CIVIL REVISION.

Before Nasim Ali and Khundkar JJ.

BADAR RAHIM*

v.

BADSHAH MIYA.*

1934

July 4, 5, 19.

Religious Endowment—Wâkf—Mutâwâlli, Removal of—Law applicable—Premable of Act, Use of—Religious Endowments Act (XX of 1863), ss. 14, 18—Regulation XIX of 1810.

The words used in section 14 of Act XX of 1863, *viz.*, " appointed under this Act " refer only to the committee and not to the trustee, manager or superintendent. The trustee or manager, who can be sued under the Act, therefore, need not necessarily be a trustee or manager appointed under the Act.

Ganes Sing v. *Ramgopal Sing* (1) referred to.

If section 14 does not apply to a *wâkf*, *i.e.*, if it is not a religious endowment, leave cannot be granted under section 18 of the Act for the removal of the *mutâwâlli*.

The religious institution contemplated in section 14 must be a religious institution of a public character.

[History and case-law on the subject stated and reviewed.]

It is now well settled that Regulation XIX of 1810 was applicable to endowments, which came into existence after it came into force.

In order to attract the operation of section 14 of the Act all that is necessary is to show that the endowment is one to which Regulation XIX would have been applicable, if it were still in force.

The words " trustee, manager or superintendent of any mosque, temple or religious establishments " in section 14 of the Religious Endowment Act mean a trustee, manager or superintendent of a mosque, temple or religious institution, to which the provisions of Regulation XIX of 1810 would have been applicable, if they were in force now : the provisions of Regulation XIX, if they were in force now, would have been attracted to religious endowments of a public character, which came into existence not only before 1863 but also afterwards.

Dhurrum Singh v. *Kissen Singh* (2) and *Jan Ali* v. *Ram Nath Mundul* (3) and *Ram Prasad Gupta* v. *Ramkishun Prasad* (4) referred to.

The preamble of an Act can be legitimately consulted to fix the meaning of words in the enacting part.

*Civil Revision, No. 105 of 1934, against the order of A. deC. Williams, District Judge of Chittagong, dated Nov. 9, 1933.

(1) (1870) 5 B. L. R. (App.) 55.
(2) (1881) I. L. R. 7 Calc. 767.
(3) (1881) I. L. R. 8 Calc. 32.
(4) (1932) I. L. R. 11 Pat. 594.

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CIVIL RULE under section 115 of the Code obtained by the defendant.

The facts of the case and the arguments in the Rule appear sufficiently in the judgment.

A.K. Roy, Advocate-General, and *Chandrashekhar Sen* for the petitioner.

A. K. Fuzlul Huq and *Imam Hossain Chaudhuri* for the plaintiff, opposite party.

Cur. adv. vult.

The judgment of the Court was as follows:—

This is an application in revision by one Badar Rahim of Chittagong, the *mutâwâlli* of certain *wâkf*, which was created in the year 1907, against the order of the District Judge of Chittagong, dated the 9th November, 1933, granting permission to the opposite parties to sue the petitioner under section 18 of the Religious Endowment Act (Act XX of 1863).

The only point urged in support of the application is that the *wâkf* having been created after the year 1863 the provisions of Act XX of 1863 are not applicable to this *wâkf*. Under section 18 of the Act, no suit under that Act can be entertained without the permission of the court to institute such a suit. The opposite parties applied to the court for leave to sue the petitioner under section 14 of the Act, which runs as follows:—

> Any person or persons interested in any mosque, temple or religious establishment, or in the performance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the civil court the trustee, manager, or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to them respectively.

If section 14 does not apply to the *wâkf* in question, leave cannot be granted under section 18 of the Act.

It is not disputed in this case that the *wâkf* in question is a religious endowment and the petitioner

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is the trustee or manager or superintendent of the said endowment. It is also not disputed that the opposite parties are persons interested in the said endowment. The only point for determination, therefore, is whether the petitioner is a trustee or manager of a religious establishment of such a character as is mentioned in section 14 of the Act. The words used in section 14, *viz.*, "appointed under "this Act," refer only to the committee and not to the trustee, manager or superintendent. See the observations of Norman J. in the case of *Ganes Sing* v. *Ramgopal Sing* (1). The trustee or manager, who can be sued under the Act, therefore, need not necessarily be a trustee or manager appointed under the Act.

The section speaks of the trustee or manager of any mosque, temple or religious establishment. Now, what is the meaning of the words "any mosque, temple "or religious endowment?" Do they mean mosques, temples or religious endowments, to which only the provisions of the Act apply, or do they include also mosques, temples or religious establishment to which the provisions of the Act do not apply at all? In the case of *Delroos Banoo Begum* v. *Asgur Ally Khan* (2), it was held that the Religious Endowment Act applies only to endowments for public purposes. That case went up to the Privy Council and, although their Lordships disposed of the appeal on another point, they observed that they saw no reason for disagreeing with that part of the judgment of the High Court, where it was held that the endowment was not of such a public character as would sustain a suit under Act XX of 1863. See *Ashgar Ali* v. *Delroos Banoo Begum* (3). This view was also taken in *Protap Chandra Misser* v. *Brojo Nath Misser* (4) and *Ram Prasad Gupta* v. *Ramkishun Prasad* (5). In the case of *Fakurudin Sahib* v. *Ackeni Sahib* (6), though it was observed by the learned Judges that section 14 is general in its application, it is not clear from the

(1) (1870) 5 B. L. R. (App.) 55.
(2) (1875) 15 B. L. R. 167.
(3) (1877) I. L. R. 3 Calc. 324.
(4) (1891) I. L. R. 19 Calc. 275.
(5) (1932) I. L. R. 11 Patna 594.
(6) (1880) I. L. R. 2 Mad. 197.

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judgment in that case that the religious institution involved in that case was not of a public character. In our judgment the religious institution contemplated in section 14 must be a religious institution of a public character.

The next question is whether the religious institutions referred to in section 14 are those endowments only, which are mentioned in the preamble of the Act; in other words, whether the preamble can be legitimately consulted to fix the meaning of the words in the enacting part.

The preamble of a statute has been said to be a good means of finding out its meaning, and, as it were, a key to the understanding of it; and, as it usually states, or professes to state, the general object and intention of the legislature in passing the enactment, it may legitimately be consulted to solve any ambiguity, or to fix the meaning of words which may have more than one, or to keep the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt.

Maxwell on Interpretation of Statutes, Seventh Edition, pages 37 and 38.

But the preamble cannot either restrict or extend the enacting part, when the language and the object and scope of the Act are not open to doubt. It is not unusual to find that the enacting part is not exactly co-extensive with the preamble. In many Acts of Parliament, although particular mischief is recited, the legislative provisions extend beyond it. The preamble is often no more than a recital of some of the inconveniences, and does not exclude any others for which a remedy is given by the statute. The evil recited is but the motive for legislation; the remedy may both consistently and wisely be extended beyond the cure of that evil, and if on a review of the whole Act a wider intention than that expressed in the preamble appears to be the real one, effect is to be given to it notwithstanding the less extensive import of the preamble. And generally, although in cases where the meaning of words used in a statute is absolutely clear, the court has no right to go beyond them, when the words are capable of one meaning, and at the same time of a more extended meaning, the Court will look to the object and policy of the Act to see what meaning they ought to have.

Maxwell on the Interpretation of Statutes, Seventh Edition, pages 39-40.

In the case of *Dhurrum Singh* v. *Kissen Singh* (1) it was held that the Act is applicable to all classes of endowments to which Regulation XIX of 1810 was applicable. In the case of *Jan Ali* v. *Ram Nath Mundul* (2), Prinsep J., on a consideraion of the

(1) (1881) I. L. R. 7 Calc. 767. (2) (1881) I. L. R. 8 Calc. 32.

preamble and the enacting portions of Act XX of 1863, has come to the conclusion that the trustee, manager or superintendent, to whom the provisions of the Act are applicable, is a trustee, manager or superintendent of a mosque, temple or other religious establishment, to which the provisions of Regulation XIX of 1810 were applicable. The learned Judge was of opinion that the same construction should be put upon sections 13 and 14 of the Act. In the course of the argument, the learned Advocate-General, who appeared for the petitioner, did not point out anything, which would lead us to differ from the construction, which was put upon the preamble and the sections of the Act in that case. Act XX of 1863 was passed with the object of relieving the Board of Revenue and the local agents from the duties imposed on them by Regulation XIX of 1810. The whole scheme of the Act would go to show that the legislature was simply replacing Regulation XIX of 1810. We are, therefore, of opinion that section 14 of the Act was really contemplating such endowments as were contemplated in the Regulation. This view of section 14 has been accepted by the Patna High Court in the case of *Ram Prasad Gupta* v. *Ramkishun Prasad* (1). The actual decision in the case of *Fakuruddin Sahib* v. *Ackeni Sahib* (2) is not really against this view, inasmuch as it appears to us that the Regulation VII of 1817 of the Madras Code was applicable to the endowment in question in that case. In the case of *Sivayya* v. *Rami Reddi* (3), it was no doubt observed by Shephard J. that section 14 of the Religious Endowment Act was not intended to be restricted to such institutions as came within the purview of the Regulation; but no reasons are given for that observations by the learned Judge. In the case of *Muhammad Siraj-ul-Haq* v. *Imam-ud-din* (4) and in the case of *Husain* v. *Hamid* (5), the endowment in question would have attracted the provisions of the Regulation.

(1) (1932) I. L. R. 11 Pat. 594.
(2) (1880) I. L. R. 2 Mad. 197.
(3) (1899) I. L. R. 22 Mad. 223.
(4) (1896) I.L .R. 19 All. 104.
(5) [1930] A. I. R. (All.) 577; 124 Ind. Cas. 710.

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Therefore, in our judgment the Act would apply only to such endowments as are referred to in the preamble, that is to those endowments to which Regulation XIX was applicable.

The next point for consideration is, what are the religious institutions, to which Regulation XIX was applicable? There cannot be any question that the Regulation was applicable to endowments, which were in existence at the date of the Regulation and to which the Regulation was actually applied. It is now well settled that the Regulation was applicable to endowments, which came into existence *after* it came into force. See *Sivayya* v. *Rami Raddi* (1). In the case of *Venkatachala Pillai* v. *The Taluq Board, Saidapet* (2), the provisions of Regulation VII of 1817 as well as the preamble of that Regulation, which are similar to Regulation XIX of 1810 were examined by the Madras High Court and it was held that the enacting portion of statutes was sufficiently clear to cover future endowments. The words—"have been granted" in sections 1 and 5, "granted" in section 2, "made" and "were granted" in section 3 and "is vested" in section 6—do not, in our opinion, justify the interpretation that the Regulation was applicable only to endowments which had already come into existence *before* the pasing of the Regulation. In the case of *Venkatachala Pillai* v. *The Taluq Board, Saidapet* (2), the learned Judges observed as follows:—

> These words were used as applicable at the time when the Board of Revenue would be called upon to take action. Happier language might perhaps have been used to denote the intended meaning regarding which we entertain no doubt, but we have to construe an old statute, and it is clear to us that it would not be reasonable to place on it the restricted interpretation suggested for the appellant.

It is also well established that, in order to bring a suit under the Religious Endowment Act, it is not necessary to show that the Regulation was actually

(1) (1899) I. L. R. 22 Mad. 223. (2) (1911) I. L. R. 34 Mad. 375, 383.

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applied to the endowment in question. See *Ganes Sing* v. *Ramgopal Sing* (1), *Dhurrum Singh* v. *Kissen Singh* (2), *Mahomed Athar* v. *Ramjan Khan* (3), *Sheoratan Kunwari* v. *Ram Pargash* (4), *Muthu* v. *Gangathara* (5), *Saturluri Seetaramanuja Charyulu* v. *Nanduri Seetapati* (6), *Ram Prasad Gupta* v. *Ramkishun Prasad* (7). In order to attract the operation of section 14 of the Act, all that is necessary is to show that the endowment is one, to which Regulation XIX should have been applied, if it were still in force.

It was not disputed before us that the endowment in question in the present case is of a public character and is of such a nature that the Regulation could have been applied to this endowment, if it were now in force.

It is, however, contended on behalf of the petitioner that the Act contemplated only those endowments, which were in existence at the time when the Act came into operation and to which the Regulation could have been applied. But, if the Regulation could have been applied to religious endowments, which were created *after* the Regulation and, if the Act also applies to endowments, which could have been brought under the operation of the Regulation, if it were in force now, it is difficult to resist the conclusion that the Act applies to endowments which came into existence *after* 1863. The point under discussion was considered by the Allahabad High Court in *Sheoratan Kunwari* v. *Ram Pargash* (4), *Husain* v. *Hamid* (8), by the Madras High Court in the case of *Sivayya* v. *Rami Reddi* (9) and by the Patna High Court in the case of *Diljan Ali* v. *Akhtari Begum* (10). In the last mentioned case Mullick J. of the Patna High Court observed as follows :—

> It is said that this section cannot apply because the Act has no application to trusts established after 1863. It is said that the authorities, which

(1) (1870) 5 B. L. R. (App.) 55.
(2) (1881) I. L. R. 7 Calc. 767.
(3) (1907) I. L. R. 34 Calc. 587.
(4) (1896) I. L. R. 18 All. 227.
(5) (1893) I. L. R. 17 Mad. 95.
(6) (1902) I. L. R. 26 Mad. 166.
(7) (1932) I. L. R. 11 Pat. 594.
(8) [1930] A. I. R. (All.) 577; 124 Ind. Cas. 710.
(9) (1899) I. L. R. 22 Mad. 223.
(10) (1925) I. L. R. 4 Pat. 741, 748.

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hold that section 14 of the Act is general and that it applies to endowments created both before and after 1863, were *obiter dicta*, but it is clear that this contention cannot be accepted. [*See Dhurrum Singh* v. *Kissen Singh* (1), *Fakurudin Sahib* v. *Ackeni Sahib* (2), *Sheoratan Kunwari* v. *Ram Pargash* (3) and *Sivayya* v. *Rami Reddi* (4)]. By Regulation XIX of 1810 all public endowments in this province were declared to be under the control and superintendence of the Board of Revenue which was entitled to take charge of their properties and to admininster the same, although it sometimes did not do so. In respect of some of the endowments the Local Government had the power to nominate or confirm the manager or superintendent. In others the Local Government did not appoint but had powers of supervision. Act XX of 1863 made rules for the management of both these classes. Regulation XIX, if not repealed, would have been applicable to endowments created after 1863 also and it is reasonable to suppose therefore that Act XX of 1863 which repealed it was intended to have the same scope and that while some part of it provided for endowments over which the Local Government were then exercising control, section 14 was intended to have wider scope and to apply to endowments coming into existence in the future.

We entirely agree with the view, which has been taken in that case.

Our conclusion, therefore, is that the words "trustee, manager or superintendent of any mosque, "temple or religious establishments" in section 14 of the Religious Endowment Act mean a trustee, manager or superintendent of a mosque, temple or religious institution, to which the provisions of Regulation XIX of 1810 would have been applicable if they were in force now, and that the provisions of Regulation XIX, if they were in force now, would have been attracted to religious endowments of a public character, which came into existence not only before 1863 but also afterwards.

The learned Judge was, therefore, right in holding that the petitioner can be sued under section 14 of the Religious Endowment Act.

The Rule is accordingly discharged, but there will be no order for costs.

Rule discharged.

G. S.

(1) (1881) I. L. R. 7 Calc. 767.
(2) (1880) I. L. R. 2 Mad. 197.
(3) (1896) I. L. R. 18 All. 227.
(4) (1899) I. L. R. 22 Mad. 223.