

(1980) 01 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No's. 4485, 4491 and 6823 of 1977

Shah Mansur Peer Dargah and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Waqf Act, 1954 — Section 25, 25 (8), 27, 27 (1)

Citation : AIR 1980 Kar 118 : (1980) 1 KarLJ 469

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : A.V. Albal and Yashoda Rao, for the Appellant; Murlidhar Rao and G.M. Seshagiri Rao, for the Respondent

Judgement

1. In these petitions under Art. 226 of the Constitution, the petitioners have challenged the order dated 28-4-1977 of the Administrator, Karnataka Board of Wakf (hereinafter referred to as "the Board") in Case No. LCC 40-3-M (Exhibit E in W. P. No. 4485 of 1977). As the challenge of the petitioners in all these cases is directed against one and the same order of the Board, I propose to dispose of them by a common order in the course of my order, I will refer to the documents produced by the petitioners in Writ Petition No. 4485 of 1977.

2. An ancient Dargah called as "Shah Mansur Peer Dargah of Bilgi" District Bijapur (hereinafter referred to as "the Wakf") endowed with various properties had been registered as a public trust under the provisions of Bombay Public Trust Act of 1950 (Bombay Act No. XXIX of 1950) (hereinafter referred to as the "Bombay Act") (Exhibit C). The uniform Wakf Act of 1954 (Central Act No. 29 of 1954) (hereinafter "referred to as "The Act") was extended to the erstwhile State of Mysore from 15-1-1955. In Notification No. GSR 1431 dated 20-11-1961, the said Act was extended to the remaining parts of the new State of Mysore, now called as Karnataka with effect from which date, the Bombay Act in so far as it related to Mussalman Wakfs, stands repealed (vide S. 69(2) of the Act). S. 30

of the Act provides for continuance of registration of a wakf made under the corresponding provisions of the Act and declares it as a registration made under the Act. Notwithstanding the same, the District Wakf Committee, Bijapur, an authority subordinate to the Board, has registered the Wakf under Ss. 25, 26 and 30 of the Act on 23-2-1967 (Exhibit D) showing the particulars of properties and recognising the second petitioner in Writ Petition No. 4485 of 1977 and six others as its muthavallis.

3. On 16-2-1967, respondent NO. 3 filed an application in the prescribed (Contd. on Col. 2) form before the Board for registration of a Sunni Wakf called "Jalal Buqari Trust Shingnapur, taluk Gokak, District Belgaum". In Column No. 7 of the said application viz., name of the Muthavalli, occupation and address, respondent No. 3 claims to be the "Sajjada and Chairman of the Trust". In statement "A appended to the said application, respondent No. 3 stated that an extent of 23H acres 17 guntas of lands detailed therein, some of which had been registered as the properties of the wakf, were the properties of the wakf Without a full and proper publication of the said application made by respondent No. 3 or an enquiry thereto, the Board by its order dated 28-4-1967, allowed the said application made by respondent No. 3 and issued a certificate of registration on 5-10-1968, the validity of which was challenged by the petitioners and others before this Court in Writ Petitions Nos. 4454 of 1968, 443, 799 and 4375 of 1969. By orders made on different dates, this court allowed the said writ petitions and directed the Board to notify the substance of the application made by the respondent No. 3 and dispose of the same in accordance with law. In compliance with the orders of this Court, the Board notified the substance of the said application on 23-11-1970 in these terms and invited objections.

"THE MYSORE STATE STATE BOARD OF WAKFS

No. 6, Cunningham Road, Bangalore, 23rd November, 1970.

NOTIFICATION

It is notified that the undermentioned Inam lands belonging to under noted Institutions are to be registered as wakf properties in the name of the Dargah with Sri Syed Shah Waliuddin Qadri as Sajjada Muthavalli and Chairman, Jalal Buqari Trust,

District Belgaum

Taluk Gokak.

1 . Dargah Mazrath Syed Shah Jalal S. No. 1 to 82 and also alluvial land Buqqari Hissamuddin Peer, Village measuring 2053 acres and odd situation at village Shingnapur. Shingnapur Taluk Gokak, Dist, Belgaum. District Bijapur Taluk Bilgi. 2. Dargah Hazrath Syed Shah Mansur Peer. (a) Village- Bilgi S.Nos. 264, 260, 26, 271, 269 and 272 acres and 13 guntas. (b) Village Bargandi S. Nos. 53, 52, 1, 125, 126, 138, and 13 acres and 11 guntas. (c) Village Anagwadi S. Nos. 121, 122, 142 and 143-94 acres 9 guntas.

Total: 2384 acres and 27 guntas. 2. Under the provisions of S. 25 of the Wakf Act, the present cultivator tenants of the said Inam lands are intimated that they may offer their grievances and objections, if any, by appearing before the Mysore State Board of Wakfs, Bangalore, In person or through their pleader with documentary evidence within one month from the date of the publication of this notice.

3. After expiry of the time limit, no further time shall be given and the process of registration as specified in pars I above shall be completed forthwith according to the provisions of the Wakf Act of 1954.

This notice has been published under my signature and office seal.

Sd/- x x x (K. M. ABDUR RAHIM KHAN) Secretary."

In response to the said notification, the petitioners in Writ Petitions Nos. 4485, 4491 of 1977 and the father of the petitioner in Writ Petition No. 6823 of 1977 and several others filed objections, opposing the application made by respondent No. 3 principally on the grounds that the same was barred by time and that there was no wakf as claimed therein. As by the time, the enquiry would be completed by the Board, some of the original objectors like Gopalrao Kelkar, father of the petitioners in Writ Petition No. 6823 of 1977 had died. But, however, the Board proceeded with the enquiry at which only respondent No. 3 appeared and participated, while all the objectors remained absent. On a consideration of the evidence placed by respondent No. 3, the Board by its order dated 28-4-1977 (Exhibit E) rejected the objections filed by the petitioners and others on the ground that they had not produced any documentary evidence in support of their case and substantially accepted the case of respondent No. 3. By the said order, the Board directed that various properties referred to therein be registered as Wakf Property in the name of Jalal Buqari Trust and that respondent No. 3 be recognised as the muthavalli of those properties.

4. The first petitioner in Writ Petition No. 4485 of 1977 is the wakif and the second petitioner is its muthavalli. The petitioner in Writ Petition No. 4491 of 1977 claims to be the owner in possession of Sy. No. 50/2 measuring 7 acres 29 guntas of Singnapur village. The petitioners in Writ Petition No. 6823 of 1977 claim to be the sons of Gopalrao Kelkar, who had filed objections but died on 22-9-1976. They claim to own and possess Sy. No. 3/1 measuring 6 acres 8 guntas of Singnapur village.

5. While issuing rule nisi in these cases, this court has stayed the operation of the impugned order on 1-9-1977 which has continued to be in force ever since then.

6. The Board, which is respondent No. 2 in all these cases, in a common return has supported the impugned order and has urged that the petitioners have an alternative remedy of a civil suit and therefore, these are not fit cases for interference under Art. 226 of the Constitution. In separate but identical returns,

respondent No. 3 has supported respondent No. 2.

7. Sri A. V. Albal, learned counsel for the petitioners at the forefront contended that the application made by respondent No. 3 for registration, which was not made within three months from the date of the commencement of the Act or the creation of the Trust as provided by sub-section (8) of S. 25 of the Act was barred by time and was not maintainable and the order made thereto was wholly without jurisdiction.

Sri Murlidhar Rao, learned counsel for respondent No. 2 and Sri G. N. Seshagiri Rao, learned counsel for respondent No. 3 without disputing the factual assertion of the petitioners, urged that S. 25 (8) of the Act was not mandatory and was only a directory provision and the impugned order does not call nullification on that ground. In support of his contention Sri Murlidhar Rao, strongly relied on the principles enunciated by the Supreme Court in determining the mandatory or directory nature of the provisions and its consequences that came before it in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, ; *Prakash Chand Maheshwari and Another Vs. The Zila Parishad, Muzaffarnagar and Others*, , *Mansoor Khan and Others Vs. State of U.P. and Others*, and *Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others*, . Sri Murlidhar Rao, while so justifying the order of the Board, also contended that the decision of the Board was not conclusive and "the petitioners have an alternative remedy of filing a civil suit to establish their rights and, therefore, this court should decline to exercise its extraordinary jurisdiction under Art. 226 of the Constitution. In the event of my accepting the latter contention of Sri Murlidhar Rao the question of examining the merits of the cases will not arise I first propose to examine the same.

9. Earlier I have referred to the nature of the application made by respondent No. 3 and also the nature of the order made by the Board. The fact that the decision of the Board, assuming that the same has been made exclusively under sub-section (1) of S. 27 of the Act, can be challenged before a Civil Court by an aggrieved person, does not necessarily exclude the jurisdiction of, this court to examine its validity under article 226 of the Constitution. Secondly the questions raised in these petitions do not involve a detailed investigation into the nature of the rights, recording of evidence, consideration of such evidence and a decision thereon by this court. Lastly, the facts necessary to determine the question that are urged for the petitioners are not even disputed by respondents 2 and 3. In these circumstances, this court will not be justified in refusing to examine the case of the petitioners and drive them to civil suit. For these reasons, I reject this contention of Sri Murlidhar Rao and proceed to examine the contention of the petitioners on merits.

10. In deciding whether a provision is mandatory or directory it is well to remember the oft-quoted statement of Lord Campbell in *Liverpool Borough Bank v. Turner* (1861) 30 LJ Ch 379 (at pages 380 and 381) that "no universal rule can be laid down as to whether mandatory enactments shall be considered

directory only or obligatory with an implied nullification for disobedience. It Is the duty of Courts of Justice to try to get at the real intention of the legislature by careful attending to the whole scope of the statute to be considered". Crawford in his treatise on "Statutory Construction" states the same in these words:

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other."

In *State of U.P. Vs. Manbodhan Lal Srivastava*, , the Supreme court has quoted the above passage with approval. In *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, , the supreme Court has reiterated the above principles. The use of the word shall in, a provision raises a presumption that such a provision is imperative or mandatory though the same is not decisive (vide *Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan*, In every case, the fixation of a period of limitation is to some extent arbitrary and results in hardship. But, in construing such provisions equitable considerations an entirely out of place and the strict grammatical meaning of the words is the only safe guide (vide AIR 1932 165 (Privy Council) *General Accident etc. v. Janmahomed* AIR 1941 PC 61 and *Bootamal Vs. Union of India (UOI)*, It is in the light of these well settled principles, we have to examine whether sub-section (8) of S, 25 of the Act prescribing a period of limitation for making an application for registration, is an imperative provision or a directory provision.

11. S. 30 of the Act provides for continuation of registration of wakfs made under the corresponding provisions of the Act. S. 31 saves the earlier registrations and ensures their continuity and administration by the Board. On the application of the Act to a State or an area, Chap. 11 of the Act empowers the State Government to appoint a Commissioner of Wakfs for making a survey of wakf properties and their registration in (the manner provided in that Chapter, the scope of which has been authoritatively decided by the Supreme Court in *Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others*, S. 25 of the Act provides for registration of wakfs created on or after the commencement of the Act. Sub-section (8) of S. 25 of the Act provides for the filing of an application within a period of three months from the commencement of the Act or within a period of three months from the date of the creation of a new wakf. S. 27 of the Act empowers the Board to collect information regarding any property that has not been registered either in the survey or in the earlier registrations and decide whether they are wakf properties or not. S. 28 of the Act, authorises the Board to direct a muthavalli to apply for the registration of a wakf or direct him to supply any information regarding a wakf or may itself cause the wakf to be registered or at any time amend the register of wakfs. An examination of these provisions reveal that every possible contingency to register a wakf and any of

its properties has been visualised by the legislature and extensive and suo, motu powers have been conferred on the Board to remedy every situation. By construing S.25 (8) of the Act, as mandatory, no injustice hardship or inconvenience is caused to the Board, but the object of the statute will be furthered and will be achieved. An examination of the provisions of the Act, their scope, object and the consequences that would ensure, the only conclusion that can be drawn is that sub-sec (8) of S.25 of the Act is an imperative or mandatory enactment and is not a directory enactment as conclusion, it follows that the application made by respondent No. 3 which was admittedly barred by time, in the absence of any provision for condonation of delay in the Act, could not have been entertained by the Board and any relief granted on the said application, but the Board in doing so, has committed an error of jurisdiction and illegality apparent on the face of the record and its order is therefore, liable to be quashed.

12. A close examination of the application made by respondent. No. 3, appears to bring certain Properties as the Properties of the wakf and is not intended to register a wakf as styled in that application. Even, the impugned, order would show that the Board has proceeded to deal with the same on that footing and has included various properties as wakf properties in addition to recognising respondent No. 3 as the muthavalli of the wakf. If any of the properties are not included in a wakf that is already registered, the proper course for the Board is to collect such information under S. 27 of the Act and after making such enquiry as it may deem fit, decide that question in accordance with Sections, the Rules and the principles of natural justice. In deciding that question, it is open to the Board to rely on any information furnished by any person or any authority. The power conferred on the Board by S. 27 of the Act is a suo motu power to be exercised by the Board and cannot be exercised on an application made by S. 25 (8) of the Act.

In this view also, the application made by respondent No. 3 was not maintainable.

13. As I have reached the conclusion that the application made by respondent Sec No. 3 was not maintainable and the consequent order made by the Board was without jurisdiction and illegal, it is unnecessary to examine the other contentions urged for the petitioners.

14. In the light of my above discussion, I quash the impugned order. Rule issued is, therefore, made absolute. But, this order does not prevent the Board from exercising any of its suomotu powers under the Act in accordance with law.

15. In the circumstances of the cases, I direct the parties to bear their own costs.

16. Rule made absolute.