
(1944) 07 BOM CK 0009
In the Bombay High Court
Case No : Second Appeal No. 786 of 1942

Patali Begum

APPELLANT

Vs

Yeshwant Thite

RESPONDENT

Date of Decision : 31-07-1944

Acts Referred:

Bombay Watan Act, 1886 — Section 4

Citation : AIR 1945 Bom 317 : (1945) 47 BOMLR 112

Hon'ble Judges : Chagla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Chagla, J.—The suit out of which this appeal arises was filed by the plaintiff to challenge an order passed by the District Deputy Collector of Satara on December 17, 1923. The plaintiff alleged that the suit land was the service inam land of the defendant Kazi family ; that the defendant's ancestors granted the land by way of gift to his ancestor free of any assessment; that the District Deputy Collector, Satara, levied full assessment on the plaint land by his order dated December 17, 1923, at the instance of the defendant's father and that the order was ultra vires.

2. The District Deputy Collector in passing the order of December 17, 1923, purported to act under the Watan Act, and the only question that really arises in this appeal is whether the Watan Act applied to the lands held by the defendant's ancestors as Kazis. Mr. S.G. Patwardhan for the appellants has contended that the office of a Kazi is a hereditary office and that the lands given to the Kazis as service inam lands are watan lands within the meaning of the Watan Act. Now watan property is defined u/s 4 of the Watan Act, and that section provides that "watan property" means the moveable or Immovable property held, acquired, or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office. "Hereditary Office" is also defined as every office held hereditarily for the performance of duties

connected with the administration or collection of the public revenue or with the village police, or with the settlement of boundaries, or other matters of civil administration. As far back as 1877 it was held by Sir M.R. Westropp, Chief Justice, and Mr. Justice Melvill in *Jamal walad Ahmed v. Jamal walad Jallal* ILR (1877) 1 Bom. 633 that the office of a Kazi was not hereditary and they held that the appointment of a Kazi Should be made by the Sovereign with the greatest circumspection with regard to the fitness of the individual appointed; and though the State might have full power to make the watan attached to the office of Kazi hereditary, yet under the Mahomedan law it had no power to make the office itself so. They took the view that there might be a local custom which would have to be established whereby the office of a Kazi might become hereditary. In *Baba Kakaji Shet Shimpi v. Nassaruddin valad Aminuddin Kazi* (1893) ILR 18 Bom. 103, an appellate bench of this Court consisting of Sir Charles Sargent, Chief Justice, and Mr. Justice Bayley held that the office of Kazi was not hereditary, and they specifically held that the property attached to the office of a Kazi was not watan property within the meaning of the Watan Act. Mr. Justice Fawcett and Mr. Justice Madgavkar in *Kasamkhan v. Kaji Abdulla* (1925) 28 Bom. L.R. 49 went a little further than, what was decided in *Jamal walad Ahmed v. Jamal walad Jallal*. In the case before them the plaintiff sued for a declaration that as a hereditary Kazi he was entitled to exclusively officiate at marriage contracts, funeral rites and other religious functions amongst the Mahomedan communities of Pawas and he complained that the defendant, who was not a Kazi, had officiated at certain marriages. Mr. Justice Fawcett in delivering the main judgment of the Court took the view that a custom by which certain Kazi families hereditarily officiate as the Kazis of a village was invalid as being opposed to Mahomedan Law, so far as any claim to hereditary and exclusive right to officiate as Kazi at marriage contracts, divorces and religious ceremonies was concerned, and he points out that the Mahomedan Law does not regard the office of Kazi as hereditary, that is to say, no person can claim to be a proper Kazi merely because he is the son or other descendant of a previous Kazi.

3. The only authority on which Mr. Patwardhan can rely is a decision in *Sattappa v . Mahomedsaheb* (1935) 38 Bom. L.R. 221. In that case the question really under the Watan Act did not arise at all. The Court was merely construing a sanad issued to the Kazi by which the inam lands given to him were made inalienable. Mr. Justice Tyabji, who heard the second appeal, has gone very carefully through the whole history of the office of the Kazi and the various texts in Mahomedan Law. From his judgment there was a Letters Patent Appeal to Mr. Justice Broomfield and Mr. Justice Macklin, and Mr. Justice Broomfield in his judgment at p. 241 points out that a Kazi now does not hold any judicial office but merely discharges the functions of a religious officiant, and he expresses the opinion that the position in law that the office of a Kazi is not hereditary may not be now incontrovertible. With great respect to the learned Judge it is not upon the fact that the office of a Kazi is a judicial office that the principle of Mahomedan Law is based, namely, that that office should not be hereditary ; it is

the right of every Mahomedan to select such person as he likes for discharging certain religious duties in connection with marriages, divorces or funeral ceremonies; and I entirely agree with the view taken by Mr. Justice Fawcett in *Kasamkhan v. Kaji Abdulla* that it is contrary to the fundamental principles of Mahomedan Law to suggest that the office of a Kazi can be hereditary. I, therefore, hold that the office of a Kazi is not a hereditary office and therefore it does not fall within the meaning of the Watan Act.

4. There is a further difficulty in the way of Mr. Patwardhan. Even assuming that the office of a Kazi was hereditary, it must be an office which must be held for the purposes of the duties mentioned in Section 4 of the Watan Act. According to Mr. Patwardhan, the particular duties which a Kazi discharges are duties connected with matters of civil administration. Now if Mr. Justice Broomfield is right that all that a Kazi does is to discharge the functions of a religious officiant, then I fail to see how a Kazi discharges any duties with regard to matters of civil administration. Marriages, divorces and funerals are matters of vital interest to the subject or the citizen. They are not matters of civil administration in which the Government as a Government is interested; and this view finds support in the observations of Sir Charles Farran, Chief Justice, in *Yesu v. Sitaram* ILR (1896) 21 Bom. 733 There the learned Chief Justice was construing the meaning of the expression "hereditary office" as appearing u/s 4 of the Watan Act; and he says in his judgment (p. 737):

The duties with which the section deals appear to be confined to duties in which Government as being responsible for the administration of the country is directly interested. The definition does not appear to us to extend to these duties, which, though useful to the village community, are not matters with which Government has any direct concern.

In that case Sir Charles Farran, Chief Justice, and Mr. Justice Strachey held that the definition of "hereditary office" did not extend to duties of a village carpenter. In my opinion a Kazi, though he may discharge duties which are useful to persons living in a particular village of which he is the Kazi, does not discharge any duties in which Government as being responsible for the administration of the country is directly interested. I, therefore, hold that the office of a Kazi is not an office held for the performance of duties referred to in Section 4 of the Watan Act.

5. Mr. Patwardhan concedes that if I hold that the Watan Act does not apply, then the order of the District Deputy Collector of Satara is bad inasmuch as he purported to act under the Watan Act.

6. The appeal, therefore, fails and must be dismissed with costs.