

Wakf Board A.P. Represented by its Secretary

Vs

Biradavolu Ramana Reddy

Civil Appeal No. 3568 of 1989

(S. B. Majmudar, U. C. Banerjee JJ)

19.08.1999

JUDGMENT

S. B. MAJMUDAR, J. –

1. The Wakf Board, Andhra Pradesh, the appellant before us has brought in challenge the decision rendered by a Division Bench of the High Court of Andhra Pradesh allowing the appeal of the respondent - defendant and dismissing the suit of the appellant Wakf Board for possession of the suit property.

2. The suit property consists of 48 1/2 cents of land situated in Nellore town in Nellore District of Andhra Pradesh. The appellant Board as plaintiff filed a suit on 17-1-1973 in the Court of the learned District Judge, Nellore. The appellant's case in brief was that the suit property is wakf and is an imam land granted to the then Paish Imam for rendering prayers at the mosque commonly known as Abbas Ali Khan Mosque or Badruddin Ali Khan Mosque or Mustafa Ali Khan Mosque located in Big Bazar of Nellore town. That the said land was sold by the then Paish Imam of the Mosque, one Ghous Saheb to one Noor Mohammed on 24-4-1952. Obviously, Noor Mohammed came in possession of the land in question from that date. The said Noor Mohammed sold the very same land to one Mathew on 4-7-1962. Mathew in his turn sold the property to his son, Jacob on 29-3-1966 and Jacob then sold the said property to the present respondent-defendant for a consideration of Rs. 15,000 on 20-8-1971. The appellant Board challenged the said alienations by filing the aforesaid suit.

3. Amongst others, one of the defences put forward by the respondent was that the suit was barred by limitation. Learned trial Judge took the view that the suit land was service Imam land alienated by Ghous Saheb who was the Paish Imam of the Mosque. He could be treated to be a person who had illegally disposed of the wakf property. Suit filed by the plaintiff Board for possession from the hands of his latest successor-in-interest could be said to be within time in the light of Article 96 of the Limitation Act, 1963 as well as Section 3 of the Public Wakfs (Extension of Limitation) Act, 1959 (hereinafter to be referred to as "the Extension Act"). Consequently, the solitary defence of the defendant that the suit was barred by limitation and the defendant was in adverse possession was negated and the decree for possession was passed against the respondent. The respondent carried the matter in appeal. The Division Bench of the High Court by its impugned judgment took the view that the suit was barred by limitation and consequently, the appeal was allowed and the suit was dismissed. That is how the appellant Board is before us in the present appeal on obtaining special leave to appeal under Article 136 of the Constitution of India.

4. In support of this appeal, learned counsel for the appellant submitted that the High Court was in

error in taking the view that the suit was barred by limitation. In support of his contention, he in the first instance invited our attention to the Extension Act. Section 3 of the said Act reads as under :

"3. Extension of period of limitation in certain cases for suits to recover possession of immovable property forming part of public wakfs. - Where a person entitled to institute a suit of the description referred to in Article 142 or Article 144 of the First Schedule to the Indian Limitation Act, 1908, for possession of any immovable property forming part of a public wakf or any interest therein has been dispossessed, or has discontinued the possession, at any time after the 14th day of August, 1947, and before the 7th day of May, 1954, or, as the case may be, the possession of the defendant in such a suit has become adverse to such person at any time during the said period, then, notwithstanding anything contained in the said Act, the period of limitation in respect of such a suit shall extend up to the 31 st day of December, 1970."

5. In its application in the State of Andhra Pradesh, by the State amendment, the period was extended from time to time and by the A.P. Act 10 of 1980, Section 2 the said period was further extended with effect from 31-12-1979 to 31-12-1981. It is not in dispute between the parties that at the relevant time when the suit was filed in 1973, the said period stood extended up to 31-12-1972.

6. A mere look at Section 3 of the Extension Act shows that it would be of some help if it is found that the possession of the land which was sought from the defendant belonged to a public wakf. The term "public wakf" is defined in Section 2 of the said Act to mean permanent dedication by a person professing Islam of any immovable property for any purpose recognised by Muslim law as a public purpose of a pious, religious or charitable nature. It cannot be disputed that the land in question which was sold by the Paish Imam, Ghous Saheb in 1952 was a service Imam land granted to him for performing services as Paish Imam at the Mosque. It was not directly dedicated to the Mosque. Therefore, as per the definition of public wakf the suit land being a service grant cannot be treated to be a public wakf. In this connection it is profitable to refer to the definition of "wakf" as found in the Wakf Act, 1954. As per Section 3(1) of the said Act, the definition of "wakf" is as under :

"3. (1) 'wakf' means the permanent dedication by a person professing Islam or any other person of any moveable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes -

(i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) grants (including mashrut-ul-khidmat, muafies, khairati, qazi services, madadmash for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iii) a wakf-alal-aulad;

7. The aforesaid definition shows that at least from 1964 when sub-clause (ii) was added to the definition in Section 3(1) thereof, grants including mashrut-ul-khidmat were also to be treated as part of wakf. Apart from the question whether the 1954 Act definition of wakf can be read with the definition of public wakf under the Extension Act, in 1952 when the first alienation by the Paish Imam took place even this definition was not available to cover the said transaction. But even

proceeding on the basis that on the date of the suit, the definition of wakf as per the Wakf Act, 1954 was available for being pressed into service, it only treated mashrut-ul-khidmat i.e. grant for rendering service to be wakf. The Extension Act required the property to be of a public wakf and not a mere wakf before Section 3 thereof can be pressed into service for extending the period of limitation. Consequently, on the express language of the definition of public wakf as found in Section 2 of the Extension Act read with Section 3 thereof, the conclusion becomes inevitable that the extension of time would not be available to the appellant for challenging the alienations in question. It is obvious that the suit property even if a wakf as per the Wakf Act, 1954 was not within the sweep of the definition of a "public wakf" as per the Extension Act wherein service grants are not treated to be public wakf. In view of our aforesaid conclusion it is not necessary for us to examine the other question whether the Extension Act could have been of any assistance to the learned counsel for the appellant for treating the suit to have been filed within limitation on account of Pongal holidays during which the civil courts were closed in Andhra Pradesh and after holidays the courts reopened on 17-1-1973. It is also not necessary for us to examine the other question whether there was any practice in the civil courts of Andhra Pradesh about reopening of the Registry for filing of cases on a day previous to the date on which the courts reopen after Pongal holidays. We keep this question open.

8. The second plank of submission of learned counsel for the appellant is Article 96 of the Limitation Act, 1963. The said provision reads as under :

# ----- "Description of suit Period of Time  
from which period begins to limitation run -----  
- 96. By the manager of a Twelve The date of death, resignation or Hindu, Muslim or Buddhist  
years removal of the transferor or the religious or charitable date of appointment of the plaintiff  
endowment to recover as manager of the endowment, possession of moveable or whichever is later."  
immovable property comprised in the endowment which has been transferred by a previous  
manager for a valuable consideration. ----- ##

9. It becomes at once clear that 12 years' period may be available from the date of death, resignation or removal of the transferor or the date of appointment of the plaintiff as manager of the endowment, whichever is later provided the plaintiff challenges alienation by the previous manager for valuable consideration. Learned counsel for the appellant was right when he contended that the present appellant Board got constituted when the Board came into existence on 4-3-1961 in the State of Andhra Pradesh. Even if that is so, and 12 years' period is counted from that date, the nature of the suit must be such that the plaintiff therein must seek to recover possession of the property alienated by the previous manager such as Mutwalli or Sajjada Nashin. So far as Ghous Saheb was concerned, he was never the previous manager of the Mosque. He was merely a Paish Imam who could not be considered to be the previous manager. Hence alienation by him in 1952 cannot be said to be alienation by the previous manager of the Mosque for valuable consideration. Therefore, Article 96 of the Limitation Act, 1963 also cannot be of any assistance to learned counsel for the appellant. In this connection our attention was drawn by learned Senior Counsel for the respondent to Article 134-B of the earlier Limitation Act, 1908, which reads as under :

# ----- "Description of suit Period of Time  
from which period begins to limitation run -----  
----- 134-B. By the manager of a Twelve The death, resignation or removal Hindu, Muhammadan  
or years of the transferor." Buddhist religious or charitable endowment to recover possession of  
immovable property comprised in the endowment which has been transferred by a previous

manager for a valuable consideration. -----

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10. The said provision is also in pari materia with slight modification with Article 96 of the present Act, the difference being that the limitation may also start from the date of appointment of a new manager in the place of the old one but still the requirement of both these articles is that the impugned alienation must be effected by the previous manager. As we have already held that Ghous Saheb was not the previous manager and he was only a Paish Imam neither Article 134-B of the old Act nor Article 96 of the Limitation Act, 1963 can be of any assistance to learned counsel for the appellant. These were the two provisions on which reliance was placed by the trial court in holding the suit to be within the period of limitation. Both these provisions were not found by the High Court to be applicable. That view of the High Court is well sustained as we have already discussed. The inevitable result is that the suit filed by the appellant is to be treated to be barred by limitation.

11. Learned counsel for the appellant tried to salvage the situation by inviting our attention to Section 66-G of the Wakf Act, 1954. The said provision reads as under :

"66-G. Period of limitation for recovery of wakf properties to be thirty years. - Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963), the period of limitation for any suit for possession of immovable property comprised in any wakf or possession of any interest in such property shall be a period of thirty years and such period shall begin to run when the possession of the defendant becomes adverse to the plaintiff."

12. A mere look at the said Act indicates that Sections 66-D to 66-H were brought on the statute of the Wakf Act, 1954 by amending Act 69 of 1984. Since the present suit was filed in 1973 the said provision was not available to the appellant for getting the extension of period of limitation. Consequently, even this section can be of no avail to learned counsel for the appellant.

13. However, one aspect of the matter is required to be noted. Years back this Court tried to see that the parties amicably settled the dispute. By order dated 30-9-1993 a Bench of this Court consisting of Justice Kuldip Singh and Justice S. P. Bharucha noted that there was possibility of settlement of the dispute. Though efforts were made, the matter could not be settled and that is how it reached final hearing before us today. However, it may be noted that by letter dated 14-10-1993 addressed by the President of Abbas Ali Khan Mosque, Nellore, to learned counsel for the appellant, it was brought to his notice that a sum of Rs. 3 lakhs was being offered by the respondent to settle the matter but the settlement did not take place. We therefore, suggested to learned Senior Counsel for the respondent that even if the suit is to be dismissed on the technical ground of limitation, the respondent may be graceful enough to donate at least Rs. 3 lakhs to the Mosque in question to show his goodwill. Learned Senior Counsel for the respondent was good enough to accept our suggestion and gracefully agreed on behalf of the respondent that irrespective of the result of this appeal by way of having goodwill in the town, the respondent will pay to the Mosque Rs. 3 lakhs by three equal instalments of Rs. 1 lakh each payable at the end of six months each. He has been good enough to suggest that the respondent shall pay Rs. 1 lakh to the Mosque in question on or before 31-12-1999 and the other two instalments of Rs. 1 lakh each on or before 30-6-2000 and 31-12-2000 respectively. Thus by the end of next year the Mosque in question will receive the total amount of Rs. 3 lakhs as a goodwill gesture on the part of the respondent. We appreciate this gesture of

goodwill shown by learned Senior Counsel on behalf of the respondent even when the respondent succeeds in this appeal. It is ordered accordingly. This direction will form part of the decree to be drawn. The appeal will stand dismissed subject to the aforesaid direction to the respondent. There will be no order as to costs.