

(1994) 07 SC CK 0034

In the Supreme Court Of India

Case No : Civil Appeal No. 4920 of 1994 (Arising out of S.L.P. (C) No. 10070/93)

Salimbhai Mukhtar Jafarbai and Others

APPELLANT

Vs

Amiruddin and Others

RESPONDENT

Date of Decision : 21-07-1994

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 26

Citation : (1994) 5 JT 441 : (1994) 3 SCALE 463 : (1994) 3 SCC 38 Supp

Hon'ble Judges : M. N. Venkatachaliah, C.J; S. Mohan, J; R. M. Sahai, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. The appellants are the followers of Maulana Malak Saheb who established a separate sect in 1892 or thereabout. The said Maulana Malak Saheb established a trust called Mehdibagh Trust in 1894. Disputes arose as to the registration of this Trust. An application under the M.P. Public Trust Act, 1951 (M.P. Act of 1951, hereinafter referred as 'the Act') was filed before the Register of Public Trust for registration. The Registrar held that it was not a public trust. However, no formal entry in that regard came to be made. The father of the present appellant along with three others filed a civil suit No. 143/67 to set-aside the findings of the Registrar. By a judgment dated 30.9.1986, a finding was recorded that a document of 1894 did create a public trust. Contemner Amiruddin and the Deputy Charity Commissioner, Nagpur for taking action u/s 26 of the Bombay Public Trust Act to make an entry of the trust property in the registered public trust. Accordingly an entry was made by the Deputy Charity Commissioner.

3. The respondents initiated contempt proceedings before this Court in Contempt Petition No. 178 of 1990 on the ground that the Deputy Charity Commissioner and the appellant No. 1 have committed contempt of this Court's order dated 22.8.1986 in Civil Appeal No. 498 of 1964. This Court, by its order dated

12.2.1991, held that this was not a case of contempt. However, in order to safeguard the rights of the trust, it was just and proper to appoint the first respondent as Receiver of all the Trust Property who was directed to render true and correct accounts in respect of trust property. Should any difficulty arise, the Receiver was set at liberty to approach the District Court. Instead of so approaching, the first respondent filed an application before this Court which was dismissed on 16.9.1992. The extension of time was granted for readiness of accounts,

4. The first respondent submitted accounts for the period 1.1.1991 to 39.9.1991. In the said accounts, he submitted that he had received an income of Rs. 51/- per annum as rent. As against this, the expenditure was shown as Rs. 2925/- towards the maintenance of properties and other electricity charges as Rs. 116.80/-. A balance of Rs. 509.20/- was shown. In view of this, appellant No. 1 filed an application for contempt. This Court directed the parties to approach the District Court for appropriate order. Accordingly, the District Court was approached for a clarification as regards the extent of trust properties. The District Court came to the conclusion that all the properties mentioned in Exh. -249 are the trust properties. On this basis, a directive was issued calling upon the Receiver to render accounts of all the properties mentioned in Exh. 249 within a period of one month.

5. Aggrieved by this order, the respondents filed Civil Revision Application No. 497 of 1993 in the High Court of Bombay, Nagpur Bench. The said Civil Revision Application was posted for admission on 16.6.1993. The High Court passed the impugned order which reads as under:

Rule returnable early. Interim stay as prayed.

6. The main argument before us centers on the question whether by the grant of interim stay, the High Court has virtually enabled the Receiver to be relieved of the obligation of rendering the accounts.

7. Mr. Harish Salve, learned Counsel for the appellants would urge that the effect to stay is virtually to defeat the directions issued by this Court to the Receiver requiring him to render proper accounts. When this Court directed with regard to the identification of properties, the parties were at liberty to approach the District Court. Armed with that liberty, the District Court was moved. It has identified that the trust properties are the ones covered by Exh. 249. Under those circumstances, in a civil revision petition, the maintainability of interim stay is doubtful. The High Court ought not have granted stay. Therefore, the order is liable to be set aside.

8. In opposition to this, Mr. A.M. Khanwilkar, learned Counsel for the respondents would submit that there has not been an adjudication as to the scope of Exh. 249. On the contrary, the parties have all along proceeded with the extent of property which was only 3.16 acres. The observations of the Trial Court in respect of formation of trust were extremely limited to Exh. 554 which was a

deed of 1894 in respect of only 3.16 acres. No other property was mentioned in Ex. 554. Where, therefore, the Receiver is called upon to account in relation to properties which do not belong to the trust, the grant of stay is fully justified.

9. In view of the nature of a controversy raised before us, the proper course would be to request the High Court to dispose of Civil Revision Application No. 497 of 1993 at a very expeditious level. We will greatly appreciate if the matter is disposed of within three months from the date of this order. At the time of hearing in High Court, it is open to the appellants to raise the preliminary point as to the maintainability of the stay and also as to the extent of properties belonging to the trust; whether there was an adjudication on Ex. 249 and Ex. 554. While deciding this, the High Court may have regard to the various orders passed by this Court from time to time. With these directions, this civil appeal is disposed of.