

**(1949) 01 AHC CK 0016**  
**In the Allahabad High Court**

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|-----------------------------------|------------|
| Bhagwan Das Chela Mahant Atma Das | APPELLANT  |
| Vs                                |            |
| Moti Chand Ram and Others         | RESPONDENT |

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**Date of Decision :** 17-01-1949

**Acts Referred:**

**Citation :** AIR 1949 All 612

**Hon'ble Judges :** Agarwala, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Agarwala, J.—This is an application in revision against an order of the District Judge, Ghazipur, dated 5th December 1947, allowing an application for leave to sue u/s 18, Religious Endowments Act (Act XX [20] of 1863). The opposite party alleged in the application which he made to the learned District Judge that there was a public religious institution in Ghazipur known as Sangat Pushta Ghat of which the applicant before us, Mahant Bhagwan Das, was the Mahant, and that certain immovable properties were owned by the institution for the purposes of the trust but that the applicant before us was mismanaging the same. The opposite party claimed to be entitled to perform religious worship in the said Sangat and interested in its welfare and management. He therefore prayed that permission may be accorded to him to sue the applicant before us under the provisions of Section 14 of the said Act for his removal from the office of the Mahant. The learned Judge considered the matter before him and came to the conclusion that this was a fit case in which permission should be granted. One of the contentions raised by the applicant before the learned District Judge was that Act XX [20] of 1863 did not apply to the religious institution in dispute as the said religious institution had come into existence after 1663 when the Act was passed. According to the applicant, Act XX [20] of 1863 was applicable only to institutions which had come into existence before that Act was passed. The learned Judge came to the conclusion that this contention was not well founded and overruled it. The applicant has come up in revision to this Court against that

order and the only point argued before us by learned Counsel appearing on behalf of the applicant is that Act XX [20] of 1863 has no application to the endowment in question.

2. The religious endowments in this country were first controlled by the British Government by means of Regulation XIX [19] of 1810 so far as the Presidency of Bengal was concerned, and by Regulations VII [7] of 1817 and XVII [17] of 1827 so far as the Madras and Bombay Presidencies respectively were concerned. In 1863 Act XX [20] of 1863 was passed replacing these Regulations in so far as they referred to mosques, Hindu temples and other religious endowments. Regulation XIX [19] of 1810 which applied to these provinces related to religious, as well as to certain charitable endowments and it also referred to the custody and disposal of Nazul property or escheats. In Section 1 of the said Regulation the object for which the Regulation was made was mentioned. This section no doubt referred to existing endowments. But the other sections were general in effect and did not necessarily restrict themselves to existing endowments. For instance, Section 2 provided:

The general superintendence of all lands granted for the support of mosques, Hindu temples, colleges, and for other pious and beneficial purposes (and of all public buildings, such as bridges, serays, Kuttras and other edifices), is hereby vested in the Board of Revenue and Board of Commissioners, in the several districts subject to the control of those Boards respectively.

The word "granted" in this section does not necessarily refer to grants made before the coming into force of the Regulation. It is a qualifying word which qualifies "lands" and as such it refers both to grants that had been made in the past or that might be made in the future.

3. Section 3 provided:

It shall be the duty of the Board of Revenue and Board of Commissioners to take care that all endowments made for the maintenance of establishments of the above description be duly appropriated to the purpose for which they were destined by the Government or individual by whom such endowments were granted....

Here again the word "made" does not necessarily refer to the existing endowments but merely qualifies "endowments" and refers to endowments that were made or may be made in future for the maintenance of establishments described in the section. The words "were destined" also referred to the time when the Board of Revenue or the Board of Commissioners were called upon to perform the duty cast upon them by the section. These words do not necessarily refer to endowments of the past. In Act XX [20] of 1863 the preamble no doubt refers to existing mosques, Hindu temples or other religious endowments. That, however, merely shows what the occasion for the passing of the Act was. It was to relieve the Boards of Revenue and the local Agents in the Presidency of Fort William in Bengal, and the Presidency of Fort St. George, from the duties

imposed on them by Regulation, XIX [19] of 1810 of the Bengal Code and Regulation VII [7] of 1817 of the Madras Code. Section 3 enacts:

In the case of every mosque, temple or other religious establishment to which the provisions of either of the Regulations specified in the preamble to this Act are applicable, and nomination of the trustee, manager or superintendent thereof, at the time of the passing of this Act, is vested in, or may be exercised by, the Government or any public officer, or in which the nomination of such trustee, manager or superintendent shall be subject to the confirmation of the Government or any public officer, the Provincial Government shall, as soon as possible after the passing of this Act, make special provision as hereinafter provided.

This section and the succeeding Sections 4 to 12 do refer to endowments that were in existence on the date of the commencement of the Act. But Sections 13 and 14 as also Section 18 under which the present application was made do not restrict them-selves to such endowments. Section 14 is quite general in its terms and provides:

Any person or persons interested in any mosque, temple or religious establishment, or in the performance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to them respectively....

The words in the section are "any mosque, temple or religious establishment." These are quite general and by no stretch of reasoning can be restricted to mosques, temples or religious endowments in existence in 1863. Where the words of the enacting sections are quite clear, no limitation can be imported into them by reason of anything contained in the preamble. It is true that it has sometimes been said that a preamble is a key to the intention of the Legislature. But that rule applies only where the language of the enacting portion of any Act of the Legislature is ambiguous or doubtful or produces in its ordinary meaning any absurdity or unreasonableness. The rule is not applicable to cases where the words of the enactment are quite clear and no doubt exists. Indeed, if we were to restrict this Act, to existing endowments, there would be the anomaly that there would have been no provision left for dealing with religious endowments which came into existence after the passing of the Act, at any rate up to the time when Section 92, Civil P.C. or its equivalent in the previous Codes was enacted. There is therefore no reason to restrict the applicability of Sections 14 and 18 of the Act to endowments which were in existence in 1863, The view that we have expressed above finds support from several decisions both of this Court and of other Courts in India. They are *Sheoratan Kumari v. Ram Pargash* 18 ALL. 227

Syed Husain v. Syed Hamid AIR 1930 All. 677 Venkatachala Pillai v. Taluk Board, Saidapet 34 Mad. 375 Diljan Ali v. Bibi Akhtari Begam AIR 1925 Pat. 544 Bili Zohra v. Bibi Habibunnissa AIR 1940 Pat. 9 and Badar Bahim v. Badshah Meah AIR 1934 Cal. 74.

4. Learned Counsel for the applicant has placed great reliance upon a decision of this Court reported in Shera Khan Vs. Bhura Shah, . The facts of that case were these, In proceedings u/s 92, Civil P.C., a scheme for the management of a Mohammadan shrine had been framed in the year 1906. A committee of management had been constituted who later on dismissed the mutwalli from his office of mutwalliship and appointed another person in his place. The mutwalli then applied to the District Judge praying that the proceedings of the committee should be set aside and that he may be reinstated as mutwalli and the new mutwalli appointed by the committee may be removed. To this application the new mutwalli alone, and not the members of the committee, was made a party. The learned District Judge dismissed the application on the ground that he could find no provisions under which he could interfere with the decision of the committee. In revision it was argued in this Court that the District Judge should have acted either u/s 5 or u/s 14 of Act XX [20] of 1863. This Court held that Section 5 of the Act could not apply for two reasons. In the first place, it applied only to a case in which there was a vacancy in the office of a trustee at the time of the making of the application and as there was no such vacancy, this section was not applicable; and in the second place, the section applied only to cases where any property had been transferred to such a trustee, manager or superintendent under the provisions of Section 4 of that Act. This Court further held that Section 14 of the Act referred to trustees appointed under the Act, and observed that even if this section applied to trustees not appointed under the Act, the District Judge could not have interfered with the order of the committee since the members of the committee had not been made parties to the application and had not been appointed under the Act. The facts of that case, therefore, are entirely different from the facts before us. If, however, the learned Judges, who decided that case, intended to lay down that Section 14 could apply only to cases in which trustees had been appointed under the provisions of that Act, we respectfully do not agree. We think that Section 14 is applicable to trustees, managers or superintendents whether they had been appointed under the provisions of that Act or not. The words "appointed under this Act" in the section refer only to the preceding word "committee." They cannot properly be made to refer to "trustee, manager or superintendent."

5. Another argument addressed to us in support of the contention raised by the learned Counsel was that if the Religious Endowments Act be held to apply to endowments which came into existence after 1863, Section 92, Civil P.C., would become superfluous or redundant. We do not see any force in this contention. The Religious Endowments Act refers merely to mosques Hindu temples or other religious endowments. It does not refer to charitable institutions. Section 92 refers to such institutions also. The Religious Endowments Act does not apply to

suits which do not charge a trustee, manager, superintendent or member of the committee with any misfeasance, breach of trust or neglect of duty. Further the reliefs that can be granted u/s 14 of the said Act are not identical with the reliefs that can be obtained u/s 92, Civil P.C. No doubt some common ground is covered by the two sections - Section 92, Civil P.C. and Section 14 of Act XX [20] of 1863- and to that extent, a litigant can take recourse to any one of the two provisions, at his discretion. This fact alone, however, is no reason for holding that Act XX [20] of 1863 must necessarily be re-striated to religious endowments in existence in 1863.

6. In our opinion, Act XX [20] of 1863 applies even to religious institutions founded after the commencement of that Act, and as such the learned District Judge had jurisdiction to make an order under the provisions of Section 18 of that Act in respect of the institution in dispute which came into existence in the year 1907. The result is that there is no force in this revision and we dismiss it with costs.