

(1930) 02 PRI CK 0008

In the Privy Council

Case No : Privy Council Appeal No. 63 of 1929

Mahant Bhagwanpuri

APPELLANT

Vs

Secretary of State and others

RESPONDENT

Date of Decision : 14-02-1930

Acts Referred:

Citation : (1930) AIR(PC) 232

Hon'ble Judges : Binod Mitter, George Lowndes, Lancelot Sanderson, Lord Atkin, JJ.

Advocate : B. Dube, L.De Gruyther, S. Hyam, A.M. Dunne, for the Appearing Parties.

Judgement

Sir Lancelot Sanderson, J.

This is an appeal by Mahant Bhagwanpuri, who was one of eight defendants in a suit instituted by the Secretary of State for India in Council on 23rd September 1921, against a decree of the High Court at Allahabad, dated 3rd February 1927, which affirmed a decree of the Subordinate Judge of Saharanpur, dated 31st January 1923. The Secretary of State appeared as respondent to the appeal. The other seven defendants were added as respondents, but they were not represented at the hearing before the Board.

The suit was brought to recover possession of certain land specified in the plaint which is situate at Hardwar, within the limits of the Municipal

Board of the Hardwar Union. The main question in dispute is whether the said land was granted by the Crown to an institution or association called the "Juna Akhara" by a sanad dated 10th January 1854.

Both the Courts in India have held that the said land was not so granted. There is no necessity to enquire into the history relating to the land in suit prior to 1854, for it was agreed at the hearing of the appeal that the abovementioned main question depends upon the construction of the said sanad of 10th January 1854. The terms of the sanad are as follows :

"Sanad in favour of the Gosains of Juna Akhara, Hardwar;

"Pursuant to para. 4 of G. O. No. 907, dated 6th March 1848, addressed to the Secretary, Board of Revenue, 1,000 yards out of 10,455 cubic yards of land, named of Juna Akhara, was as per enquiry made in 1848, found in your possession. Subsequently the objections were heard and a report was made in this case. In reply to that report the Commissioner sent his letter No.30, dated 6th December 1853, along with other letters of the Board and the Government. It is written in it that this land is only one plot, that it measures 10,455 cubic yards, and that it is called by the name of Juna Akhara and the sitting place of the faqirs who come here at the time of the Kumbh fair. This plot has been relinquished in favour of the jogis in 1315 F (?)

"Therefore, in accordance with para. 7 of the Commissioner's letter to the Sudder Board of Revenue, No.197 dated 27th May 1858(?) which has been sanctioned by the Government, this sanad in respect of 10,455 cubic yards is given in favour of the Juna Akhara. The object of this sanad is that the Government has no more any claim in respect of the land and the Government has granted this land for the sitting place of the faqirs. But without the sanction of the Government the Goshains will have no power to transfer it. No. of plot 175.

"Name of house.-Mandir Bhairosi, Mandir Mahadevi and Charan Badgats (?) situate at the Juna Akhara.

East-West-41 yards.

North-South-255 yards.

Area in cubic yards.-10,455.

Approximate cost

Eastern Boundary.-Bed of the river.

Western Boundary.-Nuzul lands.

Southern Boundary.-Mango and gular trees

Northern Boundary.-Bed of the river, etc.

Dated 10th January 1854.

The word "cubic? is a mistake for "square"; this mistake is in itself obvious, but a reference to the list prepared by the Collector in 1848 shows that the plot mentioned in the sanad, viz., plot 175, was 10,455 square yards. It was admitted by the learned counsel for the appellant that the "Juna Akhara? is in possession of land measuring 10,455 square yards, and that the land claimed by the Secretary of State in this suit is no part of the said plot of 10,455 square yards but is land lying outside the said plot. It is to be noted that the above-mentioned terms of the sanad have been translated from the original.

In such translation the eastern boundary of the land granted thereby is stated to be "bed of the river," and the northern boundary "bed of the river, etc." The learned Judges of the High Court said that

"much of the misunderstanding in this case was due to mistranslation of the boundaries given in the sanad, "

and they stated what, in their opinion, was the true translation as follows:

"East-Arazi -er Dbank (land on the lower side of the pit).

"West-Ditch and Nazul land.

"South-Up to the mango and gular trees,

"North-Dhank Khodana (a mound and pit). "

The learned counsel who appeared for the appellant did not dispute the correctness of the translation adopted by the High Court. Consequently the description of the boundaries given by the learned Judges must be accepted by this Board.

That being so, the question now under consideration really becomes unarguable, for on reference to the plan which was before the High Court and this Board it is apparent that the boundaries given in the translation adopted by the High Court include plot 175 only, which is not in dispute in this suit, and do not include the land which is in dispute. The title given by the sanad, therefore, is limited to plot 175 and the 10,455 square yards therein mentioned, and does not extend to the lands claimed by the Secretary of State in this suit. Inasmuch as the appellant's appeal in relation to this part of the case was based on the construction of the sanad, their Lordships are of opinion that the decision of the High Court in respect thereof was correct.

A further point was taken by the learned counsel for the appellant. It is of a technical nature and has no relation to the merits of the case. It was argued that the defendants were not the proper parties to the suit and that no leave was asked for or obtained from the Court as required under O. 1, R. 8, Civil P.C., 1908

It appears that the defendants were elected managers by the akhara at the Kumbh in Hardwar in 1915, and on 9th May 1915 a power-of-attorney was given by them to four persons, of whom Hardayalgirji was one, to act as their general attorneys, and among other matters to file suits, to set up a defence and affix their signature to a written statement, and it was further provided that all such proceedings taken by the said muktars should be admitted and accepted as having been done by the defendants personally in the capacity of mahants.

Hardayalgirji gave evidence for the defendants to the effect that there was a Kumbh every three years at different places, Hardwar, Prayagraj, Nasik and Ujjain, and that different mahants were elected at each successive Kumbh at the four places to officiate for three years. He, however, made certain material

admissions in cross-examination, and the result was that there were concurrent findings of fact by both the Courts in India to the effect that the power-of-attorney had not been withdrawn, and that Hardayalgirji was actually managing the akhara properties by virtue of the said power-of-attorney executed by the defendant was looking after the akhara litigation, and that the defendants were still managers of the Hardwar properties of the akhara.

Their Lordships are of opinion that there was ample evidence to justify the abovementioned concurrent findings of the Courts in India, and they see no ground for disturbing such findings. Their Lordships agree with the finding of the High Court that the proprietary title to the lands in suit is in the plaintiff, and they are of opinion that the defendants, through their agents, were in possession of the said lands at the time when the suit was instituted, and that they were rightly joined as parties to the suit.

Order 1, Rule 8, contains provisions which enable the Court to grant the permission therein mentioned in a case which comes within the scope of the rule; but, having regard to the facts of this case, their Lordships are of opinion that it was not necessary for the plaintiff to have recourse to the said rule. The decree of the trial Court was that the plaintiff be, on dispossession of the defendants, put in possession of the property in dispute, and that the map attached to the plaint should form part of the decree. This was confirmed by the High Court. Their Lordships are of opinion that the decree of the High Court was correct, and that this appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.