

(1952) 01 PAT CK 0015
In the Patna High Court
Case No : A.F.O.D. No. 252 of 1950

Bihar Subai Sunni Majlis Awkaf

APPELLANT

Vs

Sitaram and Another

RESPONDENT

Date of Decision : 29-01-1952

Acts Referred:

Bihar Wakf (Amendment) Act, 1950 — Section 2
Bihar Wakf Act, 1947 — Section 5, 5(1)
Constitution of India, 1950 — Article 13, 19

Citation : AIR 1953 Patna 32

Hon'ble Judges : Sarjoo Prosad, J; Ramaswami, J

Bench : Division Bench

Advocate : Sir Sultan Ahmad, Bashiruddin and S.A. Saghir, for the Appellant;
Pandey Narsingh Sahai, Pandey Gopal Krishna Sahai, Guneshwar Prasad and
Murtaza Fazl Ali, for the Respondent

Final Decision : Allowed

Judgement

Ramaswami, J.—This appeal is brought on behalf of the plaintiff against the judgment and decree of the 1st Subordinate Judge of Patna dated 22-6-1950.

2. The plaintiff alleged that defendant No. 2 Saiyid Wasi Haider was Motawalli of certain endowed properties appertaining to a mosque situated in mohalla Qazi Abdul Momin alias Bagh Lodan and that on 17-6-1948 defendant No. 2 executed a deed of permanent lease in favour of defendant 1 with respect to the properties mentioned in Schedule I of the plaint. The salami mentioned in the document was Rs. 6000/- and the rent was Rs. 500/- but the plaintiff alleged that defendants 1 and 2 acted collusively and the sanction of the District Judge was obtained on 8-6-1948 on misrepresentation. It was averred that on 1-5-1948 the plaintiff was established as a body corporate under the Bihar Wakf Act and u/s 43 of the Act no transfer made by a Motawalli of the property of a wakf by way of lease extending a period of three years could be valid unless made with the previous sanction of the Majlis. The plaintiff, therefore, asked for a

declaration that the deed of permanent lease dated 17-6-1948 executed in favour of defendant No. 1 was void and invalid, that the District Judge had no jurisdiction to sanction the lease and defendant 1 had acquired no title to the properties mentioned in Schedule 1 of the plaint. The plaintiff also asked that the defendant 1 should be ejected from the properties and that he should be restrained by permanent injunction from demolishing the structures existing on the land in question.

3. The main ground of defence was that the plaintiff was not duly constituted or established under the Bihar Wakf Act VIII of 1948; that in any case defendant 1 acted bona fide in the interest of the Wakf and since the District Judge granted sanction the deed of permanent lease in favour of defendant 2 was valid.

4. The learned Subordinate Judge dismissed the suit on the preliminary ground that the plaint was not duly constituted under the Bihar Wakf Act VIII of 1948 and the suit as framed was not competent.

5. The sole question argued in this appeal is whether the plaintiff was lawfully constituted and established under the Bihar Wakf Act VIII of 1948 and so entitled to maintain the present suit.

6. The answer to this question turns upon the construction and effect of Sections 5 and 57 of Bihar Act VIII of 1948. Section 5 deals with the constitution and incorporation of the Majlis. Section 5 (1) states :

"As soon as possible after this Act comes into force, there shall be established for the Province of Bihar a Majlis to be called the Bihar Subai Sunni Majlis-e-awqat & a Majlis to be called the Bihar Subai Shia Majlis-e- awqaf, to discharge respectively in regard to Sunni Waqfs and Shia Waqfs in the Province of Bihar the functions assigned to the Majlis by this Act."

Section 5 (2) enacts :

"The Mailis shall be a body corporate by the name of the Bihar Subai Sunni Majlis-e-Awqaf, or the Bihar Subai Shia Majlis-e-Awqaf, as the case may be, and shall have perpetual succession and a common seal, with power to acquire and hold property both movable and immovable, and to transfer any such property subject to the prescribed conditions and restrictions and shall, by the said name, sue and be sued".

Section 7 deals with the Sadar and members of the first Majlis and their term of office. It provides that all the members of the first Majlis shall be appointed by the Provincial Government and the Provincial Government shall appoint one from amongst the members to be the Sadar (sic) of the first Majlis. On behalf of the appellant reference was made to the notification dated 1-5-1948 which states that in exercise of the powers conferred by Clauses (1) of Section 7, Bihar Waqfs Act, 1947, the Government were pleased to appoint certain persons to be the members of the Bihar Subai Sunni Majlis-e-Awqaf.

Dr. Sultan Ahmed argued that as soon as this notification was published the Majlis was constituted and incorporated within the meaning of Section 5 of the Act. But it was objected for the respondents that Section 5 did not delegate to the Government of Bihar the authority to establish the Majlis. It is true that Section 5 does not expressly delegate to the Government of Bihar or to any one else the authority to establish the Majlis. It is apparent also that by enacting Section 5 the legislature did not incorporate "in praesenti" the Majlis, for the opening words of Section 5 (1) are "as soon as possible after this Act comes into force, there shall be established for the Province of Bihar a Majlis....." and Section 57 (1) refers to "the date of publication of the notification establishing the first Majlis." It is plain, therefore, that the legislature did not itself establish "in praesenti" the Majlis but intended that the Majlis should be incorporated in future by a notification duly published. But Section 5 makes no reference to the authority by which the legislature intended the Majlis to be established. If Section 5 is, however, read in the context of the two following sections, viz., Sections 6 and 7, it is sufficiently clear that the legislature intended to delegate to the Provincial Government the authority to establish the Majlis for the province of Bihar. It is, therefore, necessary in this case to give effect to the principle that the manifest intention of a statute ought not to be defeated by too literal an adherence to its precise language. To put it in other words the principle is that when the main object and intention of a statute is clear it must not be reduced to a nullity by a draftsman's unskillfulness or ignorance of the law. In Maxwell on the Interpretation of Statutes, 9th edition, page 236 the principle of construction is laid down in these terms :

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship, or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

Applying the principle in the present case, it is obvious that Section 5 neither constitutes a Majlis "in praesenti" nor indicates the agency by whom the Majlis is to be constituted. If the section is grammatically construed, no Majlis could ever be established or incorporated and the object and intent of the Act -- the better administration of Wakfs--would be wholly nullified. Section 5 (1) should, therefore, be construed as if the phrase "by the State Government" is interpolated after the phrase "shall" be established". It is a case of "casus omissus" and the section must be so construed as to give effect to the undoubted object of the statute.

7. The principle is enunciated in the leading case -- "Salmon v. Duncombe (1886) 11 A. C. 627 in which the clearly expressed intention of a Colonial ordinance was to give to any subject of the Queen resident in the Colony the power of disposing by will according to English law of property both real and personal, which otherwise would devolve according to Natal law. Section 1 of the

Ordinance was operative for that purpose, except that it concluded with the provision "as if such subject resided in England", the effect of which was to leave both the "lex situs" and the "lex domicilii" in operation, thus reducing the section to a nullity. It was held by the Judicial Committee that the concluding words ought not be so construed as to destroy all that had gone before, and, therefore, should be treated as immaterial, the powers conferred not being affected by the question of residence, in England.

8. Upon the proper construction of Section 5 (1) in this case I am of opinion that the legislature had delegated authority to the Provincial Government to establish the Majlis. But the Amending Act XXXIII of 1950 has placed the matter beyond doubt. Section 2 of the Amending Act states that in Sub-section (1) of Section 5 of Bihar Act VIII of 1948 after the words "shall be established" the words "by the State Government" shall be inserted and shall be deemed always to have been inserted. It was contended for the respondents that the Amending Act was void under Article 13 of the Constitution since it abridges the fundamental right of property conferred under Article 19(1)(f). In my opinion the argument is not correct. Article 13(2) states that "the State shall not make any law which takes away or abridges the rights conferred by this Part." It is manifest in this case that the Amending Act is not a law which directly affects the fundamental right of the respondents and the argument of the learned counsel cannot be accepted.

9. The next question is whether the notification of the Government dated 1-5-1948 validly constitutes the Majlis for the State of Bihar. This notification was made by Government in exercise of the powers conferred by Clauses (1) of Section 7 of the Act. No notification u/s 5 (1) establishing the Majlis has been produced in this case. It was urged on behalf of the respondents that even if the Government had the authority to establish Majlis such authority has not been exercised and the Majlis has not been established. But the argument is met by the Bihar Amending Act XXI of 1950, Section 4 of which states :

"Notwithstanding anything contained in subsection (1) of Section 57 or any other section of the said Act, notifications Nos. 4448-D and 4449-D., dated the 1-5-1948 of the Government of Bihar in the Development Department, appointing respectively members of the Bihar Subai Sunni Majlis-e-Awqaf and the Bihar Subai Shia Malis-e-Awqaf to discharge respectively in regard to Sunni Wakfs and Shia Wakfs the functions assigned to the Majlis by the said Act, shall be deemed to have duly established each of the Majlises and the establishment of any of the said Majlises shall not be called in question in any proceeding whatsoever, including proceeding pending in any Court, on the ground that the order establishing the Majlis was not made, issued or published."

In view of the Amending Act it must be held that notification no. 4448-E dated 1-5-1948 of the Government of Bihar has duly established the Majlis.

10. Upon the main question argued, I hold that the plaintiff, Bihar Subai Sunni Majlis Awqaf, has been duly constituted and established" under Sections 5 and 7,

Bihar Waqf Act, 1947, and that the plaintiff is entitled to prosecute the present suit.

11. Accordingly I would allow this appeal, set aside the decree of the learned Subordinate Judge and remand the suit for being heard on the question whether the plaintiff is entitled to a declaration that the deed of permanent lease was illegal and void and for the other consequential reliefs claimed.

12. There will be no order as to costs of this appeal.

Sarjoo Prosad, J.

13. I concur.