

CASE NO.:
Appeal (civil) 7038-7039 of 1996

PETITIONER:
IQBAL & ORS.

RESPONDENT:
HIS HOLINESS DR.SYEDNA MOHAMED BURHANUDDIN SAHEB

DATE OF JUDGMENT: 22/11/2005

BENCH:
B.P.SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T

B.P.SINGH, J.

I.A.Nos.3-4 for deleting the names of some of the appellants are allowed.

In these appeals by Special Leave the order of the High Court of Rajasthan at Jodhpur dated 21.12.1995 has been impugned whereby two paragraphs in the written statement filed on behalf of the defendant Nos. 1 to 6, 9 to 20 and 24 to 30 have been struck out. The appellants, aggrieved by the order, have come up in appeal by special leave. We have been taken through the plaint as well as the written statement filed in the suit. The plaintiff claims to be the religious head and spiritual leader of Dawoodi Bohra Community and is described as Dai-ul-Mutlaq being the 52nd incumbent of the

said office. In the suit the reliefs claimed are 'a' to 'e' which are as follows :-

"(a) that it may be declared the plaintiffs at all material times has been and is in possession and mangement of:-

- (i) Moiyadpura or Moiyatpura Masjid situated at Moiyatpura, Bohrawadi, Udaipur.
- (ii) Vajihpura Masjid situated at Vajihpura, Bohrawadi, Udaipur.
- (iii) Rasoolpura Masjid situated at Rasoolpura (Gulabwadi), Udaipur.
- (iv) Khanpura Masjid situated at Khanpura, Chhoti Bohrawadi, Udaipur.

(b) that the defendants by themselves or by their servants and agents and/or any person claiming under or through them and/or any person styling himself as Bohra Youth Association or any member thereof or owing allegiance to the so called Dawoodi Bohra Jamaat of Udaipur or any member thereof be restrained by a permanent order and injunction of this Hon'ble Court from interfering and/or disturbing in any manner the management of the said Four Masjids by the Dai-ul-Mutlaq for the time being through his Amils or nominees;

(c) in the alternative two prayers (a) and (b) hereinabove this Hon'ble Court may be pleased to order the

defendants and all whom they represent to deliver to the plaintiff the peaceful and vacant possession of the four Masjids/Mosques described in prayer (a) hereinabove.

(d) that the defendants by themselves and by their servants and agents or any person claiming under or through them and/or any person styling himself as 'Bohra Youth Association' or owing allegiance to the so called Dawoodi Bohra Jamaat, Udaipur, or any member thereof be restrained by a permanent order and injunction of this Hon'ble Court from preventing any Dawoodi Bohra owing allegiance to their spiritual leader and religious head Dai-ul-Mutlaq for the time being entering in Masjids or mosques and/or offering or holding any Imaamat/Jamaat Namaaz led by the Pesh Imam appointed or nominated or under the authority and/or permission and/or auspices of the Dai-ul-Mutlaq for the time being and/or from attending or participating in Vaiz, majlis and any other

religious functions, ceremonies or gatherings being held or conducted with the authority and/or permission of and/or under the auspices of the Dai-ul-Mutlaq for the time being;

(e) that the defendants themselves and by their servants and agents or any person claiming under or through them and/or person styling himself as the "Bohra Youth Association" or owing allegiance to the so-called "Dawoodi

Bohra Jamaat, Udaipur" or any member thereof may be restrained by a permanent order and injunction of this Hon'ble Court from holding their separate Imaamat/Jamaat Namaaz and/or from holding Vaiz, Majlis or any other religious functions, ceremonies or gatherings in the said four masjids as mentioned hereinabove, at Udaipur;"

The suit proceeds on the basis that the plaintiff is the spiritual leader and religious head of the Dawoodi Bohra Community which is a religious denomination. Reference is made to the "Mishaq" whereby one initiated into the fold of the community has to give an oath of allegiance to the plaintiff. It is pleaded that the plaintiff is not

merely the spiritual leader and religious head of the said community but is also the sole trustee of the property of the Dawoodi Bohra Community, and the right of management and general control thereof is vested solely in him. It is also pleaded that the tenets of the said community and the articles of faith and belief referred to in the plaint, and the position

and status of the Dai-ul-Mutlaq, have been recognised and upheld by the Privy Council.

It is pleaded that in Udaipur, there are several properties of the Dawoodi Bohra Community which are for the use and benefit of the Dawoodi Bohra Community and of which the plaintiff, being the religious head and spiritual leader,

is the trustee. The right of management and general control of such properties is vested in him. Particulars of the aforesaid masjids have been given in the plaint which, according to the plaintiff are for the benefit and use of the Dawoodi Bohra community. The aforesaid Masjids are :-

- (1) Moiyadpura or Moiyatpura Masjid situated at Moiyatpura, Bohrawadi, Udaipur.
- (2) Vazirpura Masjid situated at Wazirpura, Bohrawadi, Udaipur.
- (3) Rasoolpura Masjid situated at Rasoolpura (Gulabwadi), Udaipur.
- (4) Khanpura Masjid situated at Khampura, Chhoti Bohrawadi, Udaipur."

The plaintiff claims that Dai-ul-Mutlaq being the trustee of the aforesaid masjids, the management and administrative control vests in him. He has exercised the right from time to time to appoint Amils and has been nominating a fit person to lead the Imamat-Jamat Namaz and for holding other religious functions and ceremonies in the aforesaid Masjids and to manage and administer the same for and on his behalf. However, some time in the last week of February, 1973 a section of the Dawoodi Bohras at Udaipur, including the defendants, challenged and rebelled against the spiritual and religious authority of the plaintiff as the

Dai-ul-Mutlaq describing themselves as "Bohra Youth Association". Subsequently, they have formed their own separate organisation known as "Dawoodi Bohra Jamat of Udaipur". It is the claim of the plaintiff that though overwhelming majority of the Dawoodi Bohras of Udaipur have disassociated themselves from the movements of "Bohra Youth Association" and "the Dawoodi Bohra Jamaat, Udaipur", the defendants have unjustifiably called their association as "Dawoodi Bohra Jammam, Udaipur". The members owing allegiance to these organisations have intermittently wrongfully interfered and disturbed the Imamat/Jamaat Namaz that was led by Pesh Imam appointed and nominated by the plaintiff or his Amil. They have also interfered and disturbed other religious functions and ceremonies held in the said Masjids. The members of the aforesaid associations have unauthorisedly and wrongfully commenced holding Vaiz and Majlis in Moiyatpura Masjid. The plaintiff has referred to and explained the relevant facts in relation to the Masjids and the manner in which the aforesaid associations/bodies have

challenged the authority of the plaintiff. Several instances have been mentioned relating to the disregard of the authority of the plaintiff as Dai-ul-Mutlaq. In these circumstances the plaintiff has prayed for a declaration that he has been in possession of the aforesaid Masjids at all

material times, and appropriate order of injunction may be passed against the defendants as reproduced earlier in this judgment.

The written statement filed on behalf of the appellants is to the effect that the aforesaid defendants admit that the plaintiff is the Dai-ul-Mutlaq and entitled to high respect in matters of religion by the Dawoodi Bohra Community, being the religious head. However, they deny the authority claimed for the plaintiff as flowing from the story of origin of the institution of Dais, or from that dogma of intercession. According to the defendants they have not the legal effect of enjoining, nor do they enjoin, unquestioned faith and neither do they bestow to the plaintiff the status of the sole trustee of the property of the Dawoodi Bohra Community and the sole right of management and general control thereof. It is denied that the plaintiff is the sole trustee of the said Mosque. In paragraph

6(c) of the written statement, it is stated as follows :-

"The devotion, short of worship, has taken varied forms. Community property or an institution has been named after a Dai-ul-Mutlaq, his visits and birth days have been celebrated, he had been asked to bless and inaugurate and accorded precedence. But it is not admitted that in law, properties vest in him. It is denied that properties were ever managed by him."

In paragraph 7 of the written statement, sub-paragraph (d) refers to "Misaq", "Barat" (excommunication). It is stated that the said powers came to be abused and mass excommunication were pronounced at the spur of the moment etc. Similarly a reference is made to Raza with an allegation that the power to grant permission has been misused. In the last part of the said sub-para it is stated that :-

"Plaintiff claims that Raza is a religious tenet, an article of faith and demands unquestioned acceptance. The claim is not admitted."

The High Court has struck out sub-paragraph 6(c) and 7(d) of the written statement and the order striking out the aforesaid pleadings is challenged before us.

Having noticed the relevant averments in the plaint, we find that Dai-ul-Mutlaq who is a religious and spiritual head claims for himself the status of a trustee, and also claims to have full administrative powers over the Masjids in question. The suit has been necessitated on account of the activities of the defendants who have defied his authority and who have attempted to hold functions etc. in the Masjids without his permission. In the written statement filed on behalf of the defendants the authority of the plaintiff has been challenged and his status as a trustee has also been

challenged. In substance, the defendants have claimed right to offer Namaz led by Pesh Imams chosen by the Panchas in the way they have done from time to time, and have challenged the authority of the plaintiff from preventing them to do so. This very broadly outlines the nature of the dispute.

The question arises whether paragraph 6(c), which we have quoted earlier, ought to be struck out from the written statement of the appellants. We find that the said sub-paragraph does not, in any manner, state anything which is irrelevant or scandalous. All that is stated is that the Dai-ul-Mutlaq as a spiritual head is accorded the respect which his office commands but such devotion should not be confused with worship. In this paragraph the defendants also deny that in law the properties vest in the plaintiff, and that the properties were ever managed by him.

Having heard counsel for the parties, we are satisfied that so far as paragraph 6(c) of the written statement is concerned, there is no justification for striking out the s

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because it only denies the right of the plaintiff that the properties vest in him and that he has right of management. We, therefore, hold that the High Court was in error in striking out paragraph 6(c) from the written statement of the appellants.

So far as paragraph 7(d) is concerned, we are of the view that the High Court was justified in striking out this

sub-paragraph from the written statement, except the last sub-paragraph thereof. In sum and substance the defendants in paragraph 7(d) have alleged that the powers of Mishaq, Barat and Raza have been misused or abused by the plaintiff. Having regard to the nature of allegations made in the said sub-para, if permitted to remain as a part of written statement, it would permit evidence to be recorded which will be wholly irrelevant. It is open to the defendants to say that Misaq, Barat or Raza are not religious tenets, but quite a

different thing to say that the same have been misused or abused by the plaintiff. If they are not part of the religious tenet, that may be proved by adducing relevant evidence. But

the fact that the power has been misused by the plaintiff, will not detract from his authority to manage the properties or to act as the trustee of the properties, including the functions to

be performed in Masjids, if he, in law, is otherwise entitled to exercise powers of management as a trustee. We, therefore, find justification in the order of the High Court

deleting sub-paragraph 7(d) of the written statement, except the last part thereof which we have quoted earlier wherein the defendants have not admitted the claim of the plaintiff that

Raza is a religious tenet, an article of faith and demands unquestioned acceptance. We, therefore, uphold the order of the High Court striking out sub-paragraph

7(d) of the written statement except that the last part of the said sub-paragraph shall not be struck out.

We, accordingly, allow these appeals in part, and modify the judgment and order of the High Court.

No order as to costs.

Counsel appearing on behalf of the appellant submitted that so far striking out paragraphs of the written statement filed on behalf of defendant No.7 is concerned, he is not pressing the appeal on behalf of defendant No.7. The Order of the High Court is, therefore, upheld.