
(1965) 11 MAD CK 0039

In the Madras High Court

Case No : S. A. No's. 1924 to 1928 of 1962

Syed Anwar Batcha Sahib and others

APPELLANT

Vs

Jamia Masjid Mosque, Karur and others

RESPONDENT

Date of Decision : 26-11-1965

Acts Referred:

Citation : (1965) 11 MAD CK 0039

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Advocate : T.R. Mani, for the Appellant; P. Sharfuddin, S.M. Amjad Nainar, M.R. Krishnan and T. Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

Kailasam, J.—These appeals arise out of five suits filed in the Court of the District Munsif, Karur, and can be dealt with together. The main question for determination in these appeals is the character of certain properties, viz., whether they are inam granted to Jamia Masjid Mosque, Karur or are personal inams burdened with Kazi service. The properties in dispute were originally granted as inams. The Jamia Masjid Mosque claims that they are grants to the mosque, whereas according to Kazi Syed Abdullah Batcha, they are inams granted to his ancestors burdened with service. Syed Abdullah Batcha's father, Syed Ahmed Batcha, was the Mutavalli of the mosque and was also the Kazi appointed by the Government from 14th December, 1928 to 24th April, 1948. There were disputes between the Muslim residents of Karur and one Ganaippa Rowther was appointed the Mutavalli of the mosque, and one Abdul Rahiman as Kazi on salaried basis. Syed Abdullah Batcha claimed that the grants was a personal inam in favour of his ancestor burdened with the duty of performing the Kazi service and the mutavalli of the mosque could have no right whatsoever regarding the properties. Ganaippa Rowther in his capacity as Mutavalli of the mosque filed O. S. No. 118 of 1960 in the Court of the District Munsif of Karur, from which S. A. No. 1924 of 1962 arises, impleading the heirs of Syed Ahmed

Batcha and others as defendants and prayed for recovery of Rs. 1,157-2-0 as arrears of rent due to the mosque. Syed Abdullah Batcha instituted three suits O. S. Nos. 322, 345 and 485 of 1960 out of which S. A. Nos. 1926, 1928 and 1925 of 1962, arise, against three tenants for recovery of certain amounts either as rent or as damages for use and occupation. The defendants in these three suits set up title in the mosque represented by the Mutavalli, Ganaiaappa Rowther, O. S. No. 218 of 1960 out of which S. A. No. 1927 of 1962 arises, was filed by Syed Abdullah Batcha for a declaration that the notification issued by the Wakf Board that the properties constituted wakf, was illegal and ultra vires.

2. The trial Court dismissed the suit O. S. No. 118 of 1960 filed by Ganaiaappa Rowther but decreed the suits, O. S. Nos. 322, 345, 485 and 218 of 1960 filed by Syed Abdullah Batcha. Appeals were preferred before the learned District Judge, Tiruchirapalli, against the decrees and judgments in the above five suits, and the learned District Judge, Tiruchirapalli. allowed all the five appeals, decreeing the suit O. S. No. 118 of 1960 filed by Ganaiaappa Rowther and dismissing the suits, O. S. Nos. 322, 345, 485 and 218 of 1960 filed by Syed Abdullah Batcha. Against the judgments and decrees of the lower appellate Court, these second appeals have been preferred.

3. The main question that arises in these second appeals S. A. Nos. 1924, 1926, 1928, 1925 and 1927 of 1962 is whether the grant is in favour of the mosque or whether it is a personal grant in favour of Syed Abdullah Batcha's ancestors burdened with service. The question will have to be decided mainly on the extracts of the inam registers Ex. A. 18 and A. 1. Ex. A. 18 was filed in O. S. 118 of 1960 and it is a certified copy of the inam register regarding title deed No. 1555 relating to the disputed lands in inam Karur village, whereas Ex. A. 1 filed in O. S. No. 218 of 1960 is a certified copy of the inam register regarding title deed No. 1285 in L. N. Samudram village. The entries in the inam fair register Ex. A. 18 may be dealt with first. In Column 2 the inam is described as "Dharmadaya". Column 8 describes the inam as "Kazi service". In Column 10 the entry is noted as "permanent". Against Column 11 "by whom granted" it is entered "By Krishna Raja Udaya". The name of the original grantee is noted as not known in Column 13. In Column 14, dealing with the name entered in the register prepared according to Regulation 31 of 1802, it is recorded " In fasli 1214, Namadullah." In Column 15 dealing with the name entered in the survey of subsequent accounts with relationship to the predecessors, it is noted as follows:

In F. 1233 Mulla Khahi Inam. In F. 1262,

1.

Syed Silaman

son

2.

Shamsha

brother

3.

Kadirs

brother

4.

Nazimuddin

brother.

In Columns 16 and 17 dealing with the particulars regarding then owner, it is noted, " Karur Kahi Syed Ahamedsha, aged 45, brother's grandson to the registry in F. 1214". In Column 21, it is noted as follows : " To be confirmed free in one T. D. so long as the Kazi service is rendered." In the remarks column it is noted as follows : " This will be confirmed as inam attached to the Mosque at Karur. See remarks in case No. 1 Lakshminarayana Samudram. Case No. 1 Lakshminarayana Samudram refers to Ex. A-1.

4. It is conceded by Counsel on both sides that no particular entry by itself proves that the grant is either in favour of the mosque or in favour of the person burdened with service. The question will have to be decided by considering the cumulative effect of all the entries. It was contended on behalf of Syed Abdullah Batcha that the entry " Dharmadayam " is significant and would denote a personal grant. In Wilson's Glossary of Judicial and Revenue Terms the meaning of the " Dharmadayam " is given as follows : An endowment, grant of food, or lands, or funds, for religious or charitable purposes." " Devadayam " is described as " a donation of lands or allowances for the support of a temple, an endowment." Thus, while Devadayam is a grant in favour of a temple or endowment, Dharmadayam is a grant for religious or charitable purposes. It was contended that the grant being Dharmadayam, the grant was for religious and charitable purposes, as distinguished from the grant in favour of a temple or an endowment. Construing the word Devadayam " it has been held by a Bench of this Court in Vadlamannaty Bala Tripura Sundaramma Vs. Secretary of State and Others, that the mere use of the word " Devadayam " does not necessarily show that the grant was to the mosque or temple, and that it is not conclusive in favour of a temple or a mosque. This view has been followed in all the subsequent decisions. Though the use of the word " Dharmadayam " by itself would not conclude the question in favour of the Syed Ahmed Batcha, it would have been more probable the word " Devadayam " would have been used, if the grant had been in favour of the mosque, which again is not conclusive, as pointed out by the decision cited above.

5. The next important entry is in column 8, where it is noted, "Kazi service inam". The entry by itself is more consistent with the grant being in favour of the

service rather than to the mosque. In column 10, the grant is noted as " permanent It was contended by the learned Counsel on behalf of the mosque that, if the grant was personal, the word " hereditary " would have been used and not permanent. The use of the word " permanent " has again been held as not conclusive of the question that the grant is in favour of the institution. In *Mazher Ali v. Gulam Murtujah* AIR 1958 A.P. 9 it was held that though the word " permanent " had been used in column 10, which was the word used generally in grant to an institution, the other columns showed that it was not granted exclusively to the Darga, In Column 11 the name of the grantee is given as " Krishna Raja Udayar " and against column 13 " name of the original grantee" it is noted as " It is not known It was contended on behalf of Syed Abdullah Batcha that if the grant was in favour of the mosque, the name of the mosque would have been given. It was submitted that, as the grant was by the Mysore Maharajah long before the advent of the East India Co. the name of the person to whom the grant was made was not known and hence the entry. This circumstance also probabilises the contention that the grant was a personal grant. Columns 14, 16 and 17 may be taken together. Column 14 gives the name of Namadulla in fasli 1214. Columns 16 and 17 give the name of Karur Kaji Syed Ahmedsha aged 45, as the brother's grandson of the registry in fasli 1214. These three columns would indicate that Namadullah's name was entered in the register prepared according to Regulation 31 of 1802, and Karur Kaji Syed Amedsha, aged 45, as entered in columns 16 and 17, is the brother's grandson of the registry entered in column 14, Namadullah. These entries also probabilise that the grant was personal. Considerable reliance was placed by the learned Counsel on both sides on the entry in column 21, which is as follows : " To be confined free in one title deed so long as the Kaji service is rendered." It was contended on behalf of the mosque that, if the grant was a personal grant different words would have been used, such as "To be confirmed to the party so long as he continues the performance of service" as found in *Hindu Religious Endowments, Madras v. Thadikonda Koteswara Rao* A. I. R. 1937 Mad 852 = 46 L. W. 587 and the use of the words " to be confirmed free in one title deed so long as the Kaji service is rendered" would probabilise that the grant was in favour of the mosque. In *Sami Aiyangar v. Venkataramana* A. I. R. 1934 Mad. 581=39 L. W 513 the entry in column 21 of the inam fair register is as follows: "To be confirmed to the party in column 16 as long as he continues the performance of the services ". It was held in that case that the words in column 21 were explicit and unequivocal. The Bench further observed as follows:

If "the party" referred to in that column be understood to be the deity, what would be the result ? The condition of the performing of the services cannot possibly refer to the deity and the idea of the grant being resumable on the deity failing to render the archaka service, would of course be absurd. The inam register shows that the land was continuously held at least for two generations by the family of Venkatachala. and the intention was no doubt to confirm the grant in his favour burdened with archaka service.

6. In *Hindu Religious Endowments, Madras v. Thadikonda Koteswara Rao* A. I. R. 1937 Mad 852 = 46 L. W. 587 the entry in column 16 of the Inam Register was as follows: Sri Viswaraswami (worshipper) Tangalur Venkatasivadu. In column 21 in some of the cases the entry was "To be confirmed and continued so long as the service is regularly performed". Venkatasubba Rao, J., who delivered the judgment, held that this entry was more in conformity with the grant being in favour of the institution. This view which was subsequently approved by the Supreme Court in *Nanduri Yogananda Lakshminarasimhachari and Others Vs. Sri Agastheswaraswamivaru*, was strongly relied on behalf of the mosque. It was contended that the phraseology in Column 21 in *Muhammad Esuff Rowther Vs. M. Hateem and Co.*, "To be confirmed to the party in Column 16 as long as he continues the performance of the services" and the reference to "the party" and "he continues" would necessarily refer to some individual. This contention is in accordance with the view expressed in *Hindu Religious Endowments Board v. Koteswara* A. I. R. 1937 Mad 852 = 46 L. W. 587. But as pointed out in *Hindu Religious Endowments Board v. Koteswara* A. I. R. 1937 Mad 852 = 46 L. W. 587 the entry in Column 16 would make a difference, if the name of the archaka is given. Dealing with Column 16 in the case the Court took the view that it was perfectly clear in the face of admissions and entries that the contention that the grant was a personal grant could not be upheld. The entry in Column 16 in *Sami Aiyangar v. Venkataramana* A. I. R. 1934 Mad. 581=39 L. W 513 was different, in that the name of the archaka was given indicating that the grant was in favour of the archaka. In the case with which we are concerned the entry in Column 16 is merely the name of Karur Kaji Syed Ahmed Sha, which is clearly indicative of the fact that the grant is personal in nature. On the facts the present case is more in favour of the view that the grant is personal than the one found in *Sami Aiyangar v. Venkataramana* Aiyangar A. I. R. 1934 Mad. 581=39 L. W 513. The observations of the Supreme Court in *Nanduri Yogananda Lakshminarasimhachari and Others Vs. Sri Agastheswaraswamivaru*, approving the view of the Madras High Court in *Hindu Religious and Endowments Board v. Koteswara* AIR 1937 Mad 852=46 L. W. 587 that the words "to be confirmed so long as the service is performed" would not be a personal grant would have to be taken in the light of the facts in the case.

7. In *Hindu Religious Endowments Board v. Koteswara* AIR 1937 Mad 852=46 L. W. 587 the relevant entries are as follows. In Column 1 under the heading "Name of the present employer" the name of the deity was given. In Column 11 the deity was shown under the heading "Particulars of the present enjoyment". In Column 8 it was mentioned that the grant was "for the worship of the idol in the pagoda". In Column 13 the original grant was shown in the name of the deity. In column 14 the name entered in the inam register was that of the deity. Relying on the entries in these columns and the admissions, the Court came to the conclusion that the gift was to God. Column 21 in some of the cases ran as follows : " to be confirmed and continued so long as the service is regularly performed." Reading this entry in column 21 along with the other entries the

Court distinguished the decision in *Sami Ayyangar v. Venkataramana* AIR 1934 Mad. 381=39 L.W. 513 in which the words "to be confirmed to the party in column 16 as long as he continues the performance of the service", in column 21 were used. The decision cannot be taken as an authority for the proposition that the entry in column 21 as "to be continued so long as the service is regularly performed", should be taken as a grant to the institution without any reference to the other entries. The entries in the inam register in *Lakshminarasimhachari v. Sri Agatheswaraswami Varu* A. I. R. 1960 S. C. 622 may also be referred to. In column 6 was given the name of the grantor who gave the land to the grantee and "with the income therefrom he has been performing Sri Swami varu's Kalyanotsavam from that time". In column 11 relating to the present enjoyment the entry was "Sri Swami Varu's Kalyanotsavam." Apart from these entries there were admissions of the predecessors of the appellant that they were dharmakartas of the Kalyanotsawam. In construing the entry in the inam register that the grant was to continue so long as service was performed, the Supreme Court approved the distinction brought out between the words to be confirmed to long as service is performed " and "to be confirmed to the party so long as he continues to perform the service " made in *Hindu Religious Endowments Board v. Koteswara* AIR 1937 Mad 852=46 L. W. 587. The two decisions in *Hindu Religious Endowments Board v. Koteswara* AIR 1937 Mad 852=46 L. W. 587 and *Lakshminarasimhachari v. Agatheswaraswami Varu* A. I. R. 1960 S. C. 622 cannot be taken as authority for the proposition that whenever the words "to be confirmed to the party so long as he continues to perform the service " are used, the grant can only be in favour of the institution. All the other entries should be taken as a whole and construed together in arriving at a conclusion whether the grant was in favour of the institution or not.

8. Very strong reliance was placed by the learned Counsel for the mosque, on the remarks made in the register, which are as follows : " This will be confirmed as an inam attached to the mosque at Karur ". These remarks are relied on as conclusive as the grant being in favour of the mosque. On the other hand it was contended by the appellant that the words "attached to the mosque" would not make the grant one in favour of the mosque. A reference to the duties of a Kazi may be made in this connection. In *Hedaya*, on Mussalman law, the duties of a Kazi are set out in detail. It is enough to notice the more important one. The office of Kazi has its origin in Muslim law. Kazi was chiefly a judicial officer more or less corresponding to the Magistrate of the present day. It was his duty to examine the state of prisoners, and whenever any acknowledgment of right in favour of the others was made by a person it was the duty of the Kazi to record it. It was requisite that the Kazi should sit openly in a mosque for the execution of his office, in order that his place might not be uncertain to travellers or to the inhabitants of the town. The Jama mosque was considered the most eligible place if it was situated within the city. It was not improper for the Kazi to sit in his own house and pass judgment. Amongst his other functions may be

mentioned the attesting and registering deeds of transfer of property, celebrating marriages, performing other rights and ceremonies, attending funerals and visiting the sick. The duties of the Kazi were, therefore, not strictly religious in character, and the office of the kazi cannot be strictly said to form part of the mosque or religious rites of the mosque. The office of the Kazi was also not one held wider the mosque, though he was expected to exercise his functions ordinarily in the mosque. From the remarks in the inam register "This will be confirmed as inam attached to the mosque" it cannot be inferred that the grant was to the mosque. The proper inference, in my opinion, is that the grant was made to the person burdened with the service of the kazi. In determining the question whether a grant was in favour of an institution or in favour of a person, a Bench of this Court in *Bala Tripura Sundaramma v. Secretary of State* A. I. R. 1928 Mad 282=27 L.W. 101 laid down certain tests at page 287. Where the grant is not to temple or mosque or to a person in the capacity of mutavalli, dharmakartha etc., or where it appears that a substantial part of the income does not go for the benefit of the institution, then the grant must be treated as a grant to the grantee named, and if services are mentioned, it is a grant for service. Taking all the entries in the inam fair register into consideration and applying the test laid down in the above decision, I find that the grant is a personal grant burdened with service.

9. The other inam fair register, Ex. A.1, remains to be considered. The entries more clearly indicate that the grant is a personal inam. In Column 11 it is stated that the grant was made by Syed Karthar Ahmed. The name of the original grantee in Column 13 is given as Syed Ahmed. In Column 16 dealing with the particulars of the owner the name of Karur Kazi Syed Ahmed Sahib is entered. In Column 18 it is mentioned that the said person is the grandson of the original grantee. In Column 21, it is entered "To be confirmed free in one title deed so long as kazi service is rendered". It may be noted that in Ex. A-1 the remarks that "the inam will be confirmed as attached to the mosque" are not found, and the name of the grantee and his successors-in-title, are mentioned. There can be no doubt, therefore, that Ex. A-1 is a personal grant. Though Ex. B-3, a certified extract from the register Ex. B, was referred to in the course of arguments much reliance cannot be placed on it as it is not clear under what authority the register is being maintained. On a consideration of the entire facts in the case, disagreeing with the view of the lower appellate Court, I hold that the grant is personal in nature burdened with service. On this finding O. S. No. 118 of 1960 is dismissed and O. S. No. 322, 345, and 485 are decreed. S. A. No. 1924, 1926, 1928 and 1925 are allowed with costs. S. A. No. 1927 of 1962 arising out of O. S. No. 218 of 1960 filed by Syed Abdullah Batcha Sahib against the State Wakf Board, for a declaration that the notification issued by the Wakf Board was illegal and ultra vires, will have to be considered. "Wakf" is defined in Act XXIX of 1954, as meaning a permanent dedication by a person professing Islam, of any moveable or immoveable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes (i) a wakf by user (ii) mashrut-ul-

khidmat, and (iii) a wakf-alal-auwand to the extent to which the property is dedicated for any purpose recognised by Muslim Law as pious, religious or charitable. The definition of "Wakf "is amended, so as to include all dedications especially for the benefit of Muslim community, whether by a person professing Islam or not, This amendment negatives the contention of the appellant that as the original grantor was the Maharaja of Mysore, the property is not wakf property. It cannot be denied that a grant to a Kazi is a purpose recognised by the Muslim law as pious, religious and charitable. Further, it also falls within S. 2 (1) (ii), Mashrut-ul-khidmat. Wilson's glossary gives the meaning of the word " mashrut " as " conditional " as applied to assignments or grants of land revenue, importing that the grant was accompanied by certain stipulated conditions ". " Khidmat " means "service or office " " Mashrui-ul-khidmat" would mean a grant on condition of service or office. The grant to a Kazi would certainly fall within this class of the definition. Whether the grant was in favour of the institution or personal in nature, the appellant cannot contend that it is not wakf. His suit for the declaration that the property is not wakf property will therefore have to be dismissed. S. A. No. 1927 of 1962 is dismissed with costs. Leave granted.