

CASE NO.:
Appeal (civil) 1616 of 1994

PETITIONER:
RAM BHAROSE SHARMA

RESPONDENT:
MAHANT RAM SWAROOP AND ORS.

DATE OF JUDGMENT: 06/02/2001

BENCH:
SYED SHAM MOHAMMED QUADR & S.N. PHUKAN

JUDGMENT:
JUDGMENT

WITH
C.A.No. 1634 of 1994.

2001 Supp(1) SCR 715

The following Order of the Court was delivered

These two appeals arise from two judgments and orders of the Division Bench of the High Court of Rajasthan at Jaipur. Civil Appeal No. 1616 of 1994 is from the the judgment and order of the said High Court in D.B.CWP No.2150 of 1992 dated September 1, 1992 and Civil Appeal No. 1634 of 1994 is from the judgment of the Division Bench in D.B. Civil Special Appeal (Writ) No. 44 of 1992 dated September 1, 1992. The subject-matter and the contesting respondent are common in these appeals.

To comprehend the controversy in these appeals, it will be useful to refer to the facts giving rise to them. The appellants in these appeals are the tenants of the first respondent in different portions of the Jagir property. They have suffered orders of eviction and are up in arms against him. They have lodged two prongs attack on his title to the Jagir property which will be referred to presently.

In Samvat 1893, on the request of one Swami Ram Ballabh, land of an extent of 6 bighas and 4 biswas situated in Town Sawai Jaipur, outside Kishanpole, was granted as 'Udak Jagir' (referred to in this judgment as 'the Jagir property') by the Seventh Maji Bhattiyaniji of Jaipur, during the period of minority of the ruler, in favour of swami Ram Ballabh, a chela of Swami Ram Dassji Ram Snehi. The first respondent claims that the said grant was a personal grant in favour of Ram Ballabh and not in favour of any institution. The appellants contest that claim and plead that it was a grant to a religious institution which came to be known as 'Chotta Ram Dwara' or at any rate a grant in favour of all those professing Ram Sanehi sect. It is not in dispute that after the grant of the Jagir property to Ram Ballabhi, matmi (succession) to the same was being granted on the death of the holder in favour of his Chela (disciple) by the Ruler or the State as the case may be, but it is stated that all of them were Ram Sanehi and remained celibates throughout their lives. The present disputes arose on the death of Ram Narain Das in 1954, who was the last holder of the Jagir property and a celibate when his Chela, the first respondent a married person, claimed matmi (succession) in his favour under Jaipur Matmi Rules. 1945 which were applicable during the relevant period. The apparent reason for opposing his succession is that he had married. However, the State Government sanctioned matmi in his favour on October 9, 1964.

While the case of first respondent for matmi was pending, two proceedings under different enactments were initiated in which the appellants objected to the claims of the first respondent. For the purpose of disposal of these

appeals. We consider it unnecessary to refer to the various orders passed at different stages of those proceedings except to the ultimate orders passed in them.

The first is under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (for short 'the Jagirs Act') which came into force on February 18, 1952. By virtue of the notification issued by the Government of Rajasthan on November 1, 1958 jagirs of the category which includes 'Udak Jagir' vested in the State under Section 22 of the Jagirs Act except those exempted under Section 23 of that Act. The first respondent applied for exemption of Jagir property (Chotta Ram Dwara) under Section 23(1) of the Jagirs Act to the Jagir Commissioner. The appellant in Civil Appeal No. 1616 of 1994 opposed it by filing objection on September 14, 1987. By order dated March 31, 1989 the Jagir Commissioner held that the Jagir property was a private personal grant to Ram Ballabh. That order was confirmed by the Board of Revenue on the appeal filed by the appellant. By its order dated September 1, 1992 the High Court, in Writ Petition 2150 of 1992 upheld the order of the Board of Revenue. That order of the High Court is assailed in Civil Appeal No. 1616 of 1994.

The second is under the Rajasthan Public Trust Act 1959. The first respondent filed an application before the Assistant Commissioner, Devasthan, stating that jagir property (Chotta Ram Dwara) is a public trust property and that it should be registered under the Act. However, later he filed another application to withdraw the above said application of July 23, 1964. The Assistant Commissioner declined to permit withdrawal of the first application and proceeded with the enquiry. This proceeding went through several vicissitudes and finally by order dated May 8, 1989 it was held that the grant made to Ram Ballabh was a personal grant. The appellant in Civil Appeal No. 1634 of 1994 carried the matter in appeal to the Devasthan Commissioner in Appeal No. 20 1989. On July 17, 1990, the Commissioner allowed the appeal, set aside the order of the said Assistant Commissioner holding it to be a Public Trust and directed that notice be issued to conduct enquiry and hear persons interested in Trust for its registration. That order was challenged by the first respondent in S.B. Writ Petition No. 4788 of 1990. The High Court held that the Jagir property was personal property of Ram Ballabh and not a public trust. In that view the High Court allowed the Writ Petition on October 31, 1999, quashed the order of the Commissioner and restored that of the Assistant Commissioner. Aggrieved by the order of the learned Single Judge, the appellant filed D.B. Civil Special Appeal (Writ) No. 44 of 1992. The appeal was dismissed by a Division Bench of the High Court on September 1, 1992 which is impugned in Civil Appeal No. 1634 of 1994.

Mr. B.D. Sharma, learned counsel appearing for the appellants in these appeals, has contended that the authorities and the High Court erred in construing the grant as a personal grant to Ram Ballabh. He points out that in the Jagir property there is a temple of Shiva, Samadhis of Gurus (Chattris) and the fool impressions of saints the place is called Chotta Ram Dwara - a religious place - therefore, the grant should have been held as a grant to the institution, a public trust. He argues that after the said grant the Raja constructed a temple of Mahadevji and granted a Bhog Jagir in favour of that temple and the subsequent events including the grant must be taken into consideration to determine the true intention of the grant made in 1836 A.D. under Ext. A-1. It is further contended that at the time when the grant under Ext. A-1 was made, the Raja was a minor and as it was not sanctioned by the Resident; the grant itself would be invalid therefore the first respondent gets no right under the grant.

Mr. U.N. Bhachawat, learned senior counsel appearing for the respondent, has contended that every authority except the Commissioner, Devasthan, on construing the grant, came to the conclusion that it was a personal grant in favour of Ram Ballabh and merely because subsequently a temple was constructed therein and a few samadhis have come up on the land, the nature of the grant would not change. Having regard to the very nature of

'Udak Jagir', submits the learned counsel, the grant cannot but a secular grant to an individual; a Bhog Jagir is a religious grant burdened with the service to the deity or for performance of religious rites. He focuses on the point that at the time of the grant in Samvat 1893 (1836 AD) there was neither any "temple" nor any samadhi' on the Jagir property which was meant for residential building and bagichi (garden) of the Ram Ballabhji as such the question of grant being for any religious purpose or for public trust, does not arise. He concedes that Ram Ballabh was Ram Sanehi, but submits that it is a sect to which Ram Ballabh and the parties belong, which does not determine the nature of the grant as it is not for the benefit of the persons belonging to the sect. Various authorities of Devasthan and Jagir administration of the State, contends the learned counsel, have interpreted the grant and came to the conclusion that the grant is a personal grant in favour of Ram Ballabh. The High Court has also interpreted the document of grant and confirmed their conclusions that under Ext. A-1 personal grant was made.

The question that arises for consideration is whether the grant under Ext. A-1 is a personal grant to Ram Ballabh or to an institution or a grant in trust for members of Ram Sanehi.

A perusal of the orders of various authorities including the Assistant Commissioner. Devasthan and Jagir Commissioner shows that there have been as many as six enquiries into the nature of the grant and every time it was found that the grant was a personal grant in favour of Ram Ballabh. Though the Commissioner, Devasthan came to the conclusion that Jagir property is a public trust the High Court has rightly quashed that order. The Board of Revenue while confirming the order of the Commissioner Jagir also examined various aspects to conclude that the nature of the grant is a personal grant, and not in favour of an institution or deity. The grant is also not burdened with performance of any religious service.

Having regard to the concurrent findings of various authorities, Assistant Commissioner, Devasthan, Commissioner Jagir, Board of Revenue, arrived at after detailed examination of facts and circumstances and on construction of document of grant (Ext. A-1), we would not normally be inclined to examine the nature of the grant; but in view of the provision of Section 2(d) of the Jagirs Act bringing the terms and conditions contained in any order or instrument granting or recognising the grant of Jagir, fall within the meaning of 'existing jagir law', we deem it appropriate to construe Ext. A-1. The English translation of the relevant extract of the grant Ext. A-1, reads as under :

"COPY OF PATTI OF VIKRAM SAMVAT 1893 (1836 AD) GIVEN TO SWAMI OF RAM BALLABH

SHRI RAMJI

Swai Jagat Singh Ji

(Seal)

Symbol of sword

In the name of Shri Mahadhiraj Maharaja Shri Swai Ram Singhji directs the Committee incharge the kasba (town) Sawai Jaipur with regard to request made regarding sacred land (Punya Dharati) measuring 6 bighas for which request was made by Swami Ram Ballabh disciple of Swami Ramji Dass Ram Sanehi and regarding which memorandum dated Bhadva Teej under the signature of the Dewan was received and order was issued for the grant of "Punya Dharati" (sacred land) measuring 6 bighas situated in town Swai Jaipur outside Kishanpole.

Queen Mother seventh Bhatiyaniji widow of late his highness purchased the aforesaid land for residence and Bagichi from the Malies for the construction of House-3 bighas 4 biswas.

Land for Bagichi measuring 3 bighas.

Therefore, beginning from summer crop of Samvat 1893 you issue a parwana

(Order) to the applicant under your seal and signature as has been ordered. So you are informed regarding the same and land measuring 6 bighas in town Sawai Jaipur outside Kishanpole be assessed as being in the category of Punya (Charity) and the land be handed over to him and do not ask for a new "parwana" (Order) and by this order adjustment for the summer crop of Samvat 1892 will be made.

It is ordered that according to the memorandum of Baisakh Badui 6 Samvat 1893 signature of Dewan Sampatram and "Nobat Bakaya Nawis and (Accountant) this sacred (Punya Dharati) land has been ordered to be given for Swami Ram Ballabh Chela (Disciple) Swami Ramji Das Ram Sanehi. According to memorandum signed by the Dewan on Bhadwa Sudi 3 Samvat 1893. On prayer it was ordered that land measuring 6 bighas situated in Kasha Sawai Jaipur outside Kishanpole has been ordered to be granted as Punya Dharati "sacred land".

Queen Mother seventh Bhatyaniji widow of late his Highness purchased the aforesaid land for the residence and Bagichi of the aforesaid person from the Malies for the construction of the house -3 bighas.

For Bagichi land - 3 bighas.

Therefore, beginning from crop of Samvat 1893 you give the Parwana (Order) under your signature to the applicant and this is a special order. Accordingly, you give the parwana "Sabti" signed by the Dewan dated Baisakh Badi 6th Samvat 1893 to the applicant according to the memorandum. Special signatures of Dewar. Jaisth Sudi 7th Samvat 1893.

Place Sawai Jaipur

(Seal of Government)
Illegible
Dewan Sampatram

Office of

Deewani

Bazuri
Mastafi Hazuri."

(Seal of Government)
Illegible
Office of
Shiv Bux

A perusal of the recital in the document, quoted above, shows that seventh Bhatyaniji, widow of late his highness, purchased 6 bighas of land in the town of Sawai, Jaipur outside Kishanpole. It also appears that the said land was purchased for construction of house and for Bagichi (garden) from the Malies, at the request of Ram Ballabh Chela (Disciple) of Swami Ramji Das, who was Ram Sanehi. It is mentioned that the land was given as "punya Dharati", to be utilised as follows :

"For the construction of House - 3 bighas 4 biswas and for Bagichi measuring 3 bighas."

It is also noted therein that the said land had been ordered to be given to Swami Ram Ballabh Chela (Disciple) Swami Ramji Das Ram Sanehi. According to the Memorandum signed by the Dewan on Bhadwa Sudi 3 Samvat 1893, it was clarified that from Samvat 1893 that land would be treated as that of

the grantee.

It is thus clear that the grant is to Swami Ram Ballabh. It is also evident that the deed as such does not speak of performing any religious services by Ram Ballabh or his successors. The word 'Ram Sanehi' which appears along with name of the grantee is merely to indicate the sect which the grantee was professing. It is also noticed that the grant is not made for the benefit of the persons belonging to Ram Sanehi sect. In short it is a pure and simple personal grant to Swami Ram Ballabh. It is worth noticing that

at the time of grant there was neither any temple nor samadhi nor foot prints etc. It is nobody's case that the jagir property was the abode of Ram Sanehis. Therefore, the grant could not be one for any institution or for persons of Ram Sanchi sect.

Before advertng to the other aspects, we would like to deal with the contention with regard to the legality of the grant for want of sanction of the Resident as the Raja was minor at the time of the grant. From the above elucidation of the recitals in the deed Ext. A-1, it is evident that the grant was not made from out of the property of the estate of the Raja. The Jagir property given as 'Udak Jagir' was purchased by Maji Bhatiyani ji on the request of Ballabh Das/Ramji Das for granting the same to Swami Ballabhdas for construction of house and Bagichi. This being the position, the fact that the Raja was minor at the time of grant is wholly irrelevant to the validity of the grant.

Now, reverting the contentions of Mr. Sharma regarding construction of 'Shiva temple' (temple of Mahadevji) and preservation of the foot-prints of the saints and existence of samadhis on the land. we are of the view that the grant has to be construed primarily on the basis of the recitals contained therein. Where the words of grant are clear, full effect must be given to them. In Ext. A-1, the terms of grant of Jagir property are unequivocal and plain, therefore, subsequent utilisation of the land by the grantees will not affect the nature of the grant. We make it clear that we are not expressing any opinion on the question as to whether the mode in which the jagir property has been used subsequently will change its nature. But so far as the grant is concerned, we have no hesitation in approving the interpretation of Ext. A-1 by the authorities and the High Court that it was a personal grant to Swami Ram Ballabh.

It appears to us that of the categories of the Jagirs in Rajasthan 'Udak Jagir' used to be granted for secular purposes whereas 'Bhog Jagir' was being granted for religious purposes. Be that as it may, we have held that under Ext. A-1, a personal grant of Udak Jagir was made by the Seventh Maji Bhattiyani ji in favour of Swami Ram Ballabh. The mutation in the name of the successor was governed by the Jaipur Matmi Rules and on October 19, 1964 the State of Rajasthan granted matmi in favour of the first respondent on the recommendation of the Jagir Commissioner as endorsed by the Board of Revenue.

The next contention of Mr. Sharma is that inasmuch as the first respondent himself filed an application before the Assistant Commissioner, Devasthan, requesting registration of the Jagir property, as a public charitable trust, he cannot be permitted to turn around and contend that it is a personal grant. Whether a grant is a personal grant, a grant to an institution or a grant in trust for the benefit of others is primarily a mixed question of fact or law and has to be determined on the facts of each case. There can be no doubt that a person cannot be permitted to approbate and reprobate. In his application dated July 23, 1964 to Assistant Commissioner, Devasthan, the first respondent stated that the Jagir property is a public trust. What is submitted before us that this admission binds him. An admission of a fact certainly binds the maker of it and not an admission on a question of law. We have already referred to Section 2(d) of the Jagirs Act. It will be useful to revert to Section 2(d) of the Rajasthan 1 and Reforms and Resumption of Jagirs Act, 1952. It reads thus :

"2. In this Act unless the context otherwise requires-

(a) to (c) xxx xxx xxx xxx

(d) 'Existing Jagir Law' means any Act, Ordinance, Regulation, Rule, Order, Resolution, Notification or bye-law relating to jagirs or jagirdars in force in the whole or any part of the State at the commencement of this Act and includes-

(i) any custom or usage, relating to such jagirs of jagirdars prevailing at the commencement of this Act in the whole or any part of the State and having the force of law, and

(ii) the terms and conditions contained in any order or instrument granting, or recognising the grant of jagir."

A plain reading of sub-clause (ii) of clause (d) shows that the terms and conditions contained in any order or instrument granting, or recognising the grant of jagir falls within the meaning of existing jagir laws. It follows that the terms and conditions of Ext. A-1 fall within the meaning of 'existing jagir law'. Thus, the claim of the first respondent based on erroneous interpretation of Ext. A-1 - 'existing jagir law' that Jagir property is a public trust, cannot be treated as an admission binding on him so as to deprive him of the benefit of true interpretation of the grant under Ext. A-1 by us that it is a personal grant to Ram Ballabh.

We shall now examine whether it is a grant in trust for benefit of those following 'Ram Sanehi' faith. A trust is defined as :

"Where a person has property or rights which he holds or is bound to exercise for or on behalf of another or others, or for the accomplishment of some particular purposes or particular purpose, he is said to hold the property or rights in trust for that other or those others, or for that purpose or those purposes, and he is called a trustee."

In Indian Trusts Act, 1882 which deals with private Trusts and trustees, the term trust is defined thus :

"A trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner."

Halsbury's Laws of England. Vol. 48. para 501.

We have referred to this definition as it is based on general principles of Trusts though that Act does not apply to public Trusts. From a careful reading of these definitions it can be gathered that when an ostensible owner holds a property for the benefit of another person as an obligation annexed to the ownership he is said to hold the property in trust for that other person.

In Ext. A-1, quoted above, we are unable to find any recital indicating that the grant is made for the benefit of any groups or sect of persons and that any obligation was annexed to the ownership of Jagir property held by Ram Ballabh so as to hold that Jagir property for their benefit. On the contrary, Ram Ballabh is named as grantee without any conditions attached to the grant. It is, therefore, not possible to accept that the grant was in the nature of a trust. As such the further question whether it was a public trust or private trust does not arise.

For all these reasons, we approve the judgments and orders of the High Court under challenge and find no merit in these appeals. The appeals are, therefore, dismissed, but on the facts and in the circumstances of the case, we make no order as to costs.