

CASE NO.:
Appeal (civil) 5178 of 1997

PETITIONER:
Kuldip Chand & Anr.

RESPONDENT:
Advocate General to Government of Himachal Pradesh & Ors. @

DATE OF JUDGMENT: 14/02/2003

BENCH:
S.B. Sinha & AR. Lakshmanan

JUDGMENT:

J U D G M E N T

S.B. SINHA, J :

Whether by mere use of a premises as a 'Dharamsala' for about 125 years would lead to an inference that the same belongs to a public trust, is the question involved in this appeal, which arises out of a judgment dated 19.11.1996 passed by a Division Bench of the High Court of Himachal Pradesh at Shimla in Regular First Appeal No.44 of 1984 whereby and whereunder the judgment of a learned Single Judge of the said Court dated 20.3.1984 passed in Civil Suit No.22 of 1979 was reversed.

Fact of the matter shorn of all unnecessary details is as under :-

Raj Kumar Bir Singh, was the owner of Nahan Estate. He constructed the said Dharamsala on a land measuring 1702 sq. yards and 18 sq. Girha; comprising of Khasra Nos. 991 with Gosha A & B, 992, 993 with Gosha, 994, 995 with Gosha, 996 and 999 situated in the town of Nahan as per Misal Haqiyat of Settlement Sani. As per the latest settlement the new Khewat Khatuni Nos. with Kharsa Nos. are Khewat No.78, Khatuni Khata Nos. 133 to 137 and Khata No.28/50, 914, 915, 955, 956, 959, 962, 963, 957, 960, 961 & 958. Allegedly, the said Dharamsala was dedicated to the general public wherefor a stone plaque on the top of its main gate was affixed. The public in general, the travellers and in particular those taking part in an yearly fair known as Renuka Fair admittedly could stay therein for three days without permission whereafter, permission of the owner of the property was necessary.

Raj Kumar Bir Singh died in or about the year 1881 whereupon the properties owned by him devolved upon Surjan Singh. Upon the death of Surjan Singh, the properties devolved upon Ranzor Singh. Ranzor Singh died on 14.11.1947 and on his death his properties were inherited by Jagat Bahadur Singh.

Jagat Bahadur Singh allegedly sold the suit property by reason of three documents in favour of the appellants herein which were preceded by agreements of sale executed in the year 1963.

Claiming the said property to be a trust property, a suit was filed by the Advocate General of the Government of Himachal Pradesh purported to be under Section 92 of the Code of Civil Procedure alleging therein that the same had been dedicated to the public for public purposes by the aforementioned Raj Bir Singh.

It was contended that while dedicating the said property to the

public Raj Kumar Bir Singh, as founder of the trust became the sole trustee and remained as such and upon his death the Dharamsala was looked after and managed by Ranzor Singh in the same capacity. Upon the death of Ranzor Singh, Jagat Bahadur Singh became the trustee but he (Original Defendant No.1) started misappropriating the trust property for his own use and denying the very existence and nature of the said property. It was alleged that with a view to defeat the trust and grab for himself the said property, he entered into the aforementioned transactions.

The cause of action for the said suit was said to have arisen on 25.4.1963 and 1.1.1970 when Defendant No.1 sold the property in suit to Defendant Nos.2 and 4 respectively and also on 29.3.1968 when Defendant No.2 sold the property to Defendant No.3

The defendants in their respective written statements denied and disputed the allegations made in the plaint that the property in question was dedicated to the public. According to the defendants, the secular nature or character of the said property was never changed and it all along remained the personal property of Original Defendant No.1 and his predecessors in interest.

The Defendants Nos.3 to 5 in their written statements further claimed that they were bona fide purchasers of the suit property for valuable consideration; and have effected improvements thereof upon coming into possession and have been running a tourist hotel therein.

The learned Single Judge having regard to the pleadings of the parties framed as many as ten issues.

In the said suit, the Plaintiff examined a large number of witnesses in support of his case. The learned Single Judge on analyzing the materials brought on records by the parties including the revenue records came to the conclusion that a public trust was not created and the Dharamsala in question had all along been treated by Raj Kumar Bir Singh, Ranzor Singh and Jagat Bahadur Singh as their own property and not as trustees thereof.

The learned Single Judge further held that Defendant Nos.3 and 5 being in possession of the property in suit for a period of more than twelve years acquired title by adverse possession.

The plaintiff- Respondent No.1, namely, the Advocate General of the Government of Himachal Pradesh, preferred a Letters Patent appeal against the said judgment and decree. The Division Bench by reason of the impugned judgment reversed the judgment and decree passed by the learned Single Judge holding that as no instrument was required for creation of a trust, the only test therefor would be to see as to whether the general public in exercise of their rights have been deriving the benefits of institution in sequence of the objects for which it came to be established. The Division Bench further held that the purported alienations made by the Original Defendant No.1 in favour of Defendants Nos.3 to 5 were illegal and they did not derive any right, title or interest in relation thereto. It wa 7

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IN THE SUPREME COURT OF INDIA
 CIVIL APPELLATE JURISDICTION
 CIVIL APPEAL NO.5178 OF 1997

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 Appellants

Versus

Advocate General to Government of
 Himachal Pradesh & Ors.
 Respondents.

J U D G M E N T

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Fact of the matter shorn of all unnecessary details is as under :-

Raj Kumar Bir Singh, was the owner of Nahan Estate. He constructed the said Dharamsala on a land measuring 1702 sq. yards and 18 sq. Girha; comprising of Khasra Nos. 991 with Gosha A ot support the case of a dedication of the property; (2) The plaintiffs have utterly failed to discharge their onus of proof to show that there was ever any dedication of property in favour of the general public; (3) The administration of the Dharamsala was all along in the hands of the members of the family; (4) No contribution had ever been made by the public; and (5) No materials have been brought on records to show that the suit property was used or managed by the general public.

Mr. Sanghi would urge that the burden of proof heavily lay upon the plaintiff to show that there had been a complete dedication of the property in question in favour of the general public which was not discharged. The learned counsel would contend that a suit under Section 92 of the Code of Civil Procedure would be maintainable only in the event it is proved beyond any pale of doubt that the trust is a public trust and not otherwise. In support of the said contention, strong reliance has been placed in Menakuru Dasaratharami Reddi vs. Duddukuru Subba Rao [(1957) SCR 1122], The Bihar State Board Religious Trust, Patna vs. Mahant Sri Biseshwar Das [(1971) 1 SCC 574] and Sri Radhakanta Deb and Another vs. Commissioner of Hindu Religious Endowments, Orissa [(1981) 2 SCC 226].

Mr. N.K. Sharma, learned counsel appearing on behalf of Respondent No.1, on the other hand, would submit that the witnesses examined on behalf of the plaintiff-respondent were all old and respectable people. Some of them had worked under the Raja. It was submitted that the user of the property as Dharamsala has not been and could not be disputed. Such user having been continued for a period of 125, years the same could not have been treated as private property and, thus, a complete dedication thereof for user of the public must be inferred.

Mr. Sharma would urge that the conduct of the contesting defendants-appellants should also be taken note of, as a power of attorney holder, i.e. the father of the appellants sold the same in their favour. It was pointed out that the appellants even did not prove their title deeds in respect of the suit property.

It was pointed out that the witnesses examined on behalf of the plaintiff-respondents categorically stated that for maintenance and management of the property a separate cell was created and the income derived therefrom was being used for maintenance thereof. Only when the Dharamsala fell in disrepair, the Town Municipal Committee started maintaining the same.

The primal question which falls for our consideration is as to whether the plaintiff has been able to prove that Raj Bir Singh had created a public trust in respect of the Dharamsala in question.

It is beyond any dispute that a Hindu is entitled to dedicate his property for religious and charitable purposes wherefor even no instrument in writing is necessary. A Hindu, however, in the event, wishes to establish a charitable institution must express his purpose and endow it. Such purpose must clearly be specified. For the purpose of

creating an endowment, what is necessary is a clear and unequivocal manifestation of intention to create a trust and vesting thereof in the donor and another as trustees. Subject of endowment, however, must be certain. Dedication of property either may be complete or partial. When such dedication is complete, a public trust is created in contra-distinction to a partial dedication which would only create a charity. Although the dedication to charity need not necessarily be by instrument or grant, there must exist cogent and satisfactory evidence of conduct of the parties and user of the property, which show the extinction of the private secular character of the property and its complete dedication to charity. [See Menakuru Dasaratharami Reddi vs. Duddukuru Subba Rao (supra)].

Admittedly, in the instant case, no instrument in writing was created. Establishment of a Dharamsala may constitute a charitable trust. It is also not in dispute that Khasra No.995 is recorded as 'Parao' (vacant site). Khasra No.993 makes a reference of demolished site relating to 'parao'. In Khasra No.994, 'katcha' latrine is entered whereas in Khasra No.992 a 'residential house' is recorded.

It is not in dispute that in the revenue records the ownership of the property stands in the name of Ranzor Singh. The right of the general public is not mentioned therein. Only because a 'sarai' or 'parao' existed in the disputed property would by itself not be sufficient to arrive at a conclusion that the same was a public trust. It appears from the revenue records that even in the possession column, the names of Ranzor Singh or Surjan Singh were mentioned. Some individuals have been shown in possession of the shops and the houses. The undisputed oral evidence is that the tenants and lessees were paying rents to the owners. It may be that an engrafted stone was fixed over the main gate of the Sarai mentioning that the same was constructed by Raj Kumar Bir Singh, but the same is of little or no value for arriving at a finding that Raja Bir Singh dedicated the property to the public. For the purpose of finding out as to whether the Plaintiff has been able to discharge the heavy burden of proof upon him as to how the same was treated, we may take notice of the evidence adduced on behalf of the Plaintiff.

P.W. 1, Ram Gopal Abhi, who was the main witness in the case, admitted that an Adult Education School was also opened on the first floor of the Dharamsala. He categorically stated that the members of the public never spent any amount for maintenance of the Dharamsala. He feigned his ignorance when suggested that horses of the police personnel were tied or used to be tied in the courtyard inside the Dharamsala. He, however, accepted that Ranzor Singh appointed a Chowkidar to look after the Dharamsala and he used to pay his salary from his own pocket. He also admitted that the disputed Dharamsala was being used on the occasion of marriage of his sister for accommodating the marriage party with the permission of Ranzor Singh and for accommodating the barat they had taken two rooms in the first floor and these were the V.I.P. rooms which could be utilized by any person only with the permission of Ranzor Singh.

P.W.2, Des Raj, stated that the travellers used to tie their cattle and horses etc. in the open site. The public in general/visitors/travellers used to stay in the disputed Dharamsala wherefor no charge used to be taken. He, however, did not know that the Chowkidar who used to look after the said Dharamsala was maintaining any register or not. Renuka Fair admittedly used to be held in the month of kartic every year.

P.W.3, Kanshi Ram, stated that the Dharamsala is a double storey building having about two rooms in the upper storey and three or four rooms in the ground floor; whereas P.W.1, Shri Ram Gopal Abhi stated that there were about 24 rooms in the Dharamsala.

P.W.4, Phool Chand, in his evidence stated that the public could

stay in the Dharamsala for three days without permission but thereafter the permission of Ranzor Singh was necessary. He admitted that about 20-22 years back, one saw mill had been fixed in a room of the disputed Dharamsala. He accepted that the public did not contribute anything for maintenance and upkeep of the Dharamsala nor any register was maintained. He also accepted that only the private persons of Raja Sahib used to stay in the two rooms of the upper storey.

P.W.7, Dalip Singh, who was married at Nahan and whose marriage party came to Nahan from Shakargarh, stated that the Dharamsala had only two rooms in the first floor and many rooms in the ground floor. He, however, could not say as to whether any permission had been taken by his in-laws for use of the Dharamsala.

P.W.8, Jagmohan Ramol, who was a Sanitary Inspector, stated :

"....One Chowkidar used to sit in the Dharamsala and Dharamsala had been constructed by the ancestors of Maharaja Jagat Bahadur. They were the owners of the Dharamsala. I do not know if the trucks of Surjan Singh were parked in the vacant site. It is, however, a fact that the trucks of different persons used to be parked there."

P.W. 14, Suraj Lal Bansal, who was the power of attorney holder of Maharaja Jagat Bahadur Singh stated :

"There were two shops in the disputed Dharamsala. The shopkeepers used to pay the rent to Bahadur Singh for further payment to Maharaj Bahadur Singh and Kanwar Ranjor Singh. The shopkeepers never paid rent to the Chowkidar. The travellers or the public who used to stay in the disputed Dharmasala were not to pay anything for their lodging. There were no orders of receiving any payment from such public persons"

He further stated :

"Kanwar Ranjor Singh and Maharaj Jagat Bahadur had one temple of their own within the Mahal area. They and their forefathers had also constructed temples in nahan Town and these temples were for public purposes. I did not see any Trust deed by I have only stated that maharaj Jagat Bahadur and Kanwar Beer Singh were trustees because they used to maintain the disputed Dharamsala. Defendants No. 4 and 5 are in possession of the property, where the old disputed Dharamsala was situated. From outside they have constructed some shops which are visible from outside. I never went inside".

He accepted that the rent received from the two shops was too meagre to maintain the disputed Dharamsala and Jagat Bahadur Singh was maintaining the same.

If the Dharamsala was constructed for the purpose of Sarai within

the meaning of provisions of the Sarai Act, 1867 still it may not amount to creation of a public trust. Dharamsala was not even registered under the Sarai Act. No evidence had been brought on record to show that the provisions thereof had been complied with either by the ruler of the State or by the Chowkidar.

All PWs and in particular PW who was in service of the Raja, did not state that the provisions of the Sarai Act had been complied with. P.W.1, as noticed hereinbefore, categorically stated that the rooms in the first floor were meant for use by the family members of the Raja and/or by others with his permission. A part of the Dharamsala which, thus, remained under the complete control of the owner of the property and, thus, the same cannot answer the description of a public trust.

Long user of a property as Dharamsala by itself would not lead to an inference that dedication of the property by Kunwar Bir Singh in favour of the public was complete and absolute. Had such dedication been made, the same was expected to be recorded in the revenue records.

In terms of Section 35 of the Evidence Act, the entries in the revenues record would be presumed to be correct; although the same is a rebuttable one.

Another aspect of the matter must also receive serious consideration. It appears from the evidence of PW 8 that Bir Singh and his successors have constructed many temples for general public. If a trust was created it was expected that all the trust properties would be managed by some trustees and not by the rulers on their own. Furthermore, if there were other properties which were also subject matter of public trust why no claim was made in relation thereto.

From the materials brought on records by the parties, as noticed hereinbefore, the following facts emerge : (1) That the shops were let out to the other people; (2) People could come and stay in the Dharamsala but for stay of more than three days, only upon seeking permission therefor; (3) Rent received from the shops were being used by the owners for their own purpose; (4) Dharamsala was being managed/maintained from the personal funds of the owner; (5) The management and control of the Dharamsala was all along with the owners; (6) A school was opened in the Dharamsala; (7) A chowkidar was appointed by Ranzor Singh to look after the Dharamsala and his salary used to be paid by the owner from his own pocket; (8) Dharamsala could be used for marriage purpose but only with the permission of the owners; (9) The first floor rooms could be used only by the officers or by others with the permission of the owner; (10) The Dharamsala was ordinarily being used by the pilgrims only during fair; (11) The public never contributed anything for maintenance of the Dharamsala; (12) No member of public had any say as regards management of the Dharamsala and had no legal right to use the same; (13) No member of public ever participated in the management of the Dharamsala; (14) No manager had ever been appointed to look after and manage the property; (15) The Dharamsala was not registered under the Sarais Act; (16) There is no evidence to show that the owners acted as shabaitis or trustees.

A dedication for public purposes and for the benefit of the general public would involve complete cessation of ownership on the part of the founder and vesting of the property for the religious object. In absence of a formal and express endowment, the character of the dedication may have to be determined on the basis of the history of the institution and the conduct of the founder and his heirs. Such dedication may either be complete or partial. A right of easement in favour a community or a part of the community would not constitute such dedication where the owner retained the property for himself. It may be that right of the owner of the property is qualified by public right of user but such right in the instant case, as noticed hereinbefore, is not wholly unrestricted. Apart from the

fact that the public in general and/or any particular community did not have any right of participation in the management of the property nor for the maintenance thereof any contribution was made is a matter of much significance. A dedication, it may bear repetition to state, would mean complete relinquishment of his right of ownership and proprietary. A benevolent act on the part of a ruler of the State for the benefit of the general public may or may not amount to dedication for charitable purpose.

When the complete control is retained by the owner - be it be appointment of a Chowkidar; appropriation of rents, maintenance thereof from his personal funds dedication cannot be said to be complete. There is no evidence except oral statements of some witnesses to the effect that Raj Kumar Bir Singh became its first trustee. Evidence adduced in this behalf is presumptive in nature. How such trust was administered by Raj Kumar Bir Singh and upon his death by his successors in interest has not been disclosed. It appears that the family of the donor retained the control over the property and, therefore, a complete dedication cannot be inferred far less presumed. Furthermore, a trust which has been created may be a private trust or a public trust. The provisions of Section 92 of the Code of Civil Procedure would be attracted only when a public trust comes into being and not otherwise.

Undoubtedly, bequests for construction of a Dharamsala will be for a charitable purpose. It is not necessary that the properties must be dedicated to any particular deity but what is essential is complete dedication for a charitable purpose. Such dedication may be made to an object both religious and of public utility.

In Maharani Hemanta Kumari Debi and others vs. Gauri Shankar Tewari and others [(1940-41) Law Reports, I.A., Vol.68, 53], the Privy Council while reversing the decision of the Allahabad High Court reported in (1936) I.L.R. 58, 818 observed :

"A bathing ghat on the banks of the Ganges at Benares is a subject-matter to be considered upon the principles of the Hindu law. If dedicated to such a purpose, land or other property would be dedicated to an object both religious and of public utility, just as much as is a dharamsala or a math, notwithstanding that it be not dedicated to any particular deity. But it cannot from this consideration be at once concluded that in any particular case there has been a dedication in the full sense of the Hindu law, which involves the complete cessation of ownership on the part of the founder and the vesting of the property in the religious institution or object. There may or may not be some presumption arising in respect of this from particular circumstances of a given case, but, in the absence of a formal and express endowment evidenced by deed or declaration, the character of the dedication can only be determined on the basis of the history of the institution and the conduct of the founder and his heirs. That the dedication of property to religious or charitable uses may be complete or partial is as true under the Benares as under the Bengal school of Hindu law. Partial dedication may take place not only where a mere charge is created in favour of an idol or other religious object, but also, as Mr. Mayne in his well known work was careful to notice, "where the owner retained the property in himself but granted the community or part o 7

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Raj Kumar Bir Singh, was the owner of Nahan Estate. He constructed the said Dharamsala on a land measuring 1702 sq. yards and 18 sq. Girha; comprising of Khasra Nos. 991 with Gosha A same.

This Court in Mahant Ram Saroop Dasji vs. S.P. Sahi, Special Officer-in-Charge of Hindu Religious Trusts and others [AIR 1959 SC 951] traced the history of public trust and pointed out that whereas under English law all trusts should be public trusts, under Hindu law, there may be private trust also. It was held that all the statutes operating in the field including Section 92 of the Code of Civil Procedure apply to public trust alone.

In the Bihar State Board Religious Trust, Patna vs. Mahant Sri Biseshwar Das (supra), this Court upon noticing the decision of the Privy Council in Babu Bhagwan Din vs. Gir Har Saroop [67, I.A., 1] observed :

"Thus, the mere fact of the public having been freely admitted to the temple cannot mean that Courts should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right. No such evidence of any reliable kind was available to the appellant-Board in the instant case."

This Court held that the charitable trust might either be created by a grant for an express purpose or a grant having been made in favour of an individual or a class of individuals, that individual or that class of individuals might, after obtaining the grant, create a charitable trust but here there is no evidence as regards such grant.

Yet again in Sri Radhakanta Deb and Another vs. Commissioner of Hindu Religious Endowments, Orissa (supra), upon taking into consideration a large number of decisions of the Privy Council as also of this Court, it was observed :

"It may thus be noticed that this Court has invariably held that the mere fact that the members of the public used to visit the temple for the purpose of worship without any hindrance or freely admitted therein would not be a clear indication of the nature of the endowment. It is manifest that whenever a dedication is made for religious purposes and a deity installed in a temple, the worship of the deity is a necessary

concomitant of the installation of the deity, and therefore, the mere factum of worship would not determine the nature of the endowment. Indeed if it is proved that the worship by the members of the public is as of right that may be a circumstance which may in some cases conclusively establish that the endowment was of a public nature."

This Court laid down the following tests as sufficient guidelines to determine on the facts of each case whether an endowment is of a public or private nature :

(1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;

(2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;

(3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;

(4) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment.

None of the aforementioned test is satisfied in the instant case. It is true that the appellants herein did not produce their title deeds wherefor an adverse inference could be drawn, but transfer of the suit premises in their favour by the owner thereof stands admitted and in fact the said transaction constituted cause of action for filing the suit. In any event, their possession over the disputed premises stands admitted.

We furthermore fail to understand as to why the public in general did not exercise their right, if any, in respect of the suit premises for a long time and at least since 1963.

It may be that a part of the Dharamsala in question was used by the general public for a long time but continuance of such a benevolent acts/charity would not lead to creation of a trust which alone is the determinative factor for entertaining a suit at the instance of the Advocate General in terms of Section 92 of the Code of Civil Procedure.

For the foregoing reasons, we are of the opinion that the judgment and decree passed by the High Court cannot be sustained. The appeal is allowed accordingly. However, in the facts and circumstances of this case, there shall be no order as to costs.