

(1981) 03 CAL CK 0004
In the Calcutta High Court
Case No : C.R. No. 173 (W) of 1977

Sri Sri Iswar Basanti Durga Debi

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 12-03-1981

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 14(1)(a), 14(M)(1)(e), 14J, 14M, 14M(5)

Citation : 85 CWN 485

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : Saktinath Mukherjee and Himadri Sankar Majumder, for the Appellant; Sadhan Gupta, R.C. Bose, Rathindranath Bhaduri and K.N. Inha, for the Respondent

Judgement

M.N. Roy, J.—The Deity Sri Sri Iswar Basanti Durga Debi (hereinafter referred to as the said Deity), is represented through her shebait, Sri Siddhewar Panda. The said Deity has claimed to have owned and possessed 27.88 acres of agricultural lands, situated within non-irrigated areas. It has also been stated that the name of the said Deity was duly recorded in the record of rights, as prepared under the West Bengal Estate Acquisition Act, 1953 (hereinafter referred to as the said 1953 Act). The said Deity has further stated to have retained, lands upto the prescribed ceiling under the said 1953 Act. It is the case of the said Deity that in 1953, enquiries were held with regard to the entry and Debutter character of the properties, by the Revenue officer concerned, for ascertaining whether the said Debutter or the properties of the same, were absolute Debutter and were used for religious purposes and after necessary enquiries, the answer was in the affirmative.

2. The said Deity has further stated to have filed a return in Form 7A of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the said 1955 Act), as she did not possess lands more than the prescribed ceiling retaining 27.38 acres of lands. On the basis of the said return, the Revenue officer concerned, issued a

notice and directed the petitioner to produce the relevant records, for determining the ceiling. It has been alleged that the said officer, upon misinterpretation of the provisions of the said 1955 Act. passed illegally, an order vesting the Debutter properties, holding inter alia amongst others, that the usufructs of the properties, were not at all spent or used for the benefits of the public or for any charitable purposes and the public were not interested in the management of the same and as a result of such finding, the properties of the said Debuttar were considered as the properties of the Shebait, in calculating his ceiling limit. It has also been contended that the officer concerned applied wrong tests and acted illegally and with material irregularities, in calculating the members of the family, apart from the fact that the said officer was also wrong in holding that the said Deity was not in possession of the lands in question. It has also been claimed that the officer concerned misinterpreted the provisions of sub-section (5) of section 14M, which provides that the lands owned by a trust of endowment deemed to be lands owned by the beneficiaries under the trust or endowment and each such beneficiary shall be deemed to a raiyat under this Act to the extent of the share of his beneficial interest in the said trust or endowment. It has also been claimed that the officer concerned was wrong in holding that the Shebait of the said Deity was a Raiyat in respect of the concerned Debuttor properties. It has also been claimed that the beneficiary viz the said Deity in this case and not the Shebait, should have been treated as a Raiyat, in the matter of determining the ceiling limit and calculation on any basis, other than as mentioned above, was wrong and improper. It was the specific submissions that under the provisions of the said 1955 Act, each beneficiary i. e. the said Deity in this case, should have been treated as a Raiyat and as such, she was entitled to hold and retain properties of her own and upto her separate ceiling limit and that too in terms of the endowment. As such, it has also and further been claimed that the act or action of the officer concerned in vesting all the properties of the said Deity and also those of the petitioner as one which he retained as his own, was illegal, void malafide, arbitrary and bad, apart from being in violation of the provisions of section 14M (5).

3. The Respondents, in their affidavit-in-opposition dated 23rd December 1978, as filed through Shri Anukul Patra, the special Revenue officer, Grade II, have stated that the shebait of the said Deity viz Siddheswar Panda, submitted a return in Form 7A, in the name of the said Deity, for retention of 27.88 acres of lands. As such, the connected case was initiated to determine the ceiling, as would be applicable to the said Deity, on enquiring the nature of the Debuttor. In fact, it has been stated that on such enquiry, the Debuttor was found and determined to be other than public. It has thus been stated that in view of the above under sub-section (5) of section 14M of the said 1955 Act, the Debuttor property was taken into account, in calculating the ceiling of the Shebait, as beneficiary to the extent of 16 annas. The deponent has stated that on the basis of such determination, the properties of the Shebait were found to be holding 11.07 acres in secular capacity and 25.71 acres as Debuttor property.

4. It has also been stated that the family of the Shebait consisted of 6 members and as such, he was entitled to retain 5.50 standard hectre of lands or 19.03 acres, as they were situated in a non-irrigated area. So, it has been stated that the Shebait had 17.75 acres of surplus lands and thus, he was directed to exercise his choice of retention of 19.03 acres of lands, out of the Debutter and his secular properties. It has been stated that no such choice was exercised and as such, he was allowed to retain 19.03 acres of lands and the surplus lands as mentioned above, were vested. The determinations as above, have also been claimed to have been duly made in a proceeding u/s 14T and 14M(5) .

5. Mr. Mukherjee, appearing in support of the Rule, contended that the said Deity, not only in view of the terms of the endowment but also in view of the provisions of sub-section (5) of section 14M of the said 1955 Act, was entitled to have and retain separate ceiling of lands or lands other than those of the Shebait and the tagging of properties belonging to the said Deity under the endowment with those of the properties of the Shebait, was improper, void, irregular, apart from being without jurisdiction and authority. On the basis of the determinations in the case of *Vidya Varathi Thirtha v. Balusami Ayyar* L.R. 48 I. A. 302, Mr. Mukherjee contended that the said Deity, and not her Shebait in the facts of this case, should have been treated and considered to be the beneficiary and as such also, she was entitled to the benefits u/s 14M (5). In the case as cited above it has been observed that the endowments of a Hindu math are not "conveyed in trust", nor is the head of a math a "trustee" with regard to them, save as to specific property, proved to have been vested in him for a specific object. On a reference to above and in the basis of the decision, it was claimed by Mr. Mukherjee that both the said Deity and her Shebait, would thus in the facts of this case, be entitled to separate ceilings.

6. Mr. Gupta, appearing for the Respondents claimed that sections 14 (M) (1) (e) and 14M (5) must be read and construed together and if such construction is made, then in the case of any other raiyat i.e. rayats other than those mentioned in section 14(1) (a) to (d), the ceiling limit would be 7.00 standard hectares. Mr. Gupta also contended that if the endowment in question is not of a public nature, then the lands should be counted towards the share of the beneficiary viz, the shebait in this case and not the said Deity and the real beneficiary was not the said Deity but her Shebait. Mr. Gupta submitted that in view of the provisions in section 14J, Which lays down that the provisions of chapter II B shall have effect, notwithstanding any thing to the contrary contained elsewhere in the said 1955 Act or in any other law for the time being in force, the determinations in the case of *Vidya Varathi Thirtha v. Balusami Ayyer* (Supra), will have no application in this case. Mr. Gupta claimed that the beneficiary, when ascertained, would be a private endowment and when such beneficiary is unascertained then the same would be a case of public one. In fact, it was claimed that the above is and should be the test for finding out the true nature and character of the endowment. In support of the above submissions, reliance was placed on the determinations in the case of *Deoki Nandan Vs. Murlidhar* . In that case, it has

been observed that the distinction between a private and public trust is that whereas in the former, the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former, the beneficiaries are persons, who are ascertained or capable of being ascertained, in the later they constitute a body which is incapable of ascertainment. A religious endowment must, therefore, be held to be private or public according as the beneficiaries thereunder are specific persons or the general public or sections thereof, In that case, it has also been observed that under the Hindu law, an idol is a juristic person capable of holding property and the properties endowed for the institution, vest in it. But, it does not follow from this that it is to be regarded as the beneficial owner of the endowment. It is only in an ideal sense that the idol is the owner of the endowment properties and it cannot have any beneficial interest in the endowment. It was the specific submissions of Mr. Gupta that endowment in this case, was thus a private one and as such, the lands covered by the same, could be encountered u/s 14M (5) with that of the Raiyat viz the Shebait in this case.

7. Apart from the Supreme Court case as mentioned above, Mr. Gupta referred to the decision in the case of Moti Das Vs. S.P. Sahi, The Special Officer In Charge of Hindu Religious Trusts and Others, . In that case, it has been observed that the exact legal position of a shebait, may not be capable of precise definition, but its implications are fairly well established. It is now settled that the relation of a shebait in regard to debuttar property, is not that of a trustee to trust property under the English law. In view of the above and the tests as laid down in the case of Deoki Nandan v. Murlidhar (Supra), Mr. Gupta contended that the admitted fact that the said Deity was a family idol, would also show and establish the endowment to be a private one.

8. Mr. Mukherjee of course admitted and argued that the character of the endowment in this case was of a private nature, but he claimed that the Court will have to find out and answer, who is the real owner. In support of his contentions, as mentioned above, he also relied on the determinations in the case of Sri Sri Iswar Saradiya Durga Thakurani v. The Revenue Officer, 1981 (1) C.H.N. 178. In this case, it has been observed that when a property is absolutely dedicated to the Deity the same would belong to the Deity and the usufructs therefrom are to be utilised solely for the purposes connected with the shevapuja of the deity and ancillary functions. As a Shevak, the shebait should be entitled for its maintenance out of the Debuttar properties, so long he continues to remain as a shebait, but for such benefits he cannot be held to be a beneficiary or trustee as contemplated in section 14M of the said 1955 Act. In the case, it has further been observed that in such circumstances, it would not be proper to adopt Debottar properties as the personal properties of the Shebait and to determine the ceiling of the shebait by adding the Debottar properties to his personal properties.

9. A debutter, may either be absolute or partial. Where the dedicator dedicates in

favour of an idol and such dedication covers the entire beneficial interest, which he had in the property, the dedication and the Debuttor would be absolute. But the position would be otherwise, if the dedicator retains some property or pecuniary right or interest in the property, so dedicated. In terms of the observations in the case of *Nabi Shirazi v. Province of Bengal*, ILR (1942) Cal 211, the essential distinction between a public and private trust would be that in case of private trusts, the beneficiaries are definite and ascertained individuals or these persons who within a definite time can be appropriately ascertained, but in case of a public trust, the beneficial interest should be vested in an uncertain body or persons viz either the public at large or some considerable position of the same, answering a particular description. Whether a trust is public or private, should be decided in the facts and circumstances of each case, with reference to the terms of the dedication and the manner and the treatment of the same. This, of course, would be a case where any document is available and in case of absence of document or ambiguity in the language of the same, tests would be to infer such, which could be legitimately drawn from the evidence available or as adduced with regard to the actual user, enjoyment or the treatment of the properties. The essence of a public endowment as observed in the case of AIR 1940 7 (Privy Council) , Consists in dedication to the public and whether there has been any dedication or not, must be ascertained with reference to the circumstances of each case.

10. A Debutter like any other endowment, may either be public or private. By public trusts must be understood such trusts as are created for the benefit of the public at large or of a considerable section of the same, answering a particular description, while private trusts concern only individuals or families. The distinction between private and public trust has been laid down by the Supreme Court in the case of *Deoki Nandan v. Murlidhar* (Supra), the particulars whereof have been reproduced hereinbefore. But it is certain that when no express dedication is proved, the character of the endowment must always be a case of legal inference from proved facts or the circumstances as mentioned hereinbefore. As pointed out in *Mukherjea's Hindu Law of Religions and Charitable Trusts* (Fifth Edition), that the user by the public, conduct of the founder and his descendants would also be relevant, and if they, in fact, held out the temple to be a public one, a strong presumption of dedication would arise. The use of or by the public, would be a greater factor or importance, for the purpose of finding out the nature and character of the endowment. The fact, that by long uses and acceptance the public were visiting the property as endowed or enjoying the same, would also create a strong presumption as observed in the case reported in *Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas and Others*, , which incidentally was the determinations on public temples, against a private character. This apart, there are other characters, which would be relevant and material for the purpose of establishing a public nature or the public character of the endowment. In the cases of *Ganga Dhar vs. Commissioner, Hindu Religious Endowments* (1973) 31 cut. L.J. 283, the various factors,

necessary for considering whether a temple is private or public, have been illustrated those illustrations, in my view, would also be appropriately applicable in case of the endowment of the present nature. The line of distinction between a public purpose and a purpose which is not so, is very thin and technical and as observed in Hindu Law Religious and Charitable Trust (Fourth Edition) is difficult of an easy definition while on this point, Tudor on Charities; (Fifth Edition), wherein the principles as summed up : "If the intention of the doner is merely to benefit specific individuals, the gift is not charitable, even though the motive of the gift may be to relieve their poverty or accomplish some other purpose with reference to those particular individuals which would be charitable if not so confined; on the other hand, if the doner's object is to accompanise the abstract purpose of relieving poverty, advancing education or religion or other purpose charitable within the meaning of the Statute of Elizabeth, without giving to any particular individuals the right to claim the funds, the gift is charitable," would be of relevant consideration. As mentioned hereinbefore, whether the trust public or private, would have to be decided in each case with reference to the terms of the document, if any, apart from the way and manner in which the same is treated. The considerations or the tests as laid down in the case of Deoki Nanda vs. Murlidhar (Supra), which incidentally is the law of the land as laid down by the Supreme Court of India, must and should be followed.

11. It has been observed in the proceeding and that too on the basis of the evidence as adduced and available that the deed in question was executed on 3rd August 1953 and the same was registered on 7th August 1953 and the executor of the same viz Gajendra Nath Panda died on 12th September 1953. The said Shri Panda, while alive managed the worship of the said Deity, out of the income of his property and such position continued till the execution of the deed. It has also been found on evidence that the concerned deed is silent as to the succession to the post of shebait and the present shebait would get the usufructs of the property after spending a negligible portion of the same, for the worship of the said Deity. It has also been observed on evidence and construction of the deed that the public are not interested in or benefited by the same. On the basis of the above mentioned specific findings on evidence, it is thus clear that the beneficiaries are definite and ascertained persons and the usufructs of the properties are not at all spent for the benefit of the public or for any charitable purpose and the public are not at all or also interested in the management of the Debutter propertied. The Debutter in question was not a public one. This is on the basis of the terms of the deed in question and the way and the manner in which the properties as endowed, were treated.

12. So the question to be answered, is if sub-section (5) of section 14M of the said 1955 Act, was applicable in this case. On the basis of the determinations, as in the case of Deoki Nandan v. Murlidhar (Supra), it cannot be doubted and it can be safely deduced in this case that the said Deity or the endowment creating the same, was private and not public and such determination was not placed or considered in the case of Sri Sri Iswar Saradiya Durga Thakurani v. The Revenue

Officer (Supra), and as such the determinations as made therein, are distinguishable on the basis of the determinations by the Supreme Court. These apart, on the basis of the intrinsic intention of the deed in question or that of the maker of the same, apart from the treatment by the donee and the character of enjoyment, I also hold the deed in question to be a private one. Since the provisions of chapter IIB of the said 1955 Act, have now been found to be intra vires by the Supreme Court in the case of Sasanka Sekhar Maity and Others Vs. Union of India (UOI) and Others, , I am of the view that because of section 14J, the provisions of chapter II B would override the other provisions of law and as such, the determinations in the case of Vidya Varathi Thirtha v. Baluswami Ayyar (Supra), would not be available in this case. The trusts or endowments, which are private in nature, in my view, would not get the benefits of section 14M (5). In view of the above and that too in view of that nature and character of the trust or endowment, I find that the same was not of a public nature and as such, the lands have been appropriately deemed to be belonging to the real beneficiary under the trust or endowment viz the shebait Shri Siddheswar Panda and as such beneficiary, he was appropriately held and found to be a Raiyat under the provisions of the said 1955 Act.

Thus the Rule is discharged. There will be no order for costs.