

CIVIL REVISION.

Before S. K. Ghose and Mukherjea J.J.

1939
Jan. 5.

COMMISSIONER OF WAKFS, BENGAL

v.

NARASINGH CHANDRA DAW & CO.*

Mahomedan Law—Wâkf—Court outside Bengal, if bound to give notice of proceeding to Commissioner of Wâkfs—Commissioner, if entitled under the Act, to maintain application before such Court for setting aside sale of wâkf property—Bengal Wâkf Act (Ben. XIII of 1934), ss. 1, 3, 70.

Section 70 of the Bengal Wâkf Act has no operation in proceedings outside the province of Bengal.

When a portion, therefore, of a *wâkf* estate situate outside the province of Bengal is sold by a local Court in execution of a decree, the Court is not bound to give notice of the sale to the Commissioner of *Wâkfs*, Bengal, and, the latter is not entitled to maintain an application to set aside the sale under s. 70, sub-ss. (4) and (5) of the Act.

Punyendra Narain Deb v. Jogendra Narain Deb (1) referred to.

CIVIL RULES obtained by the Commissioner of *Wâkfs*, Bengal, under s. 115 of the Code of Civil Procedure.

The facts of the case are sufficiently stated in the judgment.

Abul Quasem No. II for the petitioner. I rely on the provisions of s. 3 of the Bengal *Wâkfs* Act and the principle laid down in *Punyendra Narain Deb v. Jogendra Narain Deb* (1) in support of my contention that the Act applies to the whole of the *wâkf* estate including the portion situate in Assam. The provisions of ss. 5, 27(1) (a), 38, 44(3), 59 and some

*Civil Revision Case, No. 679 of 1938, against the order of L. Sharma, Munsif of Dhubri, dated Feb. 3, 1938.

other sections indicate that the Act is intended to apply to a *wákf* as a whole. The previous sanction of the Governor-General having been obtained under sub-s. (3) of s. 80A of the Government of India Act, 1919, to the passing of the Bengal *Wákf* Act the Act in its application to portions of the *wákf* estate situate outside Bengal is not *ultra vires*.

1939
 Commissioner
 of *Wákfs*,
 Bengal
 v.
 Narasingh
 Chandra
 Daw & Co.

Atul Chandra Gupta, Rabindra Nath Chaudhury and *Prabhas Chandra Bose* for the opposite party. The proceeding in question originated in a Court outside Bengal; the person who started the proceeding and the property affected by it are also outside Bengal. The question, therefore, is whether the Bengal *Wákf* Act is applicable to a property or proceeding outside the province, by virtue of the previous sanction of the Governor-General under s. 80A of the Government of India Act. I submit that by such previous sanction property outside Bengal was not intended to be affected, but it was obtained only because a tax was imposed by the *Wákf* Act (vide s. 59). Even with sanction under s. 80A of the Government of India Act of 1915 as amended by the Act of 1919, the provincial Government cannot legislate in excess of the powers given to it in sub-s. (1) and it cannot regulate the procedure of a Court outside the province. Section 3 of the Bengal *Wákf* Act affects *wákf* property only in so far as this can be done through the *mutáwálli*. This view is supported by the case of *Punyendra Narain Deb v. Jogendra Narain Deb* (1). The Act applies as an Act *in personam* to the *mutáwálli*, but the Rule in this case on the *mutáwálli*, who is the judgment-debtor, was not served and was discharged. As the suit in which the proceeding originated was started before the *Wákf* Act came into force, it is not affected by the Act. *Commissioner of Wákfs, Bengal v. Umme Salima* (2).

Quasem, in reply. The sale was notified after the *Wákf* Act came into force. Section 70 of the *Wákf* Act therefore applies.

(1) (1936) 64 C. L. J. 212, 276.

(2) I. L. R. [1937] 1 Cal. 673.

1939

Commissioner
of Wákfs,
Bengal
v.
Narasingh
Chandra
Daw & Co.

GHOSE J. The question that arises for decision is whether s. 70 of the Bengal *Wákf* Act, 1934, has application outside the province of Bengal. The relevant facts are these.

The opposite party is the *mutáwálli* of a *wákf* created by a resident of Dacca with respect to properties situated partly in Bengal and partly in Assam. The said *wákf* has been duly enrolled under s. 44 of the Bengal *Wákf* Act, 1934, in the office of the Commissioner of *Wákfs*, who is the petitioner in this case. The *wákif* had a firm operating at Dhubri in Assam. The decree-holder opposite party obtained a decree against that firm and filed an execution case No. 281 of 1936 in the Court of the Munsif at Dhubri. Some properties were sold without notice being issued to the petitioner under s. 70 of the Bengal *Wákf* Act. On June 16, 1937, the petitioner applied to the Munsif under s. 70(5) of the Act for a declaration that the aforesaid sale was void. The learned Munsif, by his order dated February 3, 1938, dismissed the application, holding, first, that the Bengal *Wákf* Act does not apply to Assam; secondly that, in any case, the Act does not apply to the present execution case which was instituted before the Bengal *Wákf* Act came into force; and thirdly, that the application was time-barred.

It is stated in para. 5 of the petition before us that at the hearing the parties confined their contention to the question of the petitioner's *locus standi* and that, on that understanding, the pleader of the petitioner did not adduce any evidence on the merits or on the question that the application was made within one month of his coming to know of the sale. Mr. Gupta, appearing for the auction-purchaser opposite party, does not dispute this statement. The decision of this Rule, therefore, turns upon the question whether s. 70 of the Bengal *Wákf* Act applies to proceedings in Assam. If we hold that the section does apply, then the matter will have to be referred to the lower Court for further enquiry on other points.

In support of his decision, the learned Munsif has referred to the preamble of the Act which states :—

Whereas it is expedient to make provision for the proper administration of *wâkf* property in Bengal.

Section 1(2) further provides that the Act extends to the whole of Bengal. The advocate for the petitioner has placed strong reliance on s. 3, part of which runs as follows :—

Save as herein otherwise specifically stated this Act shall apply to all *wâkfs*, whether created before or after the commencement of this Act, any part of the property of which is situated in Bengal.

His contention is that the Act operates *in personam* and in respect of the *wâkf* as a whole and, therefore, all the provisions of the Act apply to all parts of the property of the *wâkf*, even if such parts are situated outside Bengal. Reliance has also been placed upon the fact that the Act has been passed with previous sanction of the Governor-General under sub-s. (3) of s. 80A of the Government of India Act. We have been referred to various provisions of the *Wâkf* Act, such as, ss. 27, 38, 44, 45, 48, 55 and 59, for the purpose of showing that the Commissioner has been authorised to deal with the *wâkf* as a whole, which necessarily implies that he is to deal with the entire property even though part of it may be situated outside the province.

Now, so far as s. 80A of the Government of India Act is concerned, it may be relevant to point out that under sub-s. (1) of that section, the local legislature may make laws for the peace and good government of the territories for the time being constituting that province and this provision is made subject to the provisions of the Act. Under sub-s. (3), sub-cl. (e), the local legislature may, with the previous sanction of the Governor-General, make laws regulating any central subject. This refers back to the provision in sub-s. (1) and it cannot be interpreted to mean that the local legislature is authorised to make laws regulating a central subject for peace and good

1939

Commissioner
of *Wâkfs*,
Bengal

v.
Narasingh
Chandra
Daw & Co.

Ghose J.

1939

Commissioner
of *Wákfs*,
Bengal
v.
Narasingh
Chandra
Daw & Co.
—
Ghose J.

government of territories lying outside the province. No contrary interpretation was put upon the section by this Court in the case of *Punyendra Narain Deb v. Jogendra Narain Deb* (1). On the contrary, it was pointed out in that case that in the Bijni Succession Act there was no definition of local extent and, having regard to the provisions of that Act, it was held that it applied to the status of the holder of the *rāj* wherever the properties appertaining to the *rāj* might be situated, even though some of the properties might be outside the province of Assam. The advocate for the petitioner has contended that the definition of extent in s. 1(2) of the Bengal *Wákf* Act does not take the matter any further, because, in any case, the local legislature cannot make laws to operate for the peace and good government of the territories outside the province. But this argument does not also advance the case of the petitioner any further. So far as the status of the Commissioner is concerned, it is conferred by the Bengal Act to operate even outside the province. Therefore, the Commissioner may bring suits under s. 72 or s. 73 of the Bengal Act in Courts outside the province. But s. 70 lies in a different category, because it imposes an obligation on the Court to issue notice to the Commissioner in certain circumstances. Mr. Gupta has contended that it is not within the province of the local legislature to make any law which will affect the jurisdiction of the Court situated outside the province. Section 70(1) refers to a suit or proceeding in respect of any *wákf* property, *etc.*, and if this *wákf* property is situated outside the province, so that the Court having jurisdiction over it is also outside the province, then the Act cannot operate beyond its extent, that is to say outside the province of Bengal. Otherwise, as Mr. Gupta points out, conflict of jurisdiction is inevitable since it is suggested that every province may have a *Wákf* Act of its own.

Leaving aside the larger question as to the interpretation of s. 80A of the Government of India Act, it seems to me that the special provisions of the Bengal *Wākf* Act, 1934, cannot be read as meaning that s. 70 of that Act will have operation in proceedings outside the province of Bengal. I think, therefore, that the view taken by the learned Munsif is right. The Rule must stand discharged. There will be no order as to costs.

MUKHERJEA J. I agree.

Rule discharged.

A. A.

1939

Commissioner
of *Wākfs*,
Bengal

v.

Narasingh
Chandra
Daw & Co.

Ghose J.