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Nnjunda and Others Vs. Court of the 1st Additional District Judge and Others

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Court : Karnataka

Decided On : Oct-13-1993

Reported in : AIR1994Kant141

Judge : K. Shivashankar Bhat, J.

Acts : [Constitution of India](#) - Articles 26 and 226; Karnataka Religious and Charitable Institutions Act, 1927 - Sections 2(2), 14 and 18; Karnataka Rent Control Act - Sections 2(7); Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1984; Mysore Religious and Charitable Institutions Act, 1927 - Sections 6, 7, 8, 11, and 17; Public Premises (Eviction of Unauthorised occupants) Act, 1971 - Sections 5

Appeal No. : Writ Petition Nos. 22186 and 22187 of 1993

Appellant : Nnjunda and Others

Respondent : Court of the 1st Additional District Judge and Others

Advocate for Def. : Sri B.V. Muralidhar, HCGP and ;Sri T.N. Raghupathy, Adv.

Advocate for Pet/Ap. : Sri B.T. Parthasarathy, Adv.

Judgement :

ORDER

1. The petitioners claim to be the lessees of certain premises belonging to third respondent temple. There is no dispute that earlier they were in the- occupation and subsequently when the premises were altered they were given certain shops under the lease. After the, lease period was over they were asked to vacate the premises. Subsequently eviction proceedings were initiated under the provisions of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1984, ('the P. P. Act' for short). The order of the Estate Officer was affirmed by the District Judge, Mysore. Hence these writ petitions.

2. Mr. Parthasarathy, the learned Counsel for the petitioners, contended that the P. P. Act is inapplicable because this is an institution not under the management of the Government and only the premises belonging to a Mujrai institution under the management of the Government could be governed by the provisions of the Act, if not the tenants could be evicted only by recourse to the provisions of either Rent Control Act or the general law governing the landlord and the tenant.

3. The premises are in Nanjangud, the area of which is governed by the Karnataka Rent Control Act.

4. The question as to the competence of inapplicability of the P. P. Act was not raised before the authority or before the District Court. That is quite clear from the observation of the learned District Judge. The order of the learned District Judge states that:

'During his arguments though Sri L. Srikantaiah appearing for the appellants did not dispute the competency of the competent officer in passing the impugned orders of eviction, he strenuously contended that since rent had been paid and accepted, after the period of lease, both these appellants became tenants holding over and hence they were not unauthorised occupants.'

The main arguments addressed before the District Court pertain to the applicability of the provisions of the Transfer of Property Act, whereunder the petitioners claim the status of holding over (enant. It is also clear that in case the provisions of the P. P. Act govern the relationship between the petitioners and the third respondent then this contention also is not available.

5. Therefore the short question is whether the provisions of the P. P. Act are attracted to the fact situation.

6. The learned Counsel for the petitioners referred to the definition found at Section 2(e)(iv) of the P. P. Act, which defines the term 'public premises' as any premises belonging to or allotted to State Government or taken on lease or a requisition by or on behalf of the State Government and includes any premises belonging to or taken on lease by or on behalf of a muzrai institution or religious or charitable institution under the management of the State Government. Similarly, Section 2(7)(bb)(iii) of the Karnataka Rent Control Act was referred, according to which nothing in the said Act shall apply to any premises belonging to a muzrai institution or a religious or charitable institution under the management of the State Government. If the premises in question fall within the definition of the 'public premises', as defined in the P. P. Act, there can be no doubt that the competent officer was competent to initiate proceedings and order eviction; if not, orders of eviction will be void. Mr. Parthasarathy at the outset pointed out that the question raised by the petitioners goes to the root of the jurisdiction and therefore the plea may be raised even at this stage. As a matter of broad proposition, there is no doubt that such a contention can be accepted. However, if the question of jurisdiction is dependent upon any disputed question of facts normally this Court would not permit such a plea to be raised for the first time in a writ petition. Investigation of disputed facts will not be possible and if the plea was specifically given up it has to be assumed that the basic fact was against the plea of the petitioners. However, Mr. Parthasarathy referred to the provisions of the Mysore Religious and Charitable Institutions Act, 1927 ('1927 Act' for short) to contend that there is a distinction between an institution which is under the management of the Government and an institution which is under the control of the Government. The third respondent-institution is under the control of the Government but not under the management of Government. The learned Counsel referred to a few provisions from which it was contended that the only inference possible in the instant case is to hold that the institution in question is not under the management of the State Government. Section 2(2) defines the muzrai institution as follows:

'2(2) 'Muzrai Institutions' means and includes :--

(i) every Matha, temple, mosque or other place of worship or religious service, every chatra or house of feeding or rest for travellers with or without charge, or other institution of a religious or charitable nature, which is now actually in the sole charge of Government or for the support of which any monthly or annual grant in perpetuity is made from the public revenues, or an inam is granted and is recognised and registered as a devadaya or dharmadaya grant;

(ii) every institution of a religious or charitable nature which, under the provisions of this Act, may be taken under the sole management of Government so long as it remains under such management.'

7. Chapter II of the 1927 Act provides for the control and management of the muzrai institutions. The Chief Controlling Authority is vested in the Government. However, the Government is empowered to appoint a Muzrai Commissioner on whom the Government may confer such duties and powers of appeal, superintendence and control as the Government may think fit in respect of all or any particular class of religious and charitable institutions. Section 5 provides for the appointment of Deputy Commissioner, Assistant Commissioner and Amildars and their duties and powers in respect of the institutions coming within their territorial jurisdiction. Section 6 which is quite relevant here provides for the appointment of Dharmadarshis and Nazarins which reads as follows:

'The Government may appoint Dharmadarshis or Nazarins of wakfs, as the case may be to manage the affairs of one or more Muzrai Institutions and, by rules framed in this behalf, determine the manner of selection, fix the term of office and regulate the powers and duties of such Dharmadarshis and Nazarins.

The Government may delegate to the Muzrai Commissioner or the Deputy Commissioner, the power of appointing Dharmadarshis or Nazarins of wakfs in respect of any institution or class of institutions.'

Section 7 provides for the appointment of committee for management of Muzrai Institutions in addition to or in lieu of Dharmadarshis and Nazarins appointed under Section 6. Section 8 provides for the transfer of managements of muzrai institution to local authority. Section 11 states that whenever it is deemed

necessary to institute a suit on behalf of any muzrai institution, the muzrai officer may file a suit himself or authorise any two or more Dharmadarshis, Nazarins, or other persons having an interest in such institution to do so. Section 14 empowers the Government to undertake either temporarily or permanently the management of the public, religious or charitable institution in respect of which a trust is created. In the case of a mismanagement Section 17 provides for an enquiry by the Muzrai Officer and thereafter if it is proved that there has been gross mismanagement of the institution or any property pertaining thereto, etc., under Section 18 the Muzrai Officer may with the previous sanction of the Government take the institution under the management of the Government. The said section also provides for other actions that may be taken by the Muzrai Officer.

8. According to Mr. Parthasarathy it is the duty of the respondents in the instant case to point out as to when the Government had taken over the management of the third respondent-institution failing which it cannot be held that the management was with the Government.

9. The above submission of the learned Counsel assumes that every institution operates by its own force or by its establishment. A public institution like a public temple may be established by a section of the public and those who founded the institution may provide for its management; such an institution may be public institution but still its management will be with the body entrusted with the management by the creator of the institution or the trust. It is in such cases where the management is done by a section of public or persons who created the trust or institution, there will be an occasion for the Government to take over the management either under Section 14 or Section 18. However there may be certain institutions which may be under the sole charge of the Government all along. Having regard to the nature of the institution and the fact that management of the institution is not governed by any specific trust or any scheme and by the very force of the control exercised by the Government all these years for decades or centuries one has to assume that such an institution is an institution under the management of the Government. The burden will be entirely on the person who asserts in such a case that the institution is not under the management of the Government; there cannot be any presumption as contended by Mr. Parthasarathy

that all the institutions should be considered as not under the management of the Government but in certain cases they may be under the control of the Government. This is quite clear from the very definition of Muzrai Institution as per Section 2(2) of the 1927 Act.

10. Several types of institutions are covered by the term 'institution' (I am using this word only for the sake of convenience), however such an institution will be a Muzrai Institution only under three circumstances, they are:

(1) An institution which is now actually in the sole charge of the Government.

(2) An institution for the support of which any monthly or annual grant is made from the public revenue, or

(3) An inam is granted and is recognised and registered as a Devadayi or Dharmadayi grant in favour of such an institution.

In the case of the institution falling under the first category, the institution will be under the management of the Government as well as under its control because the said institution was under the sole charge of the Government when the 1927 Act came into force. In the case of other two categories the management may not be with the Government at all, the Government was only aiding the institutions either by way of grant or by way of mam.

11. Sub-clause (ii) of Section 2(2) of the 1927 Act makes out the position further clear. Any institution of a religious or a charitable nature which may be taken under the sole management of the Government will be considered as a Muzrai Institution so long as it remains under such management. Sub-clause (ii) was necessary since under Sections 14 and 18, the Act provided for the temporary taking over of the management of certain institutions by the Government. This will be the fourth category.

12. I am of the view that the institutions coming within the first and the fourth category only would be considered as institutions under the management of the Government. When an institution is in the sole charge of the Government, it cannot be held that the said institution is under the management of someone else

other than the Government. Such an institution certainly have to be managed by the Government by appointing appropriate officers. Provisions of Chapter II provide for the same.

13. It is undisputed that in the instant case Dharmadarshis are being appointed to the third respondent. Dharmadarshis are appointed by the Government. It is one of the modes of managing an institution by the Government by appointing proper persons; either they may be the officers of the Government or they may be a few selected persons. Even the Dharmadarshis are not free to act as they like. The real power of the management is vested in the Muzrai Officers under the provisions of the Act. The fact that no committee is appointed under Section 7 is entirely irrelevant to consider whether the institution is under the management of the Government. Appointment of the Committee may be either in addition to or in lieu of Dharmadarshis. However, the fact remains that Muzrai Officer is there in all cases where the institution is in the sole charge of the Government. The regulation framed under the '1927 Act' in no way conveys different meaning to these provisions. The institutions are classified as per a notification No. 1497 dated 22-2-1928. The third respondent-institution is at Sl. No. 1 among the scheduled institutions. There are 10 scheduled institutions including the Gumbaz at Srirangapat-tanam. The said notification also enumerates the powers and duties of Muzrai Officer. Rule 6 referred in the above notification (framed under the regulations) provided for the appointment, powers and duties of Dharmadarshis. According to this, in the case of scheduled institutions Dharmadarshis will be appointed on the recommendation of the Muzrai Commissioner and they shall be selected from among the persons interested in the proper management of the institutions. The Dharmadarshis should ordinarily be persons residing within a radius of 5 miles from the institutions. At least two dharmadarshis should be residents of the village where the temple is situated. Dharmadarshis are to advise and co-operate with the local Muzrai Officers in matters relating to the internal management of the institution for which they are appointed. There can be Dharmadarshis for group of institutions also. These provisions make out clear that the management is not vested in the Dharmadarshis but they are to advise and co-operate in the matter of management with the local Muzrai Officers. Sub-rule (11) of Rule 6 states that in all the matters relating to the management of an

institution, not defined by rules or orders in force, unanimous resolution of Dharmadarshis will be given effect to immediately, if it is not in accordance with the mamool and the extra expenditure does not exceed Rs. 50/- subject to the resources of the institution. Even here the famildar is given the power to seek appropriate orders of the Deputy Commissioner. It is the duty of the Dharmadarshis to see that daily and periodical ceremonies are performed at the regulated time and in the prescribed manner. Dharmadarshis shall hold office for a period of 3 years unless removed within such period for reasons stated in the rules. From the above provisions it is not possible to infer that Dharmadarshis are vested with the exclusive power of management. They are to function as the advisors though they may be entrusted with the individual responsibilities of minor character. The management of such an institution which is under the sole charge of the Government will be with the Muzrai Officer.

14. It is not the case of the petitioners that there is any particular body of private individuals who have any say in the matter of the affairs of this institution. It is not even the case of the petitioners that a section of the public has an exclusive right over the temple and its properties. In fact there are several institutions where the institutions may be governed by the elected individuals even though the institution is considered as a public institution, vide *Venkataramana Devaru v. State of Mysore*, : [1958]1SCR895 . As I have already noted at an earlier stage of this order, that even for an institution to be public, it need not always be under the management of a Governmental authority or by the members of the general public. In fact an institution may be under the control of a de-nomination and still the members of the public may have a right of access to the institution as is clear from the above decision of the Supreme Court. Article 26 of the Constitution also recognises the fact that the denomination by itself may have an exclusive denominational character. In such cases the management may vest with the denomination but at the same time the Government may have regulatory or supervisory powers to see that the institution is not mismanaged. The learned Counsel for the petitioners certainly is right in saying that only because the Government exercises the power of control one cannot assume that the Government manages the institution. But from that proposition it is not possible to draw the inference that all institutions are assumed to be not under the

management of the Government. The factual aspects shall have to be pleaded and proved and the party who asserts a particular fact shall have to bear the burden prove the same. Mr. Parthasarathy referred to a decision of this Court in Karnataka State Board of Wakfs v. Mohd. Azeemuddin, 1982 (1) Kar LJ 59. The Court made a distinction between the power of superintendence and control and the power of management and held that only because the Governmental instrument had the control over the institution, it cannot be held to be under the management of the Government. I am not departing from the said proposition but the problem in the instant case for the petitioners is the failure to prove the basic facts.

15. For the reasons stated above, it is not possible to grant any relief to the petitioners.

16. Writ petitions are accordingly dismissed. Rule discharged.

17. In view of the dismissal of these writ petitions the earlier interim order automatically stands dissolved.

18. Petitions dismissed.

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