
(1985) 08 AHC CK 0007
In the Allahabad High Court
Case No : Civil Revision No. 2873 of 1978

Sukh Ram Singh and Others

APPELLANT

Vs

Baij Nath Singh and Others

RESPONDENT

Date of Decision : 02-08-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 92, 93
Religious Endowments Act, 1863 — Section 14, 18
Uttar Pradesh General Clauses Act, 1904 — Section 6, 7
Uttar Pradesh Public Charitable and Hindu Religious Institutions and Endowments Ordinance, 1976 — Section 94, 94(3)

Citation : (1985) AWC 832

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : Rakesh Dwivedi, for the Appellant; R.K. Kakkar, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—This revision is directed against an order allowing an application u/s 18 of the Religious Endowments Act, 1863 and granting permission to the opposite parties to file a suit for the reliefs mentioned therein.

2. The first contention raised by the applicants was that the aforesaid. Act was not applicable to the religious endowments which came into existence after 1863. In the present case the endowment came into existence long after 1863. This question was referred by the learned Single Judge who first heard this revision to a five Judge Full Bench which has, by its judgment dated April 17, 1984 unanimously answered the question in the affirmative--See 1984 AWC 423. The opinion expressed is that Sections 14 and 18 of the Act apply also to religious endowments created after 1863 and consequently the said Act was rightly applied to the instant case. The Full Bench decision, therefore, concludes the first point.

3. The second question which was raised before me by the Learned Counsel was

that the Religious Endowments Act, 1863 was repealed by the U.P. Public Charitable and Hindu Religious Institutions and Endowments Ordinance, 1976. The Ordinance lapsed in course of time and was not re-enacted by the Legislature. It was urged that the effect of the repeal of the Religious Endowments Act, 1863, notwithstanding the fact that, the Ordinance by which it was repealed had lapsed, was that the Religious Endowments Act, 1863 stood abrogated and completely wiped out from the Statute Book. The application made by the opposite parties u/s 14 of the Act on December 11, 1974 must hence be deemed to be incompetent in law.

4. I am unable to agree. It is true that the repeal of a repealed Act does not automatically revive the repealed Act on the repeal of the repealing Act (See Section 7 of General Clauses Act). In the present case, however, the Religious Endowments Act was not repealed by the Ordinance of 1976. The Ordinance merely provided that the Religious Endowments Act, 1863 shall cease to apply to charitable Institutions and Hindu Religious Institutions and Endowments thereof. Section 94 of the Ordinance which provides for repeals and savings in so far as it is relevant for the purpose of this case provides:

94. Repeals and Savings.

(1) The Uttar Pradesh Hindu Public Religious Institutions (Prevention of Dissipation of Properties) (Temporary Powers) Act, 1962 is hereby repealed.

(2) Except as provided in Sub-section (3), the enactments mentioned below shall cease to apply to charitable institutions and Hindu Religious Institutions and the Endowments thereof to which this Ordinance applies and Section 6 of the U.P. General Clauses Act, 1904, shall apply upon such cessation of application as if these enactments have been repealed by an Uttar Pradesh Act.

(a) The Religious Endowments Act, 1863.

(b)

(c)

(d) Sections 92 and 93 of the Code of Civil Procedure, 1908.

(3) Notwithstanding such repeal.

(a)

(b)

(c) all proceedings pending before the State Government, any officer or authority or a trustee under the provisions of the repealed Acts, at commencement of this Ordinance shall, subject to the provisions of Clause (d), abate;

(d) any remedy by way of right of suit, appeal or application which is provided by the Ordinance, shall be available in respect of proceedings under the repealed Acts, pending at the commencement of this Ordinance, as if the proceeding in

respect of which the remedy is sought had been instituted under this Ordinance and such proceeding shall be continued from the stage at which they are so pending by the appropriate authority under this Ordinance.

5. It is significant that Sub-section (1) of Section 94 uses the expression "repealed" the legal and interpretative connotation of which is well-known, whereas Sub-section (2) of the Ordinance provides merely that the Religious Endowments Act shall cease to apply to charitable institutions.

6. The repeal of an enactment has the effect of obliterating the Statute completely from the records of Parliament so to say. It wipes out the enactment from the Statute Book as if it never existed. The Legislature may be presumed to be aware of the legal consequences of the repeal of an enactment. Consequently when the Legislature specifically refrained from using the expression "repealed" in Sub-section (2) of Section 94 while using the same in Sub-section (1) of Section 94 it must follow without question that the legislative intent was not to repeal the Religious Endowments Act, 1863. It was, on the contrary, to allow the Act to remain on the Statute Book inspite of the Ordinance of 1976. Only its operation had been suspended temporarily on account of the promulgation of the Ordinance.

7. With the expiry of the Ordinance, therefore, the temporary cloud which was cast on the Religious Endowments Act stood removed and It again came into operation.

8. Learned Counsel, however, attempted to seek some assistance from the words "and Section 6 of the U.P. General Clauses Act, 1904, shall apply upon such cesser of application as if these enactments had been repealed by an Uttar Pradesh Act" occurring in Sub-section (2) of Section 94 of the Ordinance. I am, however, clearly of the opinion that these words lend no support to the arguments. Section 6 of the U.P. General Clauses Act would have had no application to the situation arising from the suspension of the operation of the Religious Endowments Act, 1863, not being a case of repeal of an enactment. These words were hence inserted merely to extend the application of Section 6 of the General Clauses Act even though not applicable in terms to the provisions of Sub-section (2) of Section 94.

9. In any case, reading Section 94, as a whole, I have not the least hesitation in holding that the Religious Endowments Act, 1863 was not repealed by the Ordinance. Consequently the second submission is also rejected. The decisions cited by the Learned Counsel on the effect of the repeal of a repealing Act are of no assistance and hence are not being dealt with elaborately.

10. Learned Counsel lastly urged that Section 18 of the Religious Endowments Act enjoins the court to determine the question whether permission should be granted or not. The order passed by the court below does not indicate that he has applied his mind to the case and determined the issue.

11. I am unable to agree. The court below has held after examining the allegations made in the application and the reply of the applicant that there are sufficient prima facie grounds for the institution of the suit warranting that permission should be granted. The court below was not required to express any final opinion on the controversies raised by the parties on the merits of their respective claims. All that he had to do was to satisfy himself upon evidence whether there were sufficient and prima facie grounds for the institution of the suit. The court below has held that there are such grounds. No jurisdictional error has been committed by the court below in this behalf so as to persuade this Court to interfere in a revision u/s 115 of the Code of Civil Procedure.

12. In the result, the revision fails and is dismissed but I make no orders as to costs.