

MohiuddIn Chowdhury Vs. AminuddIn Chowdhury and ors.

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Court : Kolkata

Decided On : Jul-28-1922

Reported in : AIR1924Cal441,72Ind.Cas.930

Judge : Lancelot Sanderson, C.J. and ;Richardson, J.

Appellant : MohiuddIn Chowdhury

Respondent : AminuddIn Chowdhury and ors.

Judgement :

Richardson, J.

1. This is a rule obtained by one Mohiuddin Chowdhury upon the opposite party to show cause why the order made by the District Judge of Sylhet, dated the 5th March, 1922, should not be set aside.

2. The order relates to a Muhammadan endowment in the village of Phulbari. The then Mutwalli had resigned and the office was vacant. The question before the learned District Judge was the appointment of a new Mutwalli. The question was raised by an application or applications made to the learned Judge to appoint a Receiver and he has dealt with it, as it appears, in accordance with the directions laid down, by the founder in the deed of endowment.

3. The deed provides in effect, according to the learned District Judge and according to the petitioner himself, that on a vacancy occurring in the office of Mutwalli, it should be filled by a pious Muhammadan, appointed by a competent Court on the nomination of five respectable and pious Muhammadans of the village.

4. On the present occasion five respectable and pious Muhammadans nominated one candidate and five other respectable and, pious Muhammadans nominated another candidate. The learned Judge held that both these candidates were duly qualified as pious Muhammadans to hold the office. After fully considering their respective claims, he appointed one of them as Mutwalli.

5. This rule was obtained not by the unsuccessful candidate, but by another Muhammadan of the village on the footing that he is a person interested in the administration of the endowment; and the rule has been argued on his behalf on two grounds.

6. As to the first ground, I have no doubt that the District Judge has, in such a matter as this, the powers of a Kazi and was a competent Court within the meaning of the deed of endowment.

7. The second ground is that the proceedings of the learned District Judge were without jurisdiction. It was argued that he had no jurisdiction to entertain any petition or application for the appointment of a new Mutwalli and that, in order to give him jurisdiction, a suit should have been instituted under the provisions of Section 92 of the Civil Procedure Code. In my opinion, there is no substance in this contention. The learned District Judge in making the appointment has merely acted in accordance with the wishes and directions of the founder himself as expressed in the deed of endowment.

8. The present case, as it came before the District Judge and as it comes before us, raises, in my opinion, no such question as is contemplated by Section 92 of the Code. It may be assumed that the endowment is a public trust created for purposes of a charitable or religious nature. But the learned Judge had no alleged breach of trust to deal with, nor is it a case within the meaning of the Statute in

which 'the direction of the Court' was 'deemed necessary for the administration' of the trust. The District Judge was carrying out a duty imposed upon him-by the founder and embedded by the founder in the constitution of the trust. The case, therefore, is clearly distinguishable from the case of Jamila Khatun v. Abdul Jalil Meah (1919) 23 C.W.N. 138 to which the learned Vakil for the petitioner referred us. There, as the report shows, the wakfnama contained no provisions for the appointment of a Mutwalli, and it did not appear that there was any executor of the original wakf who would be competent to make the appointment. It was also clear that, apart from the appointment of a Mutwalli, other matters of complications might arise. Even in that case, however, the question whether the District Judge, acting as Kazi, might entertain an application to appoint a Mutwalli, the office being vacant, or whether the only course available for the purpose was a suit under Section 92 of the Code, was left undetermined.

9. In the present case, without deciding the point, I am not sure that the proceedings of the learned Judge are judicial proceedings at all. I am rather disposed to regard them as proceedings of an administrative character, but I express no final opinion to that effect.

10. The learned Judge decided that the candidate whom he appointed was a fit person to hold the office. If his proceedings were administrative, there is an end of the matter. If they were judicial, no ground is disclosed for our interference in revision.

11. Parties interested who question the propriety of the appointment made by the learned Judge may or may not themselves have a remedy open to them by way of suit under Section 92 of the Code or otherwise. As to that I say nothing except that those who are dissatisfied must take such course as they may be advised to take in the circumstances.

12. For these reasons, this Rule should, in my opinion, be discharged with costs, the hearing-fee being assessed at one gold mohur.

Sanderson. C.J.

13. I agree.

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