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Court : Chennai

Decided On : Mar-13-1979

Reported in : (1981)1MLJ332

Appellant : K. Jainulaludden and ors.

Respondent : K.P. Jainulaludden and ors.

Judgement :

M.M. Ismail, J.

1. These two writ appeals are directed against the common judgment of Ramanujam, J., dated 25th September, 1975, in W. P. Nos. 2938 and 4423 of 1975. The matter relates to a Wakf in Aravakurichi. The appellants herein filed an application before the State Wakf Board under Section 14 of the Wakf Act, 1954(Central Act XXIX of 1954) hereinafter (referred to as the Act) for conducting an enquiry into the administration and management of the Wakf. The respondents herein were the Trustees in management of the Wakf. The respondents herein took up an objection that the appellants herein were not 'persons interested' as defined in the Act and that therefore they were not entitled to invoke the jurisdiction of the Wakf Board under Section 44 sincs the Section enables only a 'person interested in a wakf' to make an application to the Board. The Board, by its order, dated 8th March, 1975, overruled this preliminary objection raised by the respondents herein and held that the appellants herein were persons interested in

the wakf. It was at that stage the respondents herein came to this Court with the two writ petitions W. P. No. 2938 of 1975 for the issue of a writ of certiorari to quash the order of the Board dated 8th March, 1975 and W. P. No 4423 of 1975 for the issue of a writ of prohibition restraining the Wakf Board from conducting an enquiry into the affairs of the wakf in question. Ramanujam, J , by his impugned order allowed both the writ petitions. The learned Judge held that the appellants herein cannot be said to be 'persons interested' in the Wakf and therefore they were not entitled to invoke the jurisdiction of the Board by filing an application before if under Section 44 of the Act. It is against this order of Ramanujam, J. the present appeals have been preferred.

2. These appeals require consideration of the definition of the term 'persons interested in a Wakf' occurring in Section 3(h) of the Act. From the very nature of the case, such an expression has to be considered only with reference to terms of the particular Wakf, because, that expression cannot be construed in vacuum but has to be understood only in the context of the objects of the particular Wakf. The expression 'persons interested in a Wakf' has been defined as follows in Section 3(h):

3(h) 'Person interested in a Wakf' means any person who is entitled to receive any pecuniary or other benefits from the Wakf and includes.

(i) any person who has a right to worship, or to perform any religious rite in a mosque, idgah, imambara, dargah, Khankah, maqbara, graveyard or any other religious institution under the Wakf;

(ii) The wakif and any descendant of the wakif and the mutawalli:

With reference to this definition, the question for consideration is whether the appellants can be said to be interested in the Wakf in question.

3. The Wakf in question has been created by a document dated 5th September, 1908, Several charities are prescribed to be performed in the trust deed. One such thing is the running of a Madarasa for the purpose of imparting religious instructions to the Muslim children. The document does nod impose any restriction

whatever on the status of the Muslim children who can receive the education in the institution. In fact, the document refers to every Muslim boy and girl who seeks to receive religious instruction in the Madarasa being entitled to receive the education. In addition to that, paragraph 6 of the document refers to four farther charities. One was the performance of funeral rites of the Muslims who die; the second was the performance of marriage of poor Muslim girls ; the third was helping Muslims to perform their Haj Pilgrimage, and the fourth was feeding the MUSAFIRS who come in the month of Ramzan. Even here, only with regard to the marriage, the same in confined to poor Muslim girls; but in respect of performance of the funeral rites and helping Muslims to perform their Haj Pilgrimage, no restriction whatever is imposed on the age, status or the economic condition of the Muslims who will be eligible to receive the benefit thereunder. The entire document makes it absolutely clear that the author of the wakf was greatly interested in making the wakf permanently useful to the Muslim general public, and this is made abundantly clear by the provisions therein that any Muslim of the village in question can approach a Court at the expense of the trust itself in the event of the trustees not performing their obligations. The document further provides that if he prominent Muslims of the Aravakurichi village bring to the notice of the heirs of the wakif in charge of the management of the trust that the income of the trust can be utilised for the various charities in a proportion different from the one prescribed by the wakf or can be utilised for a particular charity not mentioned in the document, they must consider the suggestions and if the majority of them think that the suggestions were good, they must carry out the charities accordingly. All these features in the trust deed make it absolutely clear that the wakif intended the trust to be as broad-based and as public as he can possibly make the same with reference to the objects which he sought to achieve. The question for consideration is whether in such a context the appellants herein can be said to be persons interested in the wakf or not.

4. It has to be seen that the former part of the definition, apart from stating that a person interested in a wakf means any person who is entitled to receive any pecuniary benefits, also states that it means any person who is entitled to other benefits from the wakf. The expression 'person who is entitled to receive other benefits from the wakf' is of the widest connetation, and there is neither reason nor

principle to restrict the scope of that expression only to certain types of benefits analogous to pecuniary benefits. Ramanujam, J., would appear to have taken the view that only persons who have been given pecuniary or other benefits under the wakf' deed which they could claim as of right, would come within the scope of the expression 'persons interested in a wakf'. We are of the opinion that whenever a benefit is reserved for the public in general without restricting the persons who will be entitled to participate therein either with reference to the religious, or with reference to the age, or with reference to the social status any person who will fall within the particular category of the persons for whom the benefit is reserved will be a person entitled to receive that benefit as of right and such a person will certainly be entitled to invoke the jurisdiction of a body like the Wakf Board under Section 44. It may be that a person may not be entitled to call upon the trustees to confer a particular benefit personally on him. But certainly it will be open to him to call upon the trustees to perform the particular charity in which under the trust deed he has a right to participate. If a narrow interpretation is to be given to the expression 'any person interested in a wakf' occurring in Section 3(A), Section 44 will become inapplicable to a large number of public wakfs, because, from toe very nature of the case, a public wakf will not indicate or enumerate the beneficiaries but will merely refer to the beneficiaries is general terms. Section 44 of the Act states:

Any person interested in a wakf may make an application to the Board supported by an affidavit to institute an enquiry relating to the administration of the wakf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, it shall take such action thereon as it thinks fit.

Thus it will be seen that the action under Section 44 is meant for the better administration and management of the wakf as such, and the expression ' a person interested in a wakf' will have to be understood in that context. If so understood, any person who will be entitled to derive a benefit from the wakf will be a 'person interested in the wakf, being clothed with a right to invoke the jurisdiction of the Board under Section 44. Therefore, having regard to the objects and the terms of the present wakf, we are clearly of the opinion that the appellants

are persons interested in the wakf and therefore they are entitled to invoke the jurisdiction of the Wakf Board under Section 44 of the Act.

5. Ramanujam, J., has been influenced by the decisions bearing on the scope of the expression 'persons interested in , the trust' occurring in Section 92 of the Code of Civil Procedure. However, with respect to the learned Judge, we are of the opinion that these decisions have no relevance to this case, because, in this case we have a definition for 'person interested in the wakf' in Section 3(h), while there is no such definition with reference to the expression 'persons interested in the trust' occurring in Section 92 of the Code of Civil Procedure. The danger of relying upon such decisions is apparent from the following passage occurring in the judgment of the learned Judge:

The scope of Section 92 came up for consideration before the Full Bench in Ramachandra Iyer v. Parameswaran Unni (1919) 36 M.L.J. 396 : I.L.R. (1919) Mad. 360 and the question before the Full Bench was whether a suit instituted, under Section 92 of the Code of Civil Procedure with respect to temples in North Malabar is maintainable by a member of Dharma Rakshaka Sabha located at Madras, whose object is to institute suits for the protection and due application of the Hindu Religious Endowments.

When the same matter was before a Division Bench earlier, Wallis, CJ. expressed the view that though Hindu temples can prima facie to be taken as having been dedicated for the use of all Hindus resorting to them a mere right to worship in the temple cannot be taken as indicating his interest in the trust and that any other conclusion would defeat the object with which the Legislature inserted the words in Section 92 the object being to prevent people interfering by virtue of the section in the administration of the charitable trusts merely in the interest of others and without any real interest of their own. Kumaraswami Sastri, J., was however of the view that the right to worship in a particular temple is a sufficient interest in the temple to entitle a person to join in a suit under Section 92. On a Letters Patent Appeal, the matter cams before a Full Bench consisting of Abdur Rahim, Oldfield, and Coutts Trotter, JJ. In their majority judgment they held that the interest contemplated by Section 92 of the Code of Civil Procedure is a resent and

substantial interest and not a remote or fictitious of purely illusory interest and that a Hindu having a mere right to worship at a temple is not by reason of that alone, without more, competent to institute a suit for a scheme under Section 92.

Abdur Rahim J., in his minority judgment:however held that in the case of a Hindu temple or a Mohamadan Mosque persons resorting to them for the purpose of worship are personally beneficiaries intended by the founder and that such persons have an interest in the institution so as to enable them to invoke Section 92. In Md. Khan Sait v. Kadir Batcha Odgers : AIR1926 Mad466 . and Madhavan Nair, JJ, held that in order to entitle a plaintiff to sue under Section 92 he must have a clear interest in the particular trust over and above that which the general public has, that the words 'interest in trust' must mean a present and substantial interest arising from some special relation in which the plaintiff stands to the trust in question as compared with the body of the religious community, and that though proof of residence in the neighbourhood of the institution may be relevant on the ground that those who live near the institution will be most likely to be benefited by the institution that is not conclusive. The Judicial Committee in Vydianathan Ayyar v. Swaminatha Iyer I.L.R. (1924) Mad. 884 : 20 L.W. 803 : (1924) 471 M.L.J. 361 : 51 I. A. 282 : A.I.R. 1924 P. C. 221. however felt that 'Muhammadans who worship regularly in a mosque in a village had a direct interest in the trust relating to the mosque though a bare possibility may not clothe them with an interest in the trust.

6. In Harhar Singh v. Gurudiam Singh : [1967]2SCR739 . the Supreme Court had to consider whether the plaintiffs belonging to Sikh religion but residing in the same village can file a suit under Section 92 of the Code of Civil Procedure in relation to a non-Sikh institution running a free kitchen and serving free food to visitors. It had been urged on behalf of the plaintiffs that as residents of the village where the food is served free, they have got an interest in the institution so as to enable them to file a suit under Section 92. Dealing with that contention the Supreme Court held, after referring to the judgment of the Full Bench in Ramachandra Iyer v. Parameswaran Unni I.L.R. (1919) Mad. 360 : (1919) 36 M.L.J. 396, and the decision of the Privy Council in Vydianathan Aiyar v. Swaminatha Aiyar I.L.R. (1919) Mad. 360 : (1919) 36 M.L.J. 396. that the plaintiffs as residents of the village had no such interest as could entitle them to institute the

suit.

From this, it is clear that the learned Judge was influenced by the consideration that these deisions lay down that a person who is merely having a right to worship in a temple cannot be said to be person having an interest in the institution. On the other hand, the definition, in the present case, expressaly states the contrary. We have already extracted the definition; That expressly states that the term 'person interested in a Wakf' includes 'any person who has a right to worship or to perform any religious rite. In a mosque ...'. It is in view of this position only we have pointed out that the decisions bearing on the expression, viz., 'persons interested in the trust' occurring in Section 92 of the Code of Civil Procedure, will have no bearing on the present controversy.

Further, the learned Judge has stated:

If there had been no definition of 'a person interested in the wakf as in Section 3(h) it would be possible to hold that respondents 2 to 5(the appellants herein) have a real and distinct interest in the wakf so as to entitle them to invoke Section 44 of the Wakf Act.

But the said definition section appears to be restrictive in nature . . ..

Here again, with respect to the learned Judge, we are unable to agree with him. The definition section, instead of being restrictive, is rather expensive and it includes not only a person who has a right to worship or perform any religious rite in a mosque, idgah, imambara, dargah, khingah, maqbara, graveyard or any other religious institution connected with the wakf, but includes a person who has a right to participate in any religious or charitable institution under the wakf. Consequently the definition of the term 'person interested in a wakf' in Section 3(A) is very wide and hence we are of the opinion that the appellants herein, having regard to the definition and the terms of the wakf deed in question, fall within the definition section.

7. Independently, of this, there is also a further reason for not prohibiting the wakf board from, conducting the enquiry in the present case. Section 45(1) of the Act

reads as follows:

(i) The Board may, either on an application received under Section 44 or on its own motion:

(a) hold an inquiry in such manner as may be prescribed, or

(b) authorise any person in this behalf to hold an inquiry into any matter relating to a wakf and take such action as it thinks fit.

This section enables the Wakf Board to hold an enquiry not only on an application made by persons interested, but also of its own motion. Therefore, even if it is assumed that the appellants herein cannot be said to be 'person interested in the wakf', as defined in Section3(h) of the Act, it does not mean that the Wakf Board had no jurisdiction to conduct the enquiry, because, the suo motu jurisdiction of the Board can always be exercised treating the applications made by the appellants herein as information brought to the notice of the Wakf Board necessitating the holding of an enquiry. Ramanujam, J., was aware of the power of the Wakf Board under Section 45 of the Act, because, the learned Judge states towards the end of his judgment that what the learned Judge held with regard to Section 44 would not mean that the Wakf Board cannot initiate suo motu proceedings under Section 45 on the basis of the materials available before it and it was open to the Wakf Board to do so. If that is the conclusion of the learned Judge, it is rather difficult to understand how a writ of prohibition could issue against the Wakf Board preventing it from conducting the enquiry.

8. In view of the above circumstances, we are of opinion that the appellants herein come within the scope of the definition 'person interested in the Wakf' in Section 3(h) of the Act and therefore were entitled to apply to the Wakf Board under Section 44 of the Act for conducting an enquiry into the affairs of the Wakf in question, and even if they are not persons interested in the Wakf, as the Board has jurisdiction to conduct enquiry under Section 45 treating the application of the appellants an information made available to it, justifying its holding an enquiry into the affairs of the Wakf. We, therefore, allow both these appeals and set aside the order of the learned Judge and dismiss the writ petitions filed by the respondents.

There will be no order as to costs.

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