(1974) 07 CAL CK 0022

Calcutta High Court

Case No: Civil Rule No. 4518 (W) of 1970

Sri Sri Digambareshwar Shib Thakur		APPELLANT
	Vs	
State of West Bengal		RESPONDENT

Date of Decision: July 9, 1974

Acts Referred:

- West Bengal Estates Acquisition Act, 1953 - Section 4, 44(2), 5, 6, 6(1)

Citation: (1976) 1 ILR (Cal) 322

Hon'ble Judges: P.K. Banerjee, J

Bench: Single Bench

Advocate: Ranjit Banerjee, Saktinath Mukherjee and Abhijit Banerjee, for the Appellant;P.K. Sen Gupta and Sadananda Pal, for the Respondent

Final Decision: Allowed

Judgement

P.K. Banerjee, J.

This rule is directed against an order passed by the Revenue Officer concerned directing that a particular direction made by the predecessor-in-interest of the Petitioner was not absolute debattar arpannama but a conditional one within the meaning of Section 6(1)(i) of the West Bengal Estates Acquisition Act. Late Digambar Chatterjee dedicated a large extent of immoveable properties measuring about 50 acres of lands including homestead etc. within the district of Bankura for due performance of the sebapuja of the said deities including daily and periodical sebas and for other ceremonies connected therewith. The said deed is dated October 1921. By subsequent deed dated August 3, 1929, other properties were dedicated to the deities absolutely. By another document, in the same year certain properties were dedicated to the deity and in the last document certain directions were given to the effect that after the death of the settlor shebait, if his wife survived him, she would be the sole shebait and thereafter his three sons would be shebaits. It is stated in the documents that the settlor''s wife on the death of the settlor will be the

sole shebait and she will be entitled to maintenance of the income of the debattar estate together with maintenance of a maid-servant not exceeding Rs. 30 and 9 maps of paddy per year and that his widowed daughter will be entitled to prasad as also his widowed sister will be entitled to pertake prasad during their respective lives, that it will be at the discretion of the shebaits to pay Rs. 6 and Rs. 3 per month to the said daughter and sister respectively in lieu of prasad and the widow will be the next sole shebait. It is stated that the widow of the settlor died in the year 1942, one year after the death of the settlor and the widowed sister and daughter died during the life-time of the settlor. In the said deed it is also provided that for one month during the Durga Puja the shebaits'' descendants, if they choose to come, will be entitled to prasad of the deities. Apart from the said directions, the entire income should be exclusively devoted for sebapuja of the deity and other religious and charitable purposes. It appears that a proceeding u/s 44(2a) was initiated, being proceeding No. 6 of 1966, whereby it was declared that the estate was an absolute debattar and the deity was entitled to the benefit available under the said Act. The Revenue Officer initiated another proceeding u/s 6(1)(i) of the West Bengal Estates Acquisition Act and held, inter alia, that as some of the income from the dedicated properties, his wife, daughter and a sister will be getting monthly allowances regularly and his sons and grandsons will be fed during the annual Durga Puja month for the whole month every year, the property is a conditional debattar and not an absolute one. Being aggrieved by the said order the Petitioner moved this Court and obtained the present rule.

2. The Respondent filed the affidavit. In para. 6 of the said affidavit it has been stated as follows:

6. With reference to the allegations contained in paragraphs 8, 9, 10 and 11 of the said petition, I say that the property which forms subject-matter of the deeds was not exclusively bequeathed for religious and charitable purposes and as such was not protected u/s 6(1)(i) of the West Bengal Estates Acquisition Act, 1953. There were various reserves made in the said deed for the enjoyment of the usufract of the said property by the descendants of the settlor in their personal capacity, e.g. maintenance of residence of the wife, sister, daughter of the settlor, as mentioned in paragraph 5 of the said petition. It shall appeal further from the deed that reserves were also made for one month''s maintenance of the descendants of the settlors as stated in paragraph 6 of the petition. Moreover, the provisions were also made in the said deeds for the expenses on the ceremonial rites of the settlor and his wife after his death and on marriage, Upanayan, Annaprasan etc. of the sons and daughter''s of the Sebayats out of the income of the said property. As such, it could not be said that the settlors absolutely dedicated their property which formed the subject-matter of the deeds in question in favour of the deity and/or other charitable purposes. Save as what I have already stated hereinbefore I deny all other allegations in any way contrary to the same.

3. Mr. Ranjit Kumar Banerjee, on behalf of the Petitioner, contended firstly that on the face of the document there cannot be any doubt that the debattar was exclusively for the religious purpose and the provisions for maintenance of the sole shebait or their daughter is only insignificant part of the income and furthermore, it has been argued that the said settlor''s daughter, wife or sister died sometime in 1942 long before the West Bengal Estates Acquisition Act came into force. When the West Bengal Estates Acquisition Act came into force in 1955, the question of giving maintenance to the wife, daughter or sister did not arise. It is argued that because some provision was made for giving prasad to the sons and grandsons during the puja does not make the dedication less charitable or religious and the dedication is still an absolute one. It is further argued by Mr. Banerjee that once it has already been held by the Revenue Officer concerned that this is an absolute debattar, the same proceeding cannot be reopened u/s 6 of the West Bengal Estates Acquisition Act.

4. Mr. Sen Gupta, on behalf of the Respondent, supported the order passed by the Revenue Officer concerned and stated that the provision of maintenance for the wife, daughter and widowed daughter or for that matter giving prasad to the sons and grandsons are incidents by which it may be held that the dedication is not an absolute dedication. Section 6(1)(i) of the West Bengal Estates Acquisition Act runs as follows:

6(1). Notwithstanding anything contained in Sections 4 and 5 an intermediary shall, except in the cases mentioned in the proviso to Sub-section (2) but subject to the other provisions of that sub-section be entitled to retain with effect from the date of vesting.

6(1)(i). Where the intermediary is a corporation or an institution established exclusively for a religious or a charitable purpose or both, or is a person holding under a trust or an endowment or other legal obligation exclusively for a purpose which is charitable or religious or both--land held in khas by such corporation or institution, or person, for such purpose including land held by any person, not being a tenant, by leave or licence of such corporation or institution or person.

5. In the present case, it appears that there was a provision for an insignificant amount of money for the purpose of maintenance of shebait or widowed daughter or sister and that provision is now inoperative by reason of the death of the wife of the settlor, widowed daughter or sister when the West Bengal Estates Acquisition Act came into operation. Therefore, in my opinion, the Revenue Officer concerned was wholly wrong in considering the effect of the provision for maintenance of the shebait or the wife of the settlor. It appears that there was a complete dedication in favour of the deity and only a very nominal amount was provided for the settlor''s wife, who was the sole shebait, for her maintenance and the maintenance of the widowed daughter and sister. In my opinion, that provision of a nominal amount for the maintenance of the wife or daughter or sister cannot make the dedication a

conditional one as it is clear from the document itself that the dedication was completely in favour of the deity and the major portion of the usufruct will be used for the purpose of the sebapuja of the deity and only a fractional part thereof has been left for the maintenance of the wife and the widowed daughter. In my view, therefore, the maintenance of the shebait being Rs. 30, Rs. 6 and Rs. 3 for the widow, daughter and sister respectively in lieu of prasad not being given to them does not make the dedication less exclusively for religious and charitable within the meaning of Section 6(1)(i) of the Act. It appears further that if the prasad is given to the sons and daughters during the Durga Puja ceremonies it will not make a dedication outside the provision of Section 6(1)(i) of the Act. The prasad is to be distributed and if it is distributed to the family along with others, it does not also make the distribution a secular object and for that purpose it cannot be held that the dedication is not for absolutely religious or charitable purpose.

6. The next point urged by Mr. Banerjee is that in the earlier proceeding the Assistant Settlement Officer holds that the dedication is religious and exclusively for charitable purpose. It appears to me that once an order u/s 6(1)(i) of the Act is made by the Revenue Officer it cannot be reopened again by the Revenue Officer for the same purpose or, in my opinion, the subsequent proceeding u/s 6(1)(i) of the Act is not maintainable once the document in question is held to be an absolute debattar.

7. This rule must, therefore, be made absolute. The impugned order and notice must stand quashed and there will be no order as to costs.