(1982) 01 DEL CK 0017

In the Delhi High Court

Case No : Letter Patent Appeal No. 106 of 1971

Ratish Kumar Aggarwal and Others APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 04-01-1982

Acts Referred:

Citation : (1982) 3 DRJ 142

Hon'ble Judges : Leila Seth, J;A.B. Rohtagi, J

Bench : Division Bench

Advocate : S.L. Bhatia, P.N. Sethi and B. Dayal, for the Appellant;

Judgement

(1) The property is a Dal Mill. This property was purchased in 1908 by one Shri Ram and two other persons Mohammad Ahmad and Savaid Hussain (hereafter referred to as ''the Muslim owner''s). Shri Ram had 1/2 share in the said property. The Muslim owners had the other half. Shri Ram died leaving behind a son Balram. On Jan. 6, 1925, the property was petitioned between Balram and the Muslim owners. After partition, the Muslim owners, created a Wakf-ul-Aulad in respect of the portion of the property that fell to their share. A deed of Wakf dated 6/3/1925, was executed. It was registered on 7/3/1925. The founder appointed mutawallia in the Wakfnama. Under the deed there are a number of beneficiaries who are entitled to receive income from the Wakf property.

(2) On the partition of the country in 1947, the mutawallis migrated to Pakistan. They became evacuees. The Wakf property u/s 11 of the Administration of Evacuee Property Act, 1950 (''the Act'') vested in the Custodian. With the consent of the Deputy Custodian General, U.P., Lucknowthe property was sold to the appellants. A sale deed dated 8/2/1960, was executed by the Custodian in their favor for a total consideration of Rs. 57,004.80 paise.

(3) After the sale, it was brought to the notice of the authorities under the Act that the property had wrongly been sold. The Deputy Custodian General, by order dated 6/12/1981 set aside the sale. He ordered refund of the purchase

price. From his order the appellants, who are the purchasers of the property, brought a writ petition in his Court. The learned single Judge upheld the order of the Deputy Custodian General setting aside the sale. His decision is reported as 0m Prakash v. Union of India, I.L.R.(1971) (1) D. 780. From his order the purchasers have brought this appeal under clause 10 of letters patent.

(4) There is a special provision with respect to trust properties in the Act. This is Section 11. This reads :

"11.(1) Where any evacuee property which has vested in the Custodian is property in trust for a public purpose of a religious or charitable nature, it shall be lawful for the Central Govt. notwithstanding anything contained in the instrument of trust or any law for the time being in force, to appoint by general or special order, new trustees in place of the evacuee trustees and the property shall remain vested in the Custodian only until such time as the new trustees are so appointed and pending the appointment of such new trustees the trust property and the income thereof shall be applied by the Custodian for fulfilling ,as far as possible, the purpose of the trust. (2) In respect of any Wakf-alal-aulad,-(a) where the mutawalli is an evacuee, the property forming the subJect matter of the wakf shall vest in the Custodian subject to the rights of the beneficiaries under the wakf, if any, who are not evacuees. (b) where not all the beneficiaries are evacuees, the rights and interests of such of the beneficiaries as are evacuees shall alone vest in the Custodian".

(5) The real question for decision is whether the Custodian, had the power to sell the property which was the subject-matter of Wakf. (In the present case the mutawallis and most of the beneficiaries have migrated to Pakistan. In this case the object of the settler was to create a family settlement in per petuity. The income of the Wakf property is to be applied for the benefit of the settlor''s descendants from generation to generation. There is trust in favor of the charity also as Darul Ulam, a religious and charitable institution, is one of the beneficiaries, now charity never dies. So it can safely be concluded that the legislature never contemplated sale of the Wakf property. For such a sale will mean the extinction, of primary object of the wakf which is the a aggrandizement of the family.

(6) Then there is the charity. Derul Ulum is a beneficiary under the wakf. Now it cannot be said that Darul Ulum gave their consent to the sale. It is true that they made an offer to purchase the property and later on withdrew that offer. That does not mean that they consented to the sale. In our opinion the Deputy Custodian General and the learned Judge were right in taking the view that the Custodian had no power to sell the property.