

(1938) 12 BOM CK 0003

In the Bombay High Court

Case No : Civil Revision Application No. 54 of 1938

Baburao Prahlad Badve

APPELLANT

Vs

Hariharrao Kashinathrao Khasgiwale

RESPONDENT

Date of Decision : 13-12-1938

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1939 Bom 279 : (1939) 41 BOMLR 490

Hon'ble Judges : Wassoodew, J

Bench : Single Bench

Judgement

Wassoodew, J.—This is a civil revisional application from the orders of the District Judge of Sholapur passed upon the audit objections submitted to him by the Devasthan Committee of the Pandharpur temple against the accounts of the temple and its properties maintained by the committee of management constituted under the Scheme framed for the administration of this institution by the High Court on September 30, 1896.

2. On behalf of the opponents, the members of the Devasthan Committee, a preliminary objection has been raised that the revisional application does not lie. In order to appreciate the merits of that objection and this application, it will be necessary to understand; the facts leading to the orders of the District Judge in question. As I have already said, the Scheme for Management was passed by the High Court on September 30, 1896. The management of the institution and its properties was left under that Scheme in the hands of the Committee of Badves, who are the chief priests, managers, overseers, and guardians of the idol and the temple and its property. As such they continued to manage the properties and receive their own emoluments out of the profits by virtue of the Scheme declaring their rights thereto. By Rule IV of the Scheme it was directed that the Committee of Badves or the Managing Committee should keep regular accounts of all clothes and ornaments presented to the idol, and of all money offerings exceeding Rs. 500, showing the articles received, and their estimated value, the

articles: to be preserved for the idol, the articles to be distributed among the Badves, and the articles to be sold as provided for in Rule III. Those accounts were to be audited by the Devasthan Committee at least once a year, and that Committee were given the power to examine all ornaments and clothes which had been preserved and compare them with the accounts. The Devasthan Committee was functioning prior to the Scheme, and I am, told the appointment of the members to that Committee was made by Government. It appears that in 1912 or thereabouts the Devasthan Committee in the course of their audit found that it was ineffective, unless suitable provision was made in the Scheme for supplying them with material, to facilitate a thorough audit. They, therefore, memorialized to the District Judge of Sholapur to remove the defects in that respect by amplifying the Scheme, That memorial, it seems, was treated as a civil application, and the High Court on November 18, 1913, thought that there was no necessity for a change in the Scheme, the Devasthan Committee not having made out to the satisfaction of the High Court that any change was necessary. That order was passed after hearing the Devasthan Committee through their advocates ; and, in discharging the Rule the Devasthan Committee was ordered to pay the costs of the Badve Committee. Since then I am told there has been no audit till 1926.

3. The Devasthan Committee then moved Mr. Justice Madgavkar, who had granted an interview to them at Pandharpur, to take into consideration certain proposals made by them in regard to the maintenance of accounts and the management of the institution and to pass the necessary orders. Among those suggestions was the suggestion that the report of audit or inspection made by the Devasthan Committee might be annually forwarded to the High Court and that arrangements made to carry out the suggestions which the High Court might make thereon. The other suggestions were in regard to the preparation of a monthly statement, the carrying out of the recommendations of the Devasthan Committee in regard to the use and disposal of ornaments the valuation by experts of the ornaments of the deity and the maintenance of accounts in regard to them in the manner suggested by that Committee. That application was heard as a civil application in Court on June 27, 1930, and Madgavkar and Barlee, JJ., refused to make any amendment in the Scheme as suggested in the petition. They, however, declared that the members of the Devasthan Committee had the right as parties interested in the said idol to move the High Court in terms of Rule (9) of the Scheme to effect modifications therein. That rule provides as follows (see page 651 of the Printed Judgments of 1896) :

This Scheme shall be subject to such modifications as may be made hereafter by the High Court on the application of parties interested in the Devasthan of the said idol.

4. The other provisions of the Scheme framed by this Court for the Pandharpur temple are to be found at pp. 644 to 651 of the printed report.

5. While dismissing the claim to modification, as I understand the judgment,

certain observations were made in regard to the rights of the parties interested under the Scheme, with reference to the suggestion for forwarding the report of the audit and inspection to the High Court. They are as follows :

In our opinion no reason is shown to alter the rule. The suggestion shortly is that accounts after they are audited every year by the Devasthan Committee should be sent by them with their remarks through the Badves to the District Judge. The District Judge will have no time to go through the accounts, and the proposed alteration would be a useless formality. Under the rules as they are now framed, if that audit of the Devasthan Committee shows any irregularities in the accounts, there is nothing to prevent the Committee from bringing such irregularities to the notice of the District Judge for such action as seems to him proper.

6. It seems that a similar suggestion was made on a former occasion when the scheme was approved, and it was observed then that the orders directing the Committee appointed to keep accounts of all clothes and ornaments presented to the idol, and of the Vithoba Fund and to have the accounts audited by the Devasthan Committee were sufficient.

7. It appears that since the High Court's order in the petition in June 1930 the Devasthan Committee have been carrying out the audit of the accounts and submitting their observations and suggestions to the District Judge of Sholapur who according to the record has been transmitting them with his observations and remarks to the Committee of Management or Badves for carrying them out. Apparently no friction had occurred till 1934. It seems thereafter all the suggestions were not accepted and the matter was brought to a crisis in August 1937. It was then that the Committee's report of 1936 which had been submitted to the District Judge was forwarded along with his observations made on similar objections in 1934 to the Badve Committee with additional remarks for the explanations of that Committee. In the column headed "Court's orders" the learned District Judge took exception to the manner in which the Badve Committee¹ or the Committee of Management dealt with the suggestions of the Devasthan Committee, and he observed that there was no attempt whatsoever on the part of the Badve Committee to obey the order of his predecessor either in the letter or the spirit in regard to the maintenance of a receipt book and the particulars showing receipts of donations of cash amount and clothes and silver ornaments. Then he has proceeded to make the following remarks :

It is clear to me that this is a case of deliberate disobedience of the order of this Court and any further disobedience in the coming year will be severely noticed.

8. It is upon that threat of action that the Badve Committee have filed this application in revision.

9. It is urged on behalf of the opponents that that order and similar other orders passed on the memorandum of objection of audit are administrative in character, that they contain departmental advice to the Committee, that the District Judge

was not acting as a Court but a persona designate in the administration of the temple and its property in view of the observations of the High Court construing in effect the Scheme as conferring on the District Judge the power to interfere administratively with the management of this institution, and that therefore no appeal or civil revisional application will lie. Now, upon authority it is clear that where a Judge or presiding officer of a Court, as distinguished from the Court itself, is performing any function as vested in him, such a judge may be considered as a persona designata or as a person described, the description being by his official designation, and cannot be regarded as a civil Court subordinate to the High Court deciding the rights between the parties and performing judicial functions. The assumption underlying the preliminary objection is that authority has been conferred on the District Judge as an individual in a proper and legal way to pass the orders in question. In the consideration of the question whether a presiding officer of a Court is acting as a persona designata or as a Court, the important point to be investigated is what is the source of his authority, It might also be relevant to consider the nature of the proceedings and the action taken therein. It is conceded that the District Judge has no place whatsoever in the Scheme. The scheme does not empower the Devasthan Committee to submit its audit notes to the District Judge. In fact an attempt to engraft such a rule in the Scheme was negatived. And it was perhaps advisedly done for it is at any time a misfortune that the Badves, who owe a religious duty to the institution should give occasion to the Devasthan Committee, an honorary body of auditors, to allow their doings with pious gifts to the idols by religious minded Hindus, to be canvassed in a Court of law. The District Judge has no power of superintendence over the management of the institution which is left entirely to the discretion of the Badves. Therefore, the authority of the District Judge cannot be derived from the Scheme itself.

10. But it is urged that he derives his powers by reason of the observations in the High Court's order dated June 22, 1930. That argument, in my opinion, is not well-founded. The order does not expressly or by implication confer any authority whatsoever on the District Judge to administer or manage or supervise the management of the institution. It merely states that there is nothing to prevent the Committee from bringing any irregularity to the notice of the District Judge. That is not tantamount to the conferment of authority. The observations further contemplate such action by the District Judge as seems to him proper upon the irregularities. That might be in the nature of friendly advice for I cannot conceive of any other possible action under the scheme. Moreover, having regard to the proceedings before the High Court, those observations were obiter. The High Court was not called upon to say what things were not prevented by the Scheme and what were. It is clear that the only power which the High Court possessed under the scheme was to amend it, and which although it was called upon to exercise was not exercised. Consequently it cannot be said that the District Judge was created a persona designata with special powers. Nor is it clear from the orders that the District Judge has purported to act as persona

designata.

11. It is suggested that the High Court has interpreted the Scheme and that it has impliedly recognized the District Judge's power of supervision under the Scheme. That is not so according to the tenor of the judgment. The statement as to what is not objectionable under the Scheme amounts to very little. At least that is not what the High Court was asked to state. So, then, the very basis of the suggestion underlying derivative authority fails. In my opinion having regard to the manner in which the District Judge has acted, it is possible to suppose that he has arrogated to himself the power to interfere in the management of this institution by threatening to use the machinery of his Court for taking severe notice. In his order he expressly says that the Court's order has been disobeyed and that the Court would take severe notice of further disobedience in the coming year. That being the position, I feel real difficulty in upholding the preliminary objection.

12. But it is next urged that this is not a case decided in which the jurisdiction of the High Court u/s 115 of the CPC could properly be invoked. It is said that it is more an administrative than a judicial order. When regard is had to the fact that the District Judge has no voice under the Scheme in the administration of the temple and its properties, all that the District Judge could do under the High Court's order, when the Devasthan Committee brought to his notice irregularities of the Badve Committee, was to offer friendly advice. It is said that it is perhaps possible to construe the order as a brutum fulmen. But inasmuch as the threat proceeds from conviction in his power and might be carried out with the machinery of the Court for any disobedience of his orders, the question at once becomes serious. Indeed the mere seriousness of the situation would not justify interference by this Court. It seems to me that inasmuch as there was a proceeding in the nature of a complaint of mismanagement and disregard of the orders issued by the District Judge from time to time by the Committee of Badves, the final orders upon such proceeding could be construed as a case decided. In 22 CWN 50 (Privy Council) , the civil Court had ordered a temple committee to fill up the vacancy of the members of that Committee forthwith by making an appointment which they had a right to do. That power the Court possessed under the Religious Endowments Act (XX of 1863). But after doing that the Court had no jurisdiction to make an order declaring valid an appointment made upon the election by the persons interested. The Court notwithstanding the absence of power made an order declaring such appointment valid and the proceedings where under that order was passed were regarded by the Judicial Committee as a case decided within the meaning of Section 115 of the CPC entitling the aggrieved party to apply to the High Court in revision. That illustrates that a case decided might fall within the category of orders passed in the assumption of jurisdiction not vested in the Court by law. The following observations as to what a case implies in Section 115 are important (p. 269) :

It cannot, in their Lordships' view, be confined to a litigation in which there is a plaintiff who seeks to obtain particular relief in damages or otherwise against a defendant who is before the Court. It must, they think, include an *ex parte* application such as that made in this case, praying that persons in the position of trustees or officials should perform their trust or discharge their official duties.

13. Now, here upon a proper analysis of the facts it would be observed that the report of the Devasthan Committee was nothing more than an application to the District Judge, upon irregularities noticed, to influence his action in getting those irregularities removed and to secure redress in the interests of the charity. I shall assume that the object was purely altruistic and that the Devasthan Committee was prompted by a desire to protect the temple and its properties. But nevertheless upon such application if the Court, assuming jurisdiction to interfere in the management of the temple, does pass orders which, it says, are binding on the Committee of Badves and further threatens action for disobedience, it seems clear to me that the proceeding would be a case within the interpretation in *Bialakrishna Udayar v. Vasudeva Aiyar*. Consequently this Court has power to take action in the matter. Where the invasion of vested rights of the subject is threatened by a Court in this manner, and it is about to resort to the use of the machinery at its disposal, the High Court as a superior Court, in my opinion, will show a strong leaning against construing the powers u/s 115 so as to oust or restrict its jurisdiction. Consequently the alternative ground on which the preliminary objection is based also fails.

14. On the merits I have hardly anything more to say than what I have already observed. Perhaps the action of the District Judge was prompted by the observations in the High Court's order of 1930. Apparently he has wrongly construed that order as conferring on him jurisdiction to interfere with the committee of Badves in the management of the trust fund. It is unfortunate that the Scheme should be lacking in the necessary provision for carrying out the suggestion of the auditors. An audit which can be relegated to the waste-paper basket is at all times fruitless and ineffective. If it was considered necessary to provide for audit, I think, there should have been the corresponding machinery for carrying out the suggestion of the auditors. The High Court on two occasions deliberately omitted to provide such a machinery. Probably it left it to the good sense of the parties, particularly having regard to the interests and rights of the Badves as envisaged in the order itself. They were expected of their own accord to carry out the duties imposed upon them in the matter of accounting and other things in the best interests of the institution. Perhaps on the ground of inconvenience too additional safeguards were considered undesirable. Circumstances have now arisen when there is a possibility of mismanagement and it is not unlikely that the interests of the institution may suffer if no proper accounting and check were provided for. Those are considerations which must guide the Court when a proper application is made to it according to law under the provisions of the Scheme. All that I need say at the present moment is that the District Court through the District Judge cannot enforce its orders in question

by threat or by force. Consequently I think this application must succeed to that extent only. I make the rule absolute, without any order as to costs.