specifically refers to Exhibit 249 executed in 1931. The learned Additional District Judge after referring to para 30 as directed by this Court verified the properties mentioned in para 30 as well as Exhibit 249 and arrived at the conclusion that para 30 includes properties mentioned in Exhibit 249. This finding is reversed without referring to paragraph 30 of the Trial Court's Judgement or direction issued by this Court to the effect that "but for the limited purpose of identifying the properties which will be governed by this Order, we have referred to Paragraph 30 of the Trial Court's Judgment." If the respondent was appointed as a Receiver only for the properties mentioned in Exhibit 554 deed executed in 1894 then there was no necessity of referring to Paragraph 30 of the Judgment of the Trial Court. In any set of circumstances, the question involved whether the properties mentioned in Deed Exhibit 249 is 'Trust property' or not is now concluded by the decision rendered by the fourth Additional District Judge, Nagpur in Regular Civil Appeal No. 16 of 1987 decided on 1st February, 1992. The Additional District Judge set aside the entry dated 27th March, 1967 and arrived at the conclusion that the Trust comprised in the deed of settlement dated 9th June, 1894 is a public trust. In paragraph 37, the Court further held that properties mentioned in Exhibit 249 became the property of Trust and that a perusal of the Relinquishment Deed (Exhibit 249) dated 5th November, 1931 clearly shows that all properties belonging to the trust were relinquished in

favour of Khan Bahadur M.E.R. Malak and grand father of the defendant. The Court held that obviously all these properties were trust properties and it was obligatory upon the Registrar to publish the said list of properties. Against that judgment and decree, Second Appeal No. 132 of 1992 was filed before the High Court. By judgment and order dated 7th October, 1996, the said appeal was dismissed by a Division Bench. Admittedly, against the said judgment and decree, SLP(C) No. 25004 of 1996 was filed before this Court which was dismissed by order dated 13th January, 1997. Against the said judgment Review Petition No. 1075 of 1997 was filed before this Court and the same was also dismissed on 1.4.97. Hence, this issue is now finally concluded and it is not open to contend that all the properties mentioned in Exhibit 249 are not the trust properties. However, learned counsel appearing on behalf of the respondent vehemently submitted that issue whether the properties mentioned in Exhibit 249 are trust properties or not was not required to be decided in the suit. It is submitted that the prayers in Special Civil Suit No. 143 of 1967 are only limited for setting aside the order passed by the Registrar and for a direction to hold that the properties settled by the Deed of Settlement dated 9th June, 1894 is a public trust. Hence, the scope of suit cannot be widened by including the properties mentioned in Exhibit 249 which is a deed executed in the year 1931. He submitted that amendment application filed by the appellant to include the said properties for determination was rejected by the High Court in Civil Revision Application No. 455 of 1971 and hence it was submitted that properties mentioned in Exhibit 249 cannot be held to be trust properties. As against this, it has been pointed out that finding given in the Civil Revision Application No. 455 of 1971 while rejecting the amendment application clearly reveals that amendment was not necessary for the purpose of determining the real dispute in controversy between the parties. Further, it has been also pointed out that Trial Court has raised number of issues which included the determination of the question whether the properties received by the administrator-cum-manager of the trust are utilised for the purchased of large properties at Nagpur for the Jamat and for construction of buildings. Other issues were also raised but the respondent objected to it. Objection was allowed Hence, Civil Revision Application No. 539 of 1977 was filed before the High Court which was allowed by the Court by holding that observations made in the Order made in Revision Application No. 455 of 1971 upon which respondent relies cannot be read in isolation as the plaintiffs case was whether the public trust was created and it was permissible for the plaintiff to allege and prove how various properties including the accretions were dealt with and administered, therefore, to that extent findings on those issues were necessary for deciding basic issues viz. whether public trust was created. If the plaintiffs have alleged that not only the original properties mentioned in the trust deed but even the subsequently acquired properties were treated and administered as public trust properties and the defendant has denied this fact, it could not be said that issues were wrongly framed or were unnecessary. The Court also rejected the contention on the ground that as the revision application was allowed and amendment application was rejected, it would amount to variation of the earlier order. The Court held that it will necessitate adducing of evidence about these properties also but that is inevitable and cannot be helped so long as the scope of the suit is not widened. The Court, therefore, allowed the revision application and the Trial Court was directed to frame all issues and then proceed further. SLP filed by the Respondent against the said Judgement and Order was rejected. Hence, it would not

be open to the respondent to contend contrary to the findings given in the aforesaid Revision Application and hence the decision rendered by the Trial Court on the issues framed and determined cannot be faulted at this stage by contending that scope of the suit was limited. In this view of the matter, there is no substance in the contention of the learned counsel for the Respondent that the question whether the properties mentioned in Exhibit 249 are trust properties or not still requires to be decided. Further, this contention now is not open to the respondent because as stated above, the Additional District Judge specifically arrived at the conclusion that properties mentioned in Exhibit 249 were trust properties. Second Appeal filed against the said finding was dismissed by High Court. SLP is also dismissed by the Court. Therefore, it is not open to the respondent to contend now that properties mentioned in Exhibit 249 are not trust properties. In Second Appeal No. 132 of 1992 the Court held that subject matter of the suit comprised properties shown in the Schedules A, D. and C of the relinquishment deed exhibit 249 which was before the Registrar along with the application under Section 5 of the M.P. Trust Act. The Court further observed that the tenor of the document(Exhibit 249) implied that the property belonged to the Jamat and was a necessary pointer that the property therein was a trust property. The Court held that what was significant was by accepting such document, even Hasan Noorani - the defendant agreed that the members of the Jamat to be interested in the property. In this view of the matter, it is clear that finding given by the Additional District Judge, Nagpur to the effect that properties mentioned in Exhibit 249 were trust properties has become final as it is confirmed in second appeal and the SLP filed against the said Judgment has been rejected. Therefore, also, it is not open to the respondent to contend that properties mentioned in Exhibit 249 are not the 'Public Trust properties'.

2. In the result, the appeal is allowed and the impugned order in Civil Revision Application No. 497 of 1993 passed by the High Court is set aside and the order passed by the Third Additional District Judge, Nagpur on 2.4.1993 in Miscellaneous Civil Application No. 574 of 1992 is restored. In view of this Order, Civil Appeal No. 1711 of 1995 stands allowed accordingly. Further, in view of the aforesaid orders, separate orders would be required to be passed in Interlocutory Application No. 4 in Civil Appeal No. 1710 of 1995 and in Contempt Petition No. 6 of 1997. It is, therefore, directed that Interlocutory Application No. 4 in C.A. 1710 of 1995 and Contempt Petition No. 6 of 1997 be listed in due course.