

CALCUTTA HIGH COURT

Commissioner of Wakfs

Vs

Narasingh Chandra Daw

(S.K. Ghose ,J.)

05.01.1939

JUDGMENT

S.K. Ghose, J.

1. Civil Revision Cases-Nos. 633 of 1938 and 679 of 1938. have been brought up together. It has been pointed out to us that the former case has become infructuous by reason of the fact that the suit out of which the matter arose was withdrawn by the plaintiff even before the rule was issued by this Court on 6th May 1938. That being so, the rule must stand discharged. In the other Civil Revision Case No. 679 of 1938, the question that arises for decision is whether Section 70, Bengal Wakf Act, 1934, has application outside the province of Bengal. The relevant facts are these. The opposite party is the mutwalli of a wakf created by a resident of Dacca with respect to properties situated partly in Bengal and partly in Assam. The said wakf has been duly enrolled under Section 44, Bengal Wakf Act, 1934, in the office of the Commissioner of Wakfs who is the petitioner in this case. The wakif had a firm operating at Dhubri in Assam. The decree holder opposite party obtained a decree against that firm and filed an execution case No. 281 of 1936 in the Court of the Munsif at Dhubri. Some properties were sold without notice being issued to the petitioner under Section 70, Bengal Wakf Act. On 16th June 1937, the petitioner applied to the Munsif under Section 70(5) of the Act for a declaration that the aforesaid sale was void. The learned Munsif by his order dated 3rd February 1938 dismissed the application holding, first, that the Bengal Wakf Act does not apply to Assam; secondly, that in any case, the Act does not apply to the present execution case which was instituted before the Bengal Wakf Act came into force; and thirdly, that the application was time barred.

2. It is stated in para. 5 of the petition before us that at the hearing, the parties confined their contention to the question of the petitioner's locus standi and that on that understanding the pleader of the petitioner did not adduce any evidence on the merits or on the question that the application was made within one month of his coming to know of the sale. Mr. Gupta appearing for the auction, purchaser opposite party does not dispute this statement. The decision of this rule therefore turns upon the question whether Section 70, Bengal Wakf Act, applies to proceedings in Assam. If we hold that the Section does apply, then the matter will have to be referred to the lower Court for further enquiry on other points. In support of his decision the learned Munsif has referred to the Preamble of the Act which states: "whereas it is expedient to make provision for the proper administration of wakf property in Bengal;" Section 1(2) further provides that the Act

extends to the whole of Bengal. The advocate for the petitioner has placed strong reliance on Section 3, part of which runs as follows: Save as herein otherwise specifically stated this Act shall apply to all wakfs, whether created before or after the commencement of this Act, any part of the property of which is Bituated in Bengal.

3. His contention is that the Act operates in personam and in respect of the wakf as a whole and therefore all the provisions of the Act apply to all parts of the property of the wakf even if such parts are situated outside Bengal. Reliance has also been placed upon the fact that the Act has been passed with previous sanction of the Governor-General under Sub-section (3) of Section 80-A, Government of India Act. We have been referred to various provisions of the Wakf Act, such as, Sections 27, 38, 44, 45, 48, 55 and 59 for the purpose of showing that the Commissioner has been authorized to deal with the wakf as a whole which necessarily implies that he is to deal with the entire property even though part of it may be situated outside the province. Now, so far as Section 80-A, Government of India Act, is concerned, it may be relevant to point out that under Sub-section (1) of that Section the local Legislature may make laws for the peace and good government of the territories for the time being constituting that province and this provision is made subject to the provisions of the Act. Under Sub-section (3), Sub-clause (e), the local Legislature may with the previous sanction of the Governor-General make laws regulating any central subject. This refers back to the provision in sub-section (1) and it cannot be interpreted to mean that the local Legislature is authorized to make laws regulating a central subject for peace and good government of territories lying outside the province. No contrary interpretation was put upon the Section by this Court in *Debendra narain Roy v. Jogendra Narain Deb*,¹. On the contrary, it was pointed out in that case that in the Bijni Succession Act there was no definition of local extent and, having regard to the provisions of that Act, it was held that it applied to the status of the holder of the Raj wherever the properties appertaining to the Raj might be situated, even though some of the properties might be outside the province of Assam. The advocate for the petitioner has contended that the definition of extent in Section 1(2), Bengal Wakf Act, does not take the matter any further, because in any case the local Legislature cannot make laws to operate for the peace and good government of the territories outside the province. But this argument does not also advance the case of the petitioner any fur. fcher. So far as the status of the Commissioner is concerned, it is conferred by the Bengal Act to operate even outside the province. Therefore the Commissioner may bring suits under Section 72 or Section 73, Bengal Act, in Courts outside the province. But Section 70 lies in a different category, because it imposes an obligation on the Court to issue notice to the Commissioner in certain circumstances.

4. Mr. Gupta has contended that it is not within the province of the local Legislature to make any law which will affect the jurisdiction of the Court situated outside the province. Section 70(1) refers to a suit or proceeding in respect of any wakf property, etc. and if this wakf property is situated outside the province, so that the Court having jurisdiction over it is also outside the province, then the Act cannot operate beyond its extent, that is to say, outside the province of Bengal. Otherwise, as Mr. Gupta points out, conflict of jurisdiction is inevitable, since it is suggested that every province may have a Wakf Act of its own. Leaving aside the larger question as to the interpretation of Section 80-A, Government of India Act, it seems to me that the special provisions of the Bengal Wakf Act, 1934, cannot be read as meaning that Section 70 of that Act will have operation in proceedings outside the province of Bengal. I think therefore that the view taken by the learned Munsif is right. The rule must stand discharged. There will be no order as to costs.

B.K. Mukherjea, J.

5. I agree.

Cases Referred.

1(1938) 23 A.I.R. Cal. 593