
(1979) 05 KAR CK 0003

In the Karnataka High Court

Case No : Misc. First Appeal No's. 960 and 961 of 1974

Gurupadayya Charantayya Adavimath etc.

APPELLANT

Vs

Chikkayya etc.

RESPONDENT

Date of Decision : 31-05-1979

Acts Referred:

Bombay Public Trust Act, 1950 — Section 70 A, 72 (1)
Constitution of India, 1950 — Article 26 (d)

Citation : AIR 1979 Kar 202 : (1979) ILR (Kar) 1861 : (1979) 2 KarLJ 53

Hon'ble Judges : M.P. Chandrakantaraj Urs, J;K. Jagannatha Shetty, J;K. Bhimiah, J

Bench : Full Bench

Judgement

Jagannatha Shetty, J.—More than a century ago, a certain Madivalayya founded a Math, known as "Adaviswamy Math" in Mareguddi village, Jamkhandi taluk. In 1890 Madivalayya died. His grand-son Parayya became the Mathadhikari. Upon the death of Parayya, one Rachayya became the Mathadhipati. After his death dispute arose as to the right and mode of succession to the Headship of the Math as between two claimants-Chikkayyaswamy and gurupadayya.

2. On 30th May 1952, Chikkayyaswamy presented a petition u/s 18 of the Bombay Public Trusts Act 1950 (shortly called "the Act") to register the Math as a public trust, and to register himself and Gurupadayya as co-trustees. On 22nd Dec. 1953, the Assistant Charity Commissioner accepted his case registered them as trustees. That order was made without any notice to Gurupadayya. In 1956, Gurupadayya claiming to be the sole trustee, questioned the legality of the said order in a revision petition before the Charity Commissioner u/s 70-A of the Act. On 15th Dec. 1958 the Charity Commissioner set aside the order of the Assistant Charity Commissioner and directed a fresh enquiry. Pursuant to the said order, the Assistant Charity Commissioner after recording evidence, made an order dated 20th Oct. 1961 recognising the rival claimants as de facto co-trustees but not as de jure trustees. The claimants were not satisfied with that order. They appealed to the Charity Commissioner u/s 70 of the Act. On 19th

Oct. 1962, the Charity Commissioner dismissed both the appeals. He however, directed that the successor to the Mathadhipati could be appointed by nomination or, in default by election by the disciples and followers of the Math from amongst the members of the family.

3. Aggrieved by the order of the Charity Commissioner, the parties took up the matter before the District Judge, Bijapur in Applications Nos. 62 and 63 of 1964 filed u/s 72(1) of the Act. During the pendency of these application, Chikkayyaswamy died. Adaviswamy was put on record as successor to the deceased. On 26th Oct. 1971 the learned District Judge allowed both the applications in part and modified the order of the Assistant Charity Commissioner. He also set aside the direction contained in the order of the Charity Commissioner regarding the mode of succession. He however, held that both Chikkayyaswamy and Gurupadayya should be treated as co-trustees.

4. Against the order of the District Judge three appeals M. F. A. Nos. 100, 101 and 143 of 1972 were preferred in this Court u/s 72(4) of the Act; the first two by Gurupadayya and the third one by Adaviswamy. This court by order dated 11th Sept. 1973 allowed the appeals and remanded the matter with the following direction:

"The learned District Judge before whom the enquiry was held u/s 72 erred in holding that the Charity Commissioner had exceeded his jurisdiction when he ordered that the mode of succession to the Mutt in question depended upon either the choice of the Mathadhipati, or in default, on the election by the disciples of the Mutt. We are of the opinion that the finding of the learned District Judge is vitiated on account of the misconstruction of the order passed by the Charity Commissioner u/s 70 of the Bombay Public Trusts Act. The order passed by the learned District Judge in Misc., Application Nos. 62 and 63 of 1964 is therefore, set aside, and the cases are remanded to the District Judge. The District Judge is directed to dispose of the two applications referred to above afresh in accordance with law and in the light of the observations made herein."

In other words, this court directed the District Judge to consider the rival claims of the parties and to determine as to who should be the trustee of the Math having regard to the law and custom governing the succession.

5. When the matter was pending before the District Judge, Gurupadayya also died. Nirupadayyaswamy was brought on record as his legal representative. The litigation was thus taken over by the second generation. On 16th Nov. 1974, the District Judge made an order holding as follows: (i) that the mode of succession to the Mathadhipati should be by the election and it should be an election by lots when there are more than one contestants; (ii) BY the usage of succession, there cannot be two Mathadhikaries at the same time; (iii) The right of appointment of Mathadhikari ultimately vested in the Bhaktas and the public; (iv) Chikkayyaswamy was duly elected as per the said usage and Adaviswamy has a right to succeed as a sole trustee of the Math; and (v) Gurupadaswamy has no

right to nominate his successor.

Aggrieved by the above decision, Nirupadayyaswamy has preferred the appeals which are now pending in this court.

6. When the appeals came up for hearing before a Division Bench of this Court it was contended for the appellant that the authorities under the Act could not have decided or dealt with the claims of the parties to succeed to the Headship of the Math which is a public trust and in support of the contention a Bench decision of this Court in *Satchidananda Abhinava vidya Shankar Bharati v. The Assistant Charity Commissioner, Belgaum* (W.P. No. 7535 of 1969 disposed of on 1-9-1971) (Kant) was cited. It was also urged that the District court exercising powers u/s 72 of the Act has no jurisdiction to decide the mode of succession. The decision of this court in *Sayyad Sultan v. Abdul Aziz Saheb* (1964) 1 Mys LJ 565 was relied upon in support of the second contention. The learned Judges who heard the appeals apparently did not agree with the correctness of the said decisions and have referred two questions for the opinion of a Full Bench. In order to reflect the real controversy in the case, we have modified those questions to read as follows:-

1. Whether, in the case of a Mutt, the Head of the Mutt as such is trustee, within the meaning of Bombay Public Trusts Act and there is a dispute as to succession to the Headship of such Mutt and the mode thereof, the authorities constituted under the said Act have jurisdiction to decide it ?

2. Whether under S. 72 of the Bombay Public Trusts Act, an application lies from a decision of the Charity Commissioner of the question of succession to the Headship of Mutt and the mode thereof?

7. Before we refer to the ratio of the aforesaid decisions, it will be useful to examine the relevant provisions of the Act. The preamble of the Act shows that it was enacted to regulate and make better provisions for the administration of public religious and charitable trusts. S. 2(8) defines a "manager" to mean, any person (other than a trustee) who for the time being either alone or in association with some other person or persons administers the trust property of any public trust and includes, in the case of a math, the head of such math, etc. S. 2(a) defines "Math" to mean an institution for the promotion of the Hindu religion presided over by a person whose duty it is to engage himself in imparting religious instructions or rendering spiritual service to a body of disciples or who exercise or claims to exercise headship over such a body and includes places of religious worship or instruction which are appurtenant to the institution. S. 2(18) defined "trustee" to mean, a person in whom either alone or in association with other persons, the trust property is vested and includes a manager.

Chapter 4 contains provisions regarding registration of public trusts. S. 18 makes it obligatory upon the trustee of every public trust to make an application for the registration of the trust of which he is a trustee. U/s 19, the Deputy or Assistant

Charity Commissioner shall make an enquiry in the prescribed manner for the purpose of ascertaining among other matters, the mode of succession to the office of the trustee of such trust. U/s 20 he shall record his finding with reasons therefore. S. 22 imposes an obligation on the trustees to report a change or proposed change being made in the entries to the Deputy or Assistant Charity Commissioner within a certain period.

The Act also provides certain remedies to persons aggrieved by orders referred to above. S. 70 provides for an appeal to the Charity Commissioner against the finding or order of the Deputy or Assistant Charity Commissioner u/s 20 and 22-A. The Charity Commissioner has the power to direct his subordinates to make further enquiry or to take such evidence as he may think necessary or he may himself take such additional evidence. S. 70-A confers revisional power on the Charity Commissioner to call for and examine the record and proceedings of any case for the purpose of satisfying himself as to the correctness of any finding or order passed by the Deputy or Assistant Charity Commissioner. S. 72 provides for an application to the "Court" to set aside the decision of the Charity Commissioner. S. 2(4) defines a court to mean "The District Court". u/s 72(4) an appeal lies to the High Court against the decision of the Court as if such decision was a decree from which appeal ordinarily lies.

8. Chapter 5, deals with the Accounts and Audit of the trust fund and the manner of administering the trust properties. Chapter 6 provides for control of the statutory authorities over the public trusts. Chapter 7 provides for functions and powers of Charity Commissioner. Chapter 8 deals with the Public Trusts Administration Fund. Chapter 12 deals with Miscellaneous matters. Thereunder, Ss. 79 and 80 provide for ouster of jurisdiction of the Civil Courts. Thus, in brief, are the provisions of the Act which are material for our present purpose.

9. We may now refer to the ratio of the two decisions of this court, the correctness of which was doubted by the referring Bench. In Satchidananda Abhinava vidya Shankar Bharati's case (W. P. No. 7535 of 1969 disposed of on 1-9-1971) a dispute arose as to succession to the office of a Mathadhipati. The rival claimants therein made separate applications under section. 22 of the Act to the Assistant Charity Commissioner, Belgaum to record their names in the register of trusts maintained u/s 17 of the Act. One of them also contested the jurisdiction of the Assistant Charity Commissioner when that question was about to be enquired into. But the Assistant Charity Commissioner overruled that objection. The aggrieved party challenging that decision, preferred a writ petition in this court. The said writ petition was allowed by this court with the following observation:-

"In our opinion, the view of the law taken by the 1st respondent is patently erroneous and cannot be supported in the language of S. 22. There is no provision in the Act by which any dispute relating to succession to the office of the Mathadhipati is required to be decided by any officer or authority under the Act. Such a dispute concerns the civil rights of the rival claimants. Unless the

jurisdiction of the Civil Court is expressly barred, it cannot be taken away by implication. The enquiry contemplated u/s 22, in our opinion does not comprehend by implication the power of adjudication of the disputed question of succession. Sub-sec (1) of S. 22 imposes an obligation on the trustee to make report within 90 days from the date of the occurrence of any change in any of the entries recorded in the register kept u/s 17 to the Deputy or Assistant Charity Commissioner in charge of the Public trust Registration office where the register is kept. Sub-section (2) provides that the Deputy or Assistant Charity Commissioner may hold an enquiry for the purpose of verifying the correctness of the entries in the register kept u/s 17 or ascertaining whether any change has occurred in any of the particulars recorded in the register. In the instant case, there is no dispute that a change has occurred in one of the particulars recorded in the Register and when that fact is not disputed, nothing remains to be ascertained by holding an enquiry. The scope of enquiry is limited ascertaining whether any change has occurred in any of the particulars recorded in the Register and not the determination of the dispute as to who is entitled to succeed."

Sayyad Sultan's (1964) 1 Mys LJ 565 case was concerned with the scope of S. 72 of the Act. It was observed therein that the jurisdiction of the District Court under that Section is confined only to determine whether a trust exists, whether such trust is a public trust, and whether any property is the property of such trust and to no other questions. According to this decision, the other questions which fall for adjudication u/s. 40, 41, 70 or 70-A cannot be assailed by any party before the District Court.

10. Against this background, we may now proceed to consider whether the authorities under the Act have jurisdiction to deal and decide the dispute as to succession to the Headship of the "Adaviswamy Math" and the mode thereof. The contention urged before us on this question centred round the scheme of the Act, and the purpose with which the power was conferred on the authorities. It was urged that the Act was intended to regulate the administration of public trusts and not concerned with the civil rights of rival claimants. In support of this contentions, the counsel on both sides also depended on Ss. 18, 19 and 20 on one hand, and Ss. 79 and 80 on the other.

11. We may first consider the scope of the provisions relating to ouster of jurisdiction of the Civil Courts. S. 79 of the Act provides:-

"79. (1) Any question, whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, shall be decided by the Deputy or assistant Charity Commissioner or the Charity Commissioner in Appeal as provided by this Act.

2. The decision of the Deputy or Assistant Charity Commissioner or the Charity commissioner in Appeal as the case may be, shall, unless set aside by the decision of the Court on application or of the High Court in appeal, be final and

conclusive."

Section 80 provides:-

"Save as expressly provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act, to be decided or dealt with by any officer or authority under this Act, or in respect of which the decision or order of such officer or authority has been made final and conclusive."

In the language of S. 80, two categories of matters are excepted from the jurisdiction of civil courts. The matters which the authorities under the Act have jurisdiction to decide or deal with, and the questions in respect of which the Act imparts finality to the decision of the statutory authorities, are both excluded from the jurisdiction of Civil Courts. There is no difficulty to isolate the questions falling under the second category. They have been specifically provided under sub-section (1) of Section 79, namely, the questions as to whether or not a trust exists, whether such trust is a public trust and whether a particular property is the property of such trust. These questions shall be decided by the Deputy or Assistant Charity commissioner and the decision thereon unless set aside by the court on application or in appeal under the Act has been made final and conclusive under sub-section (2) of S. 79. The question with which we are concerned viz., the succession to the Headship of the Math and the mode thereof is obviously not one of those questions specified under S. 79.

12. But it was urged that that question falls to be decided or dealt with by the Deputy or Assistant Charity Commissioner under S. 19 and therefore, the bar imposed by S. 80 would operate. For a proper consideration of this aspect of the matter, it is necessary to remember the purpose of the Act, the nature of the dispute between the parties and the scope of the enquiry contemplated under section. 19. The short title of the Act shows that it is "an Act to regulate and to make better provision for the administration of public, religious and charitable trusts." The preamble of the Act is in the same terms. The Act includes, within its scope, all public trusts created not merely for religious but for purely charitable purposes as well and extends to people of all classes and denominations. The registration of public trusts has been made compulsory to ensure due supervision and the exercise of proper control over the trust properties. That has been so stated by the Supreme Court in *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, B. K. Mukherjea, J., speaking for the Constitution Bench in that case observed thus:-

"The provisions of registration undoubtedly have been made with a view to ensure due supervision of the trust properties and the exercise of proper control over them. These are matters relating to administration of trust property as contemplated by Article 26(d) of the Constitution and cannot by any stretch of imagination, be held to be an attempt at interference with the rights of religious institutions to manage their religious affairs....."

The scope of the Act also came up for thorough scrutiny before a Full Bench of

the Bombay High Court Keki Pestonji Jamadar and Another Vs. Kohodadad Merwan Irani and Others, . Chandrachud, J., as he then was after a review of the entire Act against the background of the statement of objects and reasons said:

"..... It is thus clear that the dominant purpose of the Act is to regulate the administration of public trusts and not to settle disputed titles to the property alleged to belong to the trust."

It can therefore be said that the Act was not intended to interfere or deal with the religious matters of public trusts. Its primary purpose is only to ensure proper administration of trust properties. It is therefore not a self-contained code covering all questions pertaining to public trusts.

13. With this background, we may now analyse the provisions of S. 19. It provides for enquiry on the question among others, about the mode of succession to the office of a trustee. The mode of succession to the office of a trustee, according to the learned counsel for the respondent covers questions relating to succession in respect of all matters including the Headship of a Math. We gave our anxious consideration to this contention. We are afraid that it would be misconstruing the scope of the section and misunderstanding question of succession to the office of a Mathadhipati. It must be borne in mind that there cannot be a Mathadhipati without a Math, and a Math without a Mathadhipati. The Mathadhipati is a spiritual head or a spiritual superior. The primary object of a Math is to maintain a competent line of religious teachers for propagating religious doctrines of a particular order or sect. The definition of "Math" under section. 2(9) makes this matter clear by stating that "Math" is an institution for the promotion of the Hindu religion presided over by a person whose duty it is to engage himself in imparting religious instructions of rendering spiritual service to a body of disciples. The succession to the office of Mahant is therefore a religious matter and it is usually regulated by religious practices or custom of the particular math. The Privy Council in AIR 1938 216 (Privy Council) observed:-

"There can be no doubt that succession to the office of Mahant, and the ownership of the Math property, limited by the period of tenure of the office, is to be regulated by the custom of the particular Math, and the respondent as plaintiff in the suit, is bound to allege and prove what the custom of the particular Math is and that his acquisition of the Mahantship was in accordance with such custom."

14. The Constitution and the rules of religious brotherhood amongst the Hindus are by no means uniform and in Mukherjea's Hindu Law of Religious and Charitable trusts (3rd Edition) pages 269 and 270 it is pointed out:-

"and it may be taken to be settled law that the controlling rule with regard to the right to the office of the Mahant would have to be found in the usage and customs of the institution provided however that there are no rules relating to the same laid down by the founder. The legal principle seems to be that the wishes of the grantor are to be primarily respected in such matters, but when

there is no evidence of any direction given by the founder, the usage or practice that obtains in any particular institution is to be regarded as presumptive evidence of the grantor's intention.

Three things you would have to bear in mind in connection with the question of succession to the office of a Mohant. The first is that if the grantor has laid down any particular rule of succession that is to be given effect to. Secondly, in the absence of any grant the usage of the particular institution is to be followed; and in the third place, the party who lays claim to the office of a Mohant on the strength of any such usage must establish it affirmatively by proper legal evidence."

It is further pointed out:-

"..... Generally speaking, the Mutts are divided into three classes according to the different ways in which the heads or superiors are appointed. These three descriptions of Mutts are Mourasi Panchayati and Hakimi. "In the first, the office of the Mohant is hereditary and devolves upon the chief disciple of the existing Mohant who moreover usually nominates him as his successor; in the second, the office is elective, the presiding Mohant being selected by an assembly of Mohants. In the third, the appointment of the presiding Mohant is vested in the ruling power or in the party who has endowed the temple."

Having regard to these principles, it appears to us that the matter of such complexity involving religious practices and principles governing succession to a Mathadhipati cannot be equated to an ordinary question of mode of succession to the office of a trustee as contemplated under section. 19 and in our opinion, it clearly falls outside the scope of the said section.

15. The Act also does not provide a proper procedure for determination of such a dispute. Under S. 19, the Deputy or Assistant Charity Commissioner has to conduct an enquiry "in the prescribed manner." Rule 7 provides for summary procedure. In this summary enquiry, it is well known that there is no obligation to record the evidence in entirety. R. 11, which provides for the manner of recording evidence of witnesses is also to the same effect. It says that at any enquiry under the Act, the officer holding the inquiry shall make a memorandum in English of the substance of what each witness deposes and if the officer is unable to make such a memorandum he shall cause it to be made in writing from his dictation. This procedure, according to us, is hardly sufficient for a proper adjudication on any complicated question. The custom or usage involving religious ceremonies which are required to be observed by the Math should be carefully ascertained by affirmative evidence and cannot properly be determined in a rough and ready summary procedure. Similar view was also expressed although in a different context by the Full Bench of the Bombay High Court in Keki Pestonji Jamadar and Another Vs. Kohodadad Merwan Irani and Others, . It was observed:-

"Rules 11 provides that the officer holding the inquiry may only make a

memorandum of the substance of what each witness deposes. It is unthinkable that questions of title could be permitted to be decided by a tribunal finally and conclusively without any obligation to record the evidence fully. It is a matter of common experience that subtle shades of evidence are often missed in a memorandum containing merely the substance of the evidence."

16. Suit for religious office is a suit of a civil nature. The general rule of law as provided u/s 9 of the CPC is unless there is an express or implied bar to the entertainment of a suit of a civil nature, the ordinary civil courts are bound to entertain the claim. We do not find any such bar for the Civil Courts in regard to the question with which we are concerned. The view taken by this court in Satchidananda Abhinava Vidya Shankar Bharati's case (W. P. No. 7535 of 1969 disposed of on 1-9-1971), therefore appears to be correct and justified.

17. Accordingly, our answer to the first question is that the authorities under the Act have no jurisdiction to decide the dispute as to succession to the Headship of the Math and the mode thereof.

18. In the view that we have taken, no further consideration is called for in this case on the second question which involves the scope of S. 72 providing for an application to the District Court to set aside the decision of the Charity Commissioner.

19. The papers will now be sent back to the Division Bench for disposal of the appeals.

20. Order accordingly.