CALCUTTA HIGH COURT

Champa Bibi

Vs.

Panchiram Nahata Siva Bigraha

Civil Revn. Case No. 1167 of 1959

(R.S. Bachawat and U.C. Law, JJ.)

08.01.1963

JUDGMENT

Bachawat, J.

1. This case raises the question whether a dedication of land to a Hindu deity is a transfer of land within the meaning of Section 5-A of the West Bengal Estates Acquisition Act, 1953.

2. By a registered 'Arpannama' executed on the 17th September, 1954 petitioner Champa Bibi dedicated 54.48 decimals of agricultural lands and 55.00 decimals of tenanted lands at Jalpaiguri town belonging to her, to the Deity Panchiram Nahata Shiva Bigraha. By an order dated May 7, 1958 the Assistant Settlement Officer, Revisional Operation, Coochbehar-Jalpaiguri, Darjeeling, held that the dedication was *bona fide*, nevertheless having regard to the fact that the dedication was made by Champa Bibi with a view to preventing the acquisition of her surplus lands by the Government, the lands should, under Section 5-A (3) (ii) of the West Bengal Estates Acquisition Act, be taken into account in calculating the lands retained by Champa Bibi as if the lands had never been transferred and were retained by her. By an order dated December 22, 1958 the Special Judge, Jalpaiguri, affirmed the aforesaid order of the Assistant Settlement Officer. The legality of these orders is challenged by Champa Bibi.

3. Now, the 'Arpannama' was executed between the 5th of May 1953 and the date of vesting. If the 'Arpannama' is a transfer within the meaning of Section 5-A, the section applies and the revenue authorities had power to pass the impugned orders. On behalf of Champa Bibi it is strenuously contended that the dedication is not a transfer within the meaning of Section 5-A. Now Section 5-A (7) (iii) defines "transfer" thus :

> " 'Transfer' means a transfer by sale, mortgage, lease, exchange or gift."

4. Plainly, the dedication is not a sale, mortgage, lease or exchange. The point in issue is whether it is a gift within the meaning of Section 5-A (7) (iii). Mr. Chowdhury on behalf of the petitioner contended that the dedication is not a gift because (a) a gift is a transfer of property to a living person and there can be no gift to a deity who is not a sentient being and (b) a gift requires

acceptance by the done and as there can be no acceptance by the deity, the dedication cannot be a gift.

5. Now a gift is a transfer of property by one person to another voluntarily and without any consideration. The New English Dictionary by Sir James Murray gives inter alia the following meanings of the word "gift" : "Giving, the action of giving, an instance of the same; a giving, bestowal. * * * The transference of property in a thing by one person to another, voluntarily and without any valuable consideration. * * * The thing given, something the possession of which is transferred to another without the expectation or receipt of an equivalent; a donation, present * * * an offering to God or to a heathen deity." Halsbury's Laws of England, Third Edition, Vol. 18, Article 692, page 364 defines gift thus : "A gift 'inter vivos' may be defined shortly as the transfer of any property from one person to another gratuitously while the donor is alive and not in expectation of death". Now by a dedication of property to a Hindu deity the donor transfers the property to the deity voluntarily and without any consideration. We are satisfied that such dedication is a transfer by gift within the meaning of Section 5-A (7) (iii) of the West Bengal Estates Acquisition Act, 1953.

6. In support of his first contention Mr. Chowdhury appearing on behalf of Champa Bibi relied on *Narasimha Swami v. Venkata Lingam*[1], That case decided that a gift to a God Almighty is not a gift to a living person within the meaning of the Transfer of Property Act and that consequently Section 123 read with Section 5 of that Act does not apply to such a gift so as to require a registered document for its creation. Section 122 of the Transfer of Property Act shows that gift is a transfer of property made voluntarily and without consideration, but by Section 5 of that Act "transfer of property" for purposes of that Act means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons. In this case we are not concerned with the question whether a gift to God Almighty is a gift within the meaning of the Transfer of Property Act. The definition of transfer of property in Section 5 of the Transfer of Property Act does not apply to the West Bengal Estates Acquisition Act. We see no reason why the expression "gift" in Section 5-A (7) (iii) of the West Bengal Estates Acquisition Act, 1953 should be restricted to transfers to a living person.

7. I will now consider the second contention of Mr. Chowdhury. Section 122 of the Transfer of Property Act defines gift as a transfer of certain existing movable or immovable property made voluntarily and without any consideration by one person called the donor to another called the donee and accepted by or on behalf of the donee. Even apart from this definition gift in the strict sense involves the proposition "that the one gave and the other accepted". See per Lord Esher M. R. in *Cochrans v. Moore*[2], at p. 75. Sir G. Mellish L. J. said in *Hill v. Wilson, (1873) 8 Ch A 888* at p. 896 that "it requires the assent of both minds to make a gift as it does to make a contract". Mr. Chowdhury contends that in the case of a dedication of property to the Hindu deity there is no acceptance by the deity and consequently no gift. In this connection he relies upon several observations in the case of *Bhupati Nath v. Ram Lal*[3], That case decided that the principle of Hindu Law which invalidates a gift other than to a sentient being capable of accepting

[1] ILR 50 Mad 687 : AIR 1927 Mad 636
[2](1890) 25 QBD 57
[3] ILR 37 Cal 128

it does not apply to a bequest to trustees for the establishment of an image and the worship of a Hindu deity after the death of the testator, nor does it make such a bequest void. Jenkins, C. J. at

pages 139-40 referred to the statement in Dayabhaga, Chapter I, verse 21 that the right of the done arises from the act of the donor, namely from his "relinquishment in favor of the done who is a sentient person" and observed, "the rule which requires relinquishment should be to a sentient person does not forbid the gift of property to trustees for a religious purpose, though that purpose cannot in strictness be called a sentient person."

Stephen, J. at page 141 observed

> "A gift consists of two parts, abandonment of rights over the subject-matter of the gift by the donor, and acceptance of those rights by the donee. In a dedication to a deity, the abandonment by the donor takes place according to the ordinary law, but there can be no acceptance by the deity * * * * But though a dedication to a deity does not constitute a gift, it has a legal effect."

Mookerjee, J. at pages 146 to 153 observed that the Gods have no ownership of their own and

> "God's property is only a figurative expression"

and at pages 153 and 155 said

> "It is conclusively established from these authorities that according to strict Hindu juridical notions there can be no gift in favour of the Gods. ****** We start with the position that in the case of deities there cannot be any acceptance and, therefore, necessarily, any gift. If, therefore, a dedication is made in favour of the deity, what is the position? The owner is divested of his rights. The deity cannot accept. In whom does the property vest? The answer is that the King is the custodian of alt such property."

At page 161 he rejects the contention

> "that a dedication to the deity has the same characteristics and is subject to the same restrictions as gift to a human being."

These observations show that there can be no acceptance by a Hindu deity, that a dedication of property to the deity is complete without any acceptance by the deity and that the dedication is not a gift in the strict sense, but they do not establish that the expression "gift" in its general and popular sense does not include a dedication of property to a Hindu deity. Chatterjee, J. in the same case observed at page 165 thus,

> "It appears that the word or gift, when spoken of in respect of the deity, is used in a i. e., secondary or figurative sense. The Sradhabibeka of Shoolapani says :

i.e., (2) "the use of the word or gift in respect of a gift to the Sun and other Gods is secondary or figurative and intended to signify, by analogy, the giving of the fee in either case."

At page 166 he observed that

> "the definition of gift referred to by the Dayabhaga, Chapter I, Section 21, is in respect of a secular gift and not a gift for religious purpose".

At pages 167-168 he observed

> "According to either view it is the relinquishment of property in the name of the deity that completes the gift. * * * * In this view of the case also the text of Dayabhaga relied on in the Tagore case cannot invalidate the gift in favor of the deity whose image is consecrated after the death of the donor".

These observations show that a dedication of property to a Hindu deity may be described as a gift of property in a secondary or figurative sense. The dedication is a gift for a religious purpose, and in a figurative sense is a gift to the deity as the ideal embodiment and symbol of the religious purpose. The Hindu law recognizes juridical persons or subjects called foundations, see *Manohar Ganesh v. Lakhmiram*[4], at pp. 263-5. The deity is a juridical person with the power of suing and being sued, see *Pramatha Nath v. Pradyumna Kumar*[5], and of owning properties in an ideal sense, see ILR 37 Cal 128, 140, 145 and 168 (FB).

8. In support of his contention that a dedication of property to a deity is a gift, Mr. Chakravarty relied upon the decision in *Bhupati Nath v. Basantakumari Devi*[6], That case decided that a deed of gift of property to a Hindu deity is not an instrument of settlement within the meaning of Article 58 of Schedule I read with Section 2 (24) of the Indian Stamp Act, but an instrument of gift not being a settlement within the meaning of Article 33 of Schedule I of the Indian Stamp Act and must be stamped as such. Dissenting from this case it was held in *Upendra Nath v. Anath Chandra*[7], that a deed of gift of property to a Hindu deity was a non-testamentary disposition of property for a religious purpose and was therefore an instrument of settlement within the meaning of Article 58 of Schedule I read with Section 2 (24) of the Indian Stamp Act and could be stamped as such; that Article 33 of Schedule I applies to an instrument of gift not being a settlement and that as an instrument of gift to the deity answers the description of an instrument of settlement, the operation of Article 33 is excluded. The question whether a deed of gift of property to a Hindu deity is an instrument of settlement or an instrument of gift not being a settlement for the purposes of the Indian Stamp Act does not arise in this case; nevertheless these two decisions establish that a gift of property to a deity may satisfy the test of a gift in the context of a particular statute.

9. The West Bengal Estates Acquisition Act, 1953 provided by Section 5 for the vesting of all estates and of rights of intermediaries therein in the State as from the date of the notification under Section 4 and at the same time, by Section 6 permitted the

[4] ILR 12 Bom 247
[5] ILR 52 Cal 809 : 30 Cal WN 25
[6] 40 Cal WN 1320 : AIR 1936 Cal556
[7] ILR (1951) 1 Cal 665

intermediaries to retain agricultural and non-agricultural lands in their khas possession up to certain limits as tenants under the State. The Act further provided by Section 52 that, on the issue of a notification under Section 49, the provisions of Sections 5 and 6 would with such modifications as may be necessary apply mutatis mutandis to raiyats and under-raiyats as if they

were intermediaries and the lands held by them were estates. The object of the Act is to enable the State to acquire the interests of zamindars and the rights of intermediaries, raiyats and under-raiyats on payment of compensation on a sliding scale as provided for in Chapters III and IV and at the same time to permit the intermediaries to retain their khas lands up to certain limits as tenants directly under the State. The Act was passed on February 12, 1954, but the statement of objects and reasons was published in the Calcutta Gazette dated May 5, 1953. The notifications under Sections 4 and 49 were published and the consequential vestings took place long after the Act was passed. Now any transfer of his surplus lands by an intermediary before the date of vesting would affect the right of the State to acquire those lands as the surplus lands of the transferor. It is common knowledge that between May 1953, the date of the publication of the statement of objects and reasons, and the date of vesting, many intermediaries transferred their surplus lands with a view to prevent the acquisition of those lands as the surplus lands of the transferor. Consequently the State Legislature intervened and by Section 5-A empowered the State Government (a) to cancel any transfer of land by sale, mortgage, lease, exchange or gift made by an intermediary between those dates if it was made mala fide to his near relations and other persons with the object either of increasing the amount of land which any person might retain under Section 6 or of increasing the amount of compensation payable under Chapters III and IV and (b) even if the transfer was made *bona fide*, to take that land into account in calculating the land which may be retained by the transferor, as if the land had never been transferred and were retained by him. Section 5-A was introduced with retrospective effect by the West Bengal Estates Acquisition (Amendment) Act, 1954 (Act 13 of 1954). We see no reason why a narrow construction should be given to the definition of "transfer" in Section 5-A (7) (iii) and why a transfer by gift should be limited to gift within the meaning of the Transfer of Property Act or to a gift for secular purposes. The general expression "gift" covers a dedication to a Hindu deity and a gift for religious purposes. For purposes of Section 5-A a gift to a deity and a gift for religious purposes stand on the same footing as a gift to a living person and a gift for secular purposes. Transfers of surplus lands by all such gifts affect the right of the State to acquire those lands as the surplus lands of the transferor. We have therefore come to the conclusion that a transfer by dedication to a Hindu deity is a transfer by gift within the meaning of Section 5-A (7) (iii).

10. Our attention has been drawn to *Bihiram Uraon Mondal v. State of West Bengal*[8], where Chatterjee, J. decided that a dedication is a transfer within the meaning of Section 5-A (7) (iii) of the West Bengal Estates Acquisition Act, 1953. For reasons given above we respectfully agree with this conclusion.

11. Mr. Chowdhury next contended that as the dedication was made *bona fide* the Revenue Authorities ought not to have directed that the land dedicated to the deity should be taken into account in calculating the land which may be retained by Champa Bibi. This contention is baseless. The dedicated land has been retained by the deity. The State Government has recorded an order to the effect that the transfer was *bona fide* and

[8] C. R. Cases Nos. 3970 to 3972 of 1958 (Cal)

thereupon by Section 5-A (3) (ii) the consequence ensues that the land may be taken into account in calculating the land which may be retained by Champa Bibi as if the land had never been transferred and were retained by her. If and in so far Section 5-A (3) (ii) gives a discretionary power to the State Government the discretion was rightly exercised. The dedication was made by Champa Bibi with a view to preventing the acquisition of her surplus lands by the State. We see

no ground for interference with the impugned order under Article 227 of the Constitution of India.

12. The Rule is discharged. There will be no order as to costs.

Law, J.

13. I agree.
Rule discharged.