
(2013) 09 RAJ CK 0030
In the Rajasthan High Court
Case No : Civil Writ Petition No. 16929/2013

Ashok Matai

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Citation : (2014) 1 WLN 497

Hon'ble Judges : Amitava Roy, C.J.;Veerender Singh Siradhana, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Roy, C.J.—Heard Mr. S.K. Saxena, learned counsel for the petitioner. In assailment is the vires of Section 2(b)(viii) of the Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964 (for short, hereafter referred to as "Act of 1964").

2. Having regard to the challenge projected in the instant petition and the arguments advanced, it is inessential to dilate on the facts.

3. The learned counsel has argued that Section 2(b)(viii) of the Act of 1964 is ultra vires being repugnant to Section 3(r) of the Wakf Act 1995 (for short, hereafter referred to as "Act of 1995"). To appreciate the assailment Section 2(b) (viii) & Section 3(r) of the two enactments as above, are quoted hereinbelow:--

2. Definitions.-....

(a)....

(b) "Public Premises" - means any premises belonging to, or taken on leases or requisitioned by or on behalf of the State Government and industrial areas developed by the Rajasthan Industrial Mineral Development Corporation and other immovable properties constructed in such areas and includes any premises belonging to-

(i)....

(ii)....

(iii)....

(iv)....

(v)....

(vi)....

(vii)....

(viii) A Wakf as defined in the Wakfs Act 1954 (Central Act 29 of 1954) and entered in the register of wakfs maintained under Sec. 26 of that act; or...

3. Definitions.-....

(r) Wakf means the permanent dedication by a person professing Islam, of any movable 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-khikmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iii) A Wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable....

4. Mr. Saksena has emphatically urged that having regard to the definition of "Wakf" provided in Section 3(r) of the Act of 1995, and in particular, the concept of "Wakf-alal-aulad", the same could not have been drawn within the purview of "public premises" envisaged in Section 2(b)(viii) of the Act of 1964. Section 2(b)(viii) being thus repugnant to Section 3(r) of the Act of 1995, is liable to be declared ultra vires, he urged. The learned counsel, to buttress this plea, placed reliance on the decisions, amongst others, of the Calcutta High Court in Anis Fatma Begum Vs. Board of Wakf, .

5. We have duly considered the arguments advanced.

6. A plain reading of Section 2(b)(viii) of the Act of 1964 would evince that while comprehending "public premises", the legislature has included, amongst others, premises belonging to Wakf as defined in the Wakfs Act, 1954 and entered in the register of Wakfs maintained under Sec. 26 of that Act. The Act of 1995 has since repealed the Wakfs Act, 1954.

7. The definition of Wakf as provided in Section 3(1) of the Act of 1954 is barring sub-Clause (iii) thereof not identical to the one as accorded by Section 3(r) of the Act of 1995. The challenge to the vires, in this changed perspective, in our view,

is also erroneous and misdirected.

8. Be that as it may, on a conjoint reading of Section 2(b)(viii) of the Act of 1964 and Section 3(r) of the Act of 1995, we see no repugnance between the two. The concept of "public premises" as contained in Section 2(b) so far as it relates to a Wakf understandably, would be governed by the definition of this term, as provided in the enactment as referred to in Clause (viii) thereof and with the advent of the Act of 1995, as provided in Section 3(r) of this legislation. Section 2(b)(viii) of the Act of 1964 is an instance of legislation by reference. Admittedly, the learned counsel for the petitioner has urged that the petitioner has no demur vis-?-vis Section 3(r)(i) & (ii) and the impeachment of the vires of Section 2(b)(viii) pertains only to Clause (iii) thereof. As the premises of the Wakf to be a public premises, has been legislatively intended to comply with the definition of "Wakf" as provided by the Wakfs Act, 1954 succeeded by the Act of 1995 with all its inherent attributes, inclusionary as well as exclusionary, we are of the view that the impugment of the vires of Section 2(b)(viii) is misconceived. Neither any element of want of legislative competence nor conflict/repugnance nor any contravention of any constitutional provision is decipherable. The challenge fails and the petition is dismissed. The stay application also stands rejected. No costs.