(2007) 09 AHC CK 0221

In the Allahabad High Court

State of UP and Others APPELLANT

Vs

Indian Christian Trustees RESPONDENT

Date of Decision : 26-09-2007

Acts Referred:

Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956 — Section 84

Citation : (2007) 09 AHC CK 0221

Hon'ble Judges : Yatindra Singh, J;Vijay kumar verma, J

Bench : Division Bench

Judgement

Yatindra Singh, J.—Who manages the Churches of India (affiliated to the Church of England)? What are their rights over the property? Are they absolute or limited? This is the main focus of this appeal.

THE FACTS

2. The plaintiff-respondent filed the Suit No. 121 of 1981 in the Court of Civil Judge, Gorakhpur in respect of plot No. 4 (3.80 acre), 6 (3.98 acre), and 7 (14.48 acre) situate in village Daudpur, Pargana Haveli, Tehsil Sadar, district Gorakhpur. It is an urban property situate within the municipal limits of Gorakhpur. The relief claimed for is, that the plaintiff be owner of the property in dispute and a mandatory (it should have been permanent prohibitory) injunction be granted restraining the defendant from interfering with their possession.

3. The plaint allegations are that:

The property in dispute was acquired by the Church Missionary Trust Association Ltd., 6 Salisbury Square Fleet Street London (also called Church Missionary Society) more than 100 years ago from the Zamindar;

Over the property, the Christ Church (belonging to Church of England) with residence of the priest was constructed;

Later on, St. Andrew''s School, College and the principals'' residence , students hostel were also constructed;

After enactment of the Indian Christian Church Act, 1927 (the Act), the property was transferred to the plaintiff, who became its owner.

Rt. Reveren Bishop Din Dayal Chairman Lucknow Diocesan Trust Association is managing its affairs on behalf of the plaintiff;

The cause of action arose on 15.12.1980 when the employees of the Government threatened to interfere with plaintiff''s possession over the property in dispute.

4. The defendants filed their separate written statements and denied the plaint allegation. It is accepted that the property in dispute is urban property within the Municipal Limits of Gorakhpur, however, their case is that:

The property in dispute is recorded in the name of the Central government in the revenue records and the State of UP is managing it through Nagar Palika Gorakhpur;

The plaintiff is not owner of the property in dispute;

The Indian Christian Church Act, 1927 is not applicable.

5. The suit has been decreed on 11.1.1984 for declaration as well as permanent injunction. Hence the present appeal.

POINTS FOR DETERMINATION

6. We have heard standing counsel for the appellant and Sri BN Asthana and Sri PK Asthana for the plaintiff-respondent. The following points arise for determination:

(i) Whether the civil court has jurisdiction to try the suit.

(ii) Whether there is pleading regarding ownership of the plaintiff.

(iii) Whether the property in dispute has vested in the plaintiff.

(iv) In case it is vested with the plaintiff then is the vesting absolute or limited?

1st POINT: APPELLANT NOT ENTITLED TO RAISE THE PLEA OF JURISDICTION

7. The standing counsel cited the decision reported in Guru Granthji v. Bachha Krishna Das 1988 All. LJ 934 and submitted that the property in dispute is governed by the UP Tenancy Act and as such Civil Court has no jurisdiction to try the suit.

8. The counsel for the plaintiff respondent has brought to our notice;

The decisions reported in State of UP v. Jagdish Sharan Singhal 1982 ALJ 1302 (Paragraph 17);

The definition of the word ''Land'' {Section 3(10)}, ''holding'' {Section 3(7)} and preamble of the UP Tenancy Act;

The definition of the word ''Urban area'', {section 3(15)} and section 84 of the UP Urban Areas Zamindari Abolitions and Land Reforms Act repealing the UP Tenancy Act in respect of Urban Area.

9. In view of the above, the counsel for the plaintiff submitted that:

The UP Tenancy Act only governs the agricultural area and not the urban area;

It is admitted that the property in dispute is in urban area over which no agriculture is done;

UP Tenancy act is not applicable;

In any case in view of section 84 of section 3(15) of the UP Urban Areas Zamindari Abolitions and Land Reforms Act, UP Tenancy Act stands repealed in respect of Urban area.

The decision cited by the Standing Counsel has not considered this aspect and is not rightly decided.

10. It is not necessary for us to decide whether the UP Tenancy Act is applicable or not. Admittedly, no issue was framed on the question of jurisdiction. This question is not raised in the grounds of appeal. It is being raised for the first time at the hearing of the appeal. No prejudice has been caused to the defendant-appellants. We see no justification to permit the defendant appellants to raise this plea at this stage.

2nd POINT: THERE IS PLADING OF OWNERSHIP

11. The plaintiff in the present suit is, India Church Trustee Calcutta through General Attorney Rt. Rev. Din Dayal Bishop of Lucknow and Chairman Diocesan Trust Association, 25 MG Marg, Allahabad. We have already mentioned the plaint allegation in paragraph 3 of this judgement. These allegations are sufficient pleading to indicate the ownership and right to sue on behalf of the plaintiff. The evidence adduced by the plaintiff can not be ignored merely on the ground that there is insufficient pleading.

12. Apart from it, the plaintiff-respondent is relying upon the Act, the rules framed under it, and the Gazette notifications, for which the court is bound to take judicial notice.

3rd POINT: THE PROPERTY HAS VESTED WITH THE PLAINTIFF

Evidence Produced

13. The plaintiff-respondent, has filed revenue records, different orders, letters sent by the Central Government and the State Government. The statement of Sri E. Larace, Secretary, Lucknow Diocesan Trust Association (PW-1) and Sri Anil Kumar Basu, Manager of the plaintiff (PW-2) has also been recorded on its behalf.

14. The defendant appellants have filed Khatauni of 1381-1383 Fasli, letter dated

13.7.1968 and have produced Sri Lalji Singh, Tax Superintendent, Nagar Mahapalika, Gorakhpur as (DW-1).

Property Was Of The Church Missionary Society

15. In 1322 F Khatauni (Ex-11), the plots are recorded in Patti of government; Hata Girjaghar and Hata Padri Saheb is recorded in Zaman 12 in the cultivator''s column. This entry was corrected by Record Officer by the order dated 27.2.1919 (Ex-16). He has held:

This is an objection to the entry of plots No. 1 to 7 as the property of Government. In the Khatauni of last Settlement plots 1 and 5 are entered as Qadim in the Khatwat of the Sarkar Bahadur, plots 4, 6 and 7 are entered as the compound of the Padri Sahib in Khewat of the Sarkar Bahadur.... At first Sheikh Farasat Hussain claimed that all the numbers are his property and that they are held by the Church Missionary Society on a permanent lease. He has withdrawn his claim in regard to Nos. 1, 2, 3 and 5. I have examined the Nazul Register and find that Nos. 4, 6 and 7 are not entered in it. Sheikh Farasat Hussain states that he receives an annual rent of Rs. 32/13/19 on account of these numbers from the Church Missionary Society and on behalf of the Society the Reverend AC Pelly confirms this statement. The Collector is represented by the Supervisor Qanungo and by the Naib Registrar Qanungo, who likewise make no claim. I am satisfied that the entry is an erroneous one and I order that Nos. 4, 6 and 7 be entered as the Zamindari of Qazi Farasat Husain perpetually leased to the Church Missionary Society at an annual rent of Rs. 32/13/19.

16. This order was never set aside and later revenue records, Khatauni from 1353 to 1363 F (Ex.32), show that plots No. 4, 6 and 7 were recorded in the patti of Farasat Hussain and the name of Hata Girjaghar Jere Ihatmam [under the management of] Padri Sahab is mentioned in the Zaman 8 (ie as hereditary tenant).

17 In 1364 F and 1365 F (Ex-32), the entries are Hata Girijaghar, Lucknow Diocesan Trust Association, Allahabad Jrer Ihatman Sri PN Ghose Mukhatare Aam, Vsarasatpur is recorded and Lucknow Diocesan Trust Association, Allahabad Jere Ihatman Shri PN Ghose, Mukhatare Aam Vasratpur respectively.

18. A correction application was filed. It was supported by the Government of India. It was allowed on 21.5.1968 (Ex.14). The relevant part of the order is as follows:

This is an application for correction of papers filed by the Secretary, LDTA for correction of entries over the plots No. 4, 6 and 7 area 22 acres 26 decimal in all, existing in the name of the Lucknow Diccesan Trust Association Zer Intizamd Sri PN Ghose, Mukhtar-s-Am, situate in village Daudpur, Tappa and Pargana Haveli, Tehsil Sadar, District Gorakhpur. The entries are incorrect in the column of ownership as the Mukhtar-e-Am Shri PN Ghose is no longer the local agent and in any case the owner should have been shown as Indian Church Trustees, Calcutta, through the Lucknow Diocesan Trust Association, Allahabad as General Attorney. The application has not been contested by any one. Sri PN Ghose has filed an admission accepting the claim of the ICT [Plaintiff]. The application has been supported by Govt. of India, Ministry of Defence No. Eccl 472/D-2(b) dated 23.3.1968 transferring the Church to the ICT. The land is the property of the ICT and not of the Govt. and they are also in its possession through the LDTA. I therefore find that the existing entry is incorrect and may be corrected. Let the name of the Indian Church Trustees, Calcutta Zer-i-Intizam Lucknow Diocesan Trust Association be entered in place of the existing entry.

19. The only revenue record, where contrary entry is recorded, is Khatauni of 1380-1381 F (Ex-ka-1). Here the Government of India is recorded as Sirdar. There is nothing on the record to show as to how the name of Government of India came to be recorded over the property in dispute as Sirdar.

20. The documentary evidence on record establishes that The property in dispute was in the Patti of Farat Hussain who was the Zamindar and it was perpetually leased out to the Church Missionary Society.

The Christ Church was constructed. Girjaghar and Ahata Padiri Sahab is recorded over the property in dispute.

The property was later on recorded in the name of the Indian Church Trustee (plaintiff).

The Property Vests In The Indian Church Trustee

21. The Indian Church Measure Act 1927 was enacted for dissolution of the legal union between the Church of England and the Church of India. Thereafter the Indian Church Act, 1927 (the Act) was enacted, providing incidental and consequential matters. Section 6 of the Act (see Appendix-1) envisages incorporation of the Indian Church Trustee (Plaintiff). This was done by issuance of the notification on 20.7.1929.

22. A reading of sections, 4 and 6(1) and 6(3)(a) of the Act show that most of the Churches along with their property vested in the Crown and over some, only management rights were given to the plaintiff. The Churches that vested in the Crown are mentioned in the Part-I of the Second Schedule of the Act. Part-II of the same Schedule contains names of those churches that did not vest in the Crown and only management was handed to the plaintiff. The Christ Church, Gorakhpur (Church is dispute) is in Part-I. This Church along with its property (namely plots No. 4, 6 and 7) vested in the Crown in view of the section 4 of the Act (see Appendix-1).

23. Section 5 of the Act (see Appendix-1) empowers the Governor General of India in Council to make rules. Initially Indian Church Statutory Rules, 1929 (the 1929 Rules) were framed. These rules were superceded by the Indian Church (India) Statutory Rules, 1940 (the 1940 Rules). The relevant part of the 1940 Rules is Appendix-2. Rule 12 empowers the removal of any Church from part-I of

the second Schedule of the Act and Rule 15 empowers the vesting of the same with the plaintiff.

24. The government of India was looking after Churches under Ecclesiastical affairs. Later on, it was decided to wind up these affairs and transfer the Churches and properties to different authorities. A letter dated 23.3.1948 (Appendix-3 to the judgement) was sent and notification dated 27.3.1948 (Appendix-4 to this judgement) to this effect was published.

25. The management of the Churches and their property was vested with the authorities mentioned in the letter dated 23.3.1948. The Christ Church is a Church of India and was vested with the plaintiff. This is how the plaintiff became owner of the Christ Church and its property: However, this vesting is not absolute: it is limited. This is dealt in discussion under the next point: VESTING IS LIMITED.

26. It is no body''s case that the Christ Church is situate in the cantonment area. The Indian Church Trustee has become its owner is also proved by the following admissions of the defendant-appellants:

The letter dated 24.12.1949 from the Defence Ministry Government of India;

The letter dated 18.12.1956 written by the Chief Secretary of Uttar Pradesh;

The order dated 21.5.1968 where the Central Government had supported the case of the plaintiff.

4TH POINT: VESTING IS LIMITED

Vesting Can Be Limited

27. Before we consider the nature of vesting of the properties with the plaintiff, let''s see whether vesting is only of one type or can it be of different types.

28. Vesting is not always absolute. It takes colour from the content in which it is used and it is not necessarily the same in every provision or in every context. This is so held by the Supreme Court in Maharaj Singh Vs. State of Uttar Pradesh and Others, and Dr M. Ismail Frauqui and Others Vs. Union of India (UOI) and Others, Thus vesting can be absolute: it can be limited.

Nature of Vesting - Present Case

29. The Church Missionary society was affiliated with the Church of England. The property was held for its purposes. The Christ church was constructed and consecrated: Services were and are still held therein...it is no body''s case that the Christ Church was not consecrated. u/s 4(3) of the Act, the crown held it in trust for the purposes of the Church of England. It is this right which has been vested with the plaintiff and is further qualified by the 1940 Rules. The plaintiff holds the property in trust for the purposes of the Church of England and is subject to the 1940 Rules.

30. Rule 28 to 30 of the 1940 Rules provide consequences of the breach of the Rules. In case the property is utilised otherwise or conditions in the 1940 Rules are violated, then suitable action can be taken. It is in this sense that vesting is not absolute but is limited. At this stage, we wish to clarify that it is no body''s case that the property is used contrary to the purposes of the church of England or any condition of the 1940 Rules has been violated.

31. The defendant-appellants have filed a letter dated 18th July, 1968 sent by the Secretary of the UP Government (Ex-Ka-2). It states that:

The Government has re-examined the matter in light of section 5(iii) & 5 (v) of the Act, and rule 15 & 30 of the 1929 Rules (it should be 1940 Rules);

The vesting is of right of possession, control, and user only;

The vesting does not extend to vesting of full proprietary rights; and

The earlier GOs dated 18.7.1956 and 29.12.1956 are cancelled/amended.

32. In our opinion, the correct legal position is that the Christ Church and the property is vested with the plaintiff for the purposes of the Church of England and is subject to the 1940 Rules: a violation of the same may render it liable it for suitable action under the law and property may be resumed.

A CLARIFICATION

33. The Christ church and residences for the priests were already constructed before enforcement of the Act. At present there is a school, degree college, students hostel, residence of teachers over the property in dispute. It is also being used for the educational purposes for more than 50 years though it is not clear as to when the school was constructed. There is neither any pleading nor any suggestions that this use is contrary to the purposes of the Church of England or contrary to the 1940 Rules. Even if that be so, it has been condoned: the appellants have acquiesced in the same. We clarify that now no action can be taken against the plaintiff for utilising a part of the property in dispute for educational purposes.

CONCLUSIONS

34. Our conclusions are as follows:

(i) There is no justification in permitting the defendant-appellants to raise the plea of jurisdiction.

(ii) The evidence led by the plaintiff cannot be ignored on the ground that there is insufficient pleading.

(iii) The Christ Church and the property has vested in the Indian Church Trustee (plaintiff- respondent)

(iv) The vesting is not absolute but is for the purposes of the church of England

and is subject to the conditions mentioned in the Indian Church (India) Statutory Rules, 1940: a violation of the same may lead to legal action and resumption of the property.

(v) The use of the Church property for educational purposes will be treated for the purposes of Church of England and in consonance with the 1940 Rules. Even if this is not so, no action can be taken as the defendant-appellants have condoned it and acquiesced in the same.

ORDER

35. The appeal is partly allowed. The declaration given by the court below is modified. It is declared that the Christ church and the property in dispute has vested in the plaintiff, however, it is not absolute but is for the purposes of the Church of England and is subject to the Indian Church (Indian) Statutory Rules 1940. The defendant appellants are restrained from interfering with the possession of the plaintiff, except in accordance with law.

36. With these observations, the appeal is partly allowed. The parties will bear their cost throughout.

