
(1990) 02 BOM CK 0021
In the Bombay High Court
Case No : First Appeal No. 267 of 1977

Bashir babumiya Inamdar and Others	APPELLANT
Vs	
Muslim Misgar Jamat and Others	RESPONDENT

Date of Decision : 20-02-1990

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 26, 28, 70A

Citation : AIR 1991 Bom 326 : (1991) 93 BOMLR 905

Hon'ble Judges : M.S. Ratnaparkhi, J

Bench : Single Bench

Advocate : K.J. Abhyankar, for the Appellant; H.A. Kazi and J.R. Lalit, for the Respondent

Judgement

M.S. Ratnaparkhi, J.—The order passed by the Extra Joint Judge, Pune on 6th October 1976 in Miscellaneous Application No. 131 of 1973, rejecting the application u/s 70A of the Bombay Public Trusts Act, has been challenged in this appeal.

2. Facts giving rise to this litigation may be briefly stated as follows:

3. Surveys Nos. 225A, 225B and 225C (present Surveys Nos. 429A, 429B and 429C), admeasuring about 1 1/2 acres situated at the City of Pune was previously an Inam land. It was given to one Makbulsahab who happened to be the ancestor of the applicants. This Makbulsahab was a Mohamed an Saint, After his death, his tomb was constructed on this property. A mosque is also standing on that property. The mosque, however, got damaged in the riots of 1965 but a part of the mosque remains. The ancestors of the applicants were in occupation of the land for a pretty long time, A portion of this land was given on lease to one Abdul Hussain Hasanali Bohori for the period of 99 years on the annual rent of Rs. 31.50 on 24-1-1923. Some land was given on lease to the Pune Municipality. On or about 1932, some members of the so-called Misgar Jamat Trust filed a suit against the ancestors of the applicants for a declaration that the property had become Wakf property by the user. This suit was Civil Suit No. 993

of 1932. The suit was decreed and the appeal against that decree was also dismissed by the High Court on or about 24-3-1935. Under the provisions of the Mussalman Wakf Act, 1923 (as amended by the Mussalman Wakf Bombay Amendment Act 1935), this Wakf was registered and the property was shown as the Wakf property. It is the case of the applicants that no notice of this proceeding was ever served on the ancestors of the applicants. There were litigations between the parties with which we are not concerned. Enough to point out at this stage that applications Nos. 9 of 48 and 2 of 43 in respect of the same Wakf were filed before the District Court. The District Court had directed the parties to file a regular suit. Accordingly, Civil Suit No. 2997 of 1949 was filed in the Civil Court at Pune. It was dismissed. The appeal, however, was preferred to the District Court. In the meanwhile, the Commissioner, Central Division, Pune, passed an order prohibiting further burials in the said land.

4. Subsequently, the Bombay Public Trusts Act came on the statute book and the Wakf came to be registered as a Public Trust. It is the Contention of the applicants that no notice was served on them. It is the applicants' contention that the points which were relevant were not considered and all these enquiries were fishing enquiries. The present application is, therefore, filed u/s 70A of the Bombay Public Trusts Act. The relief sought by the applicant was to reverse the order directing the Wakf to be registered and the property be registered as Wakf property.

5. The learned Deputy Charity Commissioner (exercising the powers of the Charity Commissioner) heard the parties at length and rejected their application on 7th October 1971. Feeling aggrieved with this order, the appellants have come in appeal u/s 72 of the Bombay Public Trusts Act. The learned Joint District Judge, Pune, on hearing this appeal recorded the finding that the Wakf in dispute was properly registered u/s 28 of the Bombay Public Trusts Act. In view of this, the appeal came to be rejected. It is this order which has been the subject of challenge in the present appeal.

6. Mr. Abhyankar, the learned Advocate for the appellants took me extensively through the record. Mr. Abhyankar fairly told before me that the Wakf has been registered long back under the provisions of the Wakf Act. He, however, contended before me that the enquiry was not proper in as much as the points which were material were never considered by the Court before passing the order directing the registration of the Wakf. It may be pointed out at this stage that this order directing registration of the Wakf was passed long back in 1937 or 1938. It is an admitted position that the Bombay Public Trusts Act came on the statute book in 1950 and according to the provisions of Section 28 of the said Act, the Wakf is deemed to have been registered under the Bombay Public Trusts Act. Admittedly, it was accordingly registered and the relevant entries were taken in the Trust record in pursuance of Section 17 of the Bombay Public Trusts Act. Mr. Abhyankar wanted this order directing the registration of the Wakf u/s 28 of the Bombay Public Trusts Act to be impeached.

7. In fact, the order registering the Wakf under the Bombay Public Trusts Act was passed long back in 1954. The objection to that order is coming for the first time in 1969. More than 20 years already elapsed. Till then, there was no challenge to this order. It is true that Section 70A of the Bombay Public Trusts Act does not speak of any limitation. But that does not mean that the party can go before the Court and ask for any order at any time he wants. After all, finality is the object of any judicial proceedings. The law of limitation permits a specified time for taking a particular remedy before the action can become final. And subject to those remedies, the action becomes final. From this point of view, the order under the Wakf Act was passed long back, at the beginning of forties. In fact, that order was agitated against but the agitation was not successful. That order remained in tact. Some incidental proceedings were taken but the order was not attempted to be set aside by appropriate proceedings. Hence, that order has become final.

8. When the Bombay Public Trusts Act came on the Statute Book, all Trusts which were registered under the enactments specified in Schedule-A (which includes the Mussalman Wakf Act of 1923 as amended by Bombay Act XVIII of 1935) were deemed to have been registered under the Bombay Public Trusts Act. The only obligation enjoined upon the Deputy or the Assistant Charity Commissioner of the region was to issue a notice to the Trustees of the said Trust for the purposes of recording the entries relating to such Trusts in the register kept u/s 26. On issuing such notice, and on hearing the Trustees and on making such enquiry as he deems fit, the Deputy or the Assistant Charity Commissioner was to record his findings with the reasons thereon. There were the limitations placed on the Deputy or the Assistant Charity Commissioner by Section 28 of the Bombay Public Trusts Act. Further limitation placed by the statute on the Deputy or Assistant Commissioner was that the findings recorded by him shall be in accordance with the entries in the register already made under the enactments, subject to such changes as may be necessary or expedient.

9. The scheme of Section 28 is thus crystallised. All Trusts which are already registered under the old enactments specified in Schedule A are deemed to be registered under the Bombay Public Trusts Act. The registration is thus fictional. The Assistant or the Deputy Charity Commissioner has merely to issue the notice to the Trustees and then on hearing them and on conducting such enquiry as he thinks fit, he is required to pass the order. The law, as it stood then, imposed an obligation upon the Assistant or Deputy Charity Commissioner to issue notice only to the Trustees. Admittedly, the present appellants were not the Trustees. No notice to them was necessary under the Statute. The record shows that the notice was issued to the Trustees and on making enquiries, the learned Assistant Charity Commissioner passed the further order in the matter.

10. The main argument of Mr. Abhyankar was that no notice of this enquiry was ever served on the appellants. It is because of this lacuna that, according to Mr. Abhyankar, the whole enquiry was vitiated. The rule of natural justice was

pressed into operation because according to Mr. Abhyankar, the appellants were vitally interested in the property and, therefore, a notice to them was absolutely necessary. However, the scheme of Section 28 of the Bombay Public Trusts Act does not permit this Court to accept the argument of Mr. Abhyankar. The point which was pending before the learned Assistant Charity Commissioner was not regarding the title of the property. The enquiry which was envisaged then had a very limited compass. The Assistant Charity Commissioner was required to issue a notice to the Trustees, hear them and pass the appropriate orders. His discretion in passing the order was also limited by the Statute in as much as the order which he was to pass was expected to be in accordance with the entries in the register already made subject to such changes as may be necessary or expedient. The dispute which the present appellants are putting before this Court is the dispute regarding the title. This dispute was never envisaged by Section 28 of the Bombay Public Trusts Act. This case could not be put before the Assistant Charity Commissioner as the purpose of the enquiry was very much different.

11. What appears apparent from the record is that some portion of the disputed property has already been acquired by the State and the appellants are claiming that compensation on the ground that they owned the property. The appellants want a decision of their title only to entitle them to claim that compensation. They have already instituted the suit and I am told that the appeal is pending before the District Court. As their appeal before the District Court is pending, they can very well argue their point before the competent court but as far as the present proceedings are concerned, they cannot justifiably ask this Court to reverse the order passed by the Deputy Charity Commissioner, which order has been passed on due consideration of all the relevant aspects. The learned Joint District Judge was, therefore, quite justified in rejecting the application. This appeal has hardly any merit and it deserves to be dismissed and the same is dismissed. There shall, however, be no order as to costs.

Appeal dismissed.