FULL BENCH.

Before Sir Syed Wazir Hasan, Knight, Chief Judge, Mr. Justice Muhammad Raza and Mr. Justice Bisheshwar Nath Srivastava.

1932 *February*, 4.

KEDAR NATH PANDIT, AND ANOTHER (PLAINTIFFS-APPELLANTS) v. PEAREY LAL GUPTA AND ANOTHER, (DEFENDANTS-RESPONDENTS).*

Religious Endowments Act (XX *of* 1863) *section* 14—*Section* 14 *of the Religious Endowments Act, if applicable to temples for the maintenance of which no endowment has been made—Interpretation of statutes—Section of a statute, if to be considered as detached from its context.*

Per Full Bench :—The provisions of section 14 of the Religious Endowments Act are not applicable to temples for the maintenance of which no endowment in land has been made. *Jan Ali* v. *Ram Nath Mundul* (1), relied on.

PER HASAN, C. J. :—For the interpretation of a section in a statute it should not be considered as detached from its context in the whole of the statute.

Per SRIVASTAVA, J. :—Section 14 of the Religious Endowments Act is inapplicable to temples for the maintenance of which no endowment has been made.

THE case was originally heard by a Bench consisting of HASAN, C. J. and SRIVASTAVA, J., who referred an important question of law involved in it to a Full Bench for decision. The referring order of the Bench is as follows :—

HASAN, C. J. and SRIVASTAVA, J. :—This is a plaintiffs' appeal against the decision, dated the 6th of December, 1930, of the District Judge of Lucknow. It arises out of a suit under section 14 of the Religious Endowments Act (XX of 1863). The relevant facts may be briefly stated.

There is a Hindu temple in Aminabad Park, Lucknow, which, according to the plaintiffs, was constructed by their ancestors. The defendants appear to have the present control and management of it. They let out a portion of the dedicated land on which the temple stands to a sweetmeat seller. The plaintiffs alleged that this

*First Civil Appeal No. 38 of 1931, against the decree of L. S. White, District Judge of Lucknow, dated the 6th of December, 1930.

(1) (1881) I.L.R., 8 Calc., 32.

sweetmeat shop interferes with the free use of the land and the performance of the religious rites connected with the worship at the temple. They therefore instituted the suit which has given rise to this appeal for an injunction to be issued against the defendants not to let or in any way interfere with any portion of the dedicated land attached to the temple and not to make any constructions upon it. They also prayed that the defendants be removed from the management and control of the temple.

The learned District Judge was of opinion that Regulation 19 of 1810 had no application to a temple for the support of which no lands had been endowed. As Act XX of 1863 was enacted to replace this Regulation so far as it concerned religious endowments, he held that the Act also could apply only to temples for the maintenance of which land has been endowed. As no such endowment exists in connection with the temple in question, the learned District Judge held that Act XX of 1863 did not apply to the case, and the present suit under that Act was not maintainable. He accordingly dismissed the suit on this preliminary ground.

It has been contended on behalf of the plaintiffs that the provisions of section 14 of the Religious Endowments Act are quite general and that the word "temple" used therein should not be confined to temples for the support of which endowments in land have been made. Reference has been made to *Sheoratan Kunwari* v. *Ram Pargash* (1), *Fakurudin Sahib* v. *Ackeni Sahib* (2), *Dhurrum Singh* v. *Kissen Singh* (3) and *Syed Diljan Ali* v. *Bibi Akhtari Begam* (4) but none of these decisions directly decides the precise question at issue in the present case. The learned counsel for the defendants-respondents on the other hand relied on a decision of the Calcutta High Court in *Jan Ali* v. *Ram Nath Mundul* (5) which supports the view taken by the learned

(1) (1896) I.L.R., 18 All., 227. (2) (1880) I.L.R., 2 Mad., 197.
(3) (1881) I.L.R., 7 Calc., 767. (4) (1925) A.I.R., Pat., 544.
(5) (1881) I.L.R., 8 Calc., 32.

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District Judge. He also laid stress on the title, heading and preamble of the Act and contended that the Act, as its very name indicates, can be applied only to cases in which there is an endowment.

We are of opinion that the question is one of considerable importance and not altogether free from difficulty. We therefore think it proper that it should be decided by a Full Bench. We accordingly refer the following question for decision to a full Bench under section 14(1) of the Oudh Courts Act:—

> Are the provisions of section 14 of the Religious Endowments Act inapplicable to temples for the maintenance of which no endowment in land has been made?

Mr. *Manohar Lal*, for the appellants.

Messrs. *Ram Prasad Varma* and *N. Banerji*, for the respondents.

HASAN, C. J.:—The circumstances, out of which this reference has arisen are as follows:—

In Aminabad in the city of Lucknow is situated a Hindu temple which, according to the plaintiffs' allegations, was constructed by their ancestors. At the present moment the defendants are in possession and management of it. It is said that the defendants have allowed a portion of the land on which the temple stands to be used for purposes not connected with the worship at the temple. The plaintiffs therefore instituted the suit in the court of the District Judge of Lucknow asking for action to be taken under section 14 of the Religious Endowments Act, 1863. The learned District Judge dismissed the suit on the ground that the aforementioned Act had no application to a case where it is not shown that the land had been endowed for the support of the temple. In the present case it had not been so shown. The appeal from his decision was heard in the first instance by two of us who

referred the following question to a Full Bench for answer :—

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> Are the provisions of section 14 of the Religious Endowments Act inapplicable to temples for the maintenance of which no endowment in land has been made?

Hasan, C. J.

On a perusal of the several sections of the Religious Endowments Act, 1863, I find that there is no section in the Act which expressly prescribes a condition precedent to the exercise of the jurisdiction by the court under that Act that there should be an endowment in land for the maintenance and support of a temple or other religious institution: nor there is any section which expressly prescribes to the contrary. In the circumstances we have to interpret the provisions of the Act with a view to determine whether those provisions collectively indicate a necessary implication one way or the other.

As observed by Sir JOHN NICHOLL in the case of *Brett* v. *Brett* (1) "The key to the opening of every law is the reason and spirit of the law—it is the *animus imponentis*, the intention of the law-maker, expressed in the law itself, taken as a whole. Hence, to arrive at the true meaning of any particular phrase in a statute, that particular phrase it not to be viewed detached from its context in the statute: it is to be viewed in connection with its whole context meaning by this as well the title and the preamble as the purview or enacting part of the statute. It is to the preamble more especially that we are to look for the reason or spirit of every statute; rehearsing this, as it ordinarily does, the evils sought to be remedied, or the doubts purported to be removed by the statute, and so evidencing, in the best and most satisfactory manner, the object or intention of the legislature in making and passing the statute itself."

(1) (1826) 3 Add., 213 s.c. 162 E.R., 457.

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The object of this Act is stated to be "an Act to enable the Government to divest itself of the management of Religious Endowments" and the preamble is as follows:—"Whereas it is expedient to relieve the Boards of Revenue . . . in the Presidency of Fort William in Bengal and the Presidency of Fort Saint George, from the duties imposed on them by Regulation XIX of the Bengal Code (for the due appropriation of the rents and the produce of lands granted for the support of mosques, Hindu temples, colleges and other purposes . . . and Regulation VII, 1817, of the Madras Code for the due appropriation of the rents and produce of lands granted for the support of mosques, Hindu temples and colleges or other public purposes . . . so far as those duties embrace the superintendence of lands granted for the support of mosques or Hindu temples and for religious uses; the appropriation of endowments made for the maintenance of such religious establishments . . . and the appointment of trustees or managers thereof . . . It is enacted as follows:—"

It seems to me that the preamble quoted above is explicit enough as to the intention of the Legislature in enacting the Religious Endowments Act of 1863. That intention was to relieve the Boards of Revenue from the duties imposed on them by Regulation XIX, 1810 of the Bengal Code and Regulation VII, 1817, of the Madras Code. It is admitted that the duties imposed by those Regulations on the Boards of Revenue were limited to such mosques, Hindu temples, colleges and other religious establishments to which were endowed rents and produce of lands for their support and which the Boards of Revenue managed and administered under the aforementioned Regulations. Having thus ascertained the intention of the Act of 1863 we must construe its sections as laying down provisions for the administration of the same institutions as were administered under the said Regulations or similar

institutions as might have been administered under the said Regulations had they not been repealed by the Act of 1863. This interpretation of the Act is not opposed to any specific section of the Act except section 14. This section is certainly so worded as to be wide enough in its scope to include any mosque, temple or religious establishment whether any land is or is not endowed for the support and maintenance of such mosque, temple or religious establishment. This can be the interpretation of section 14 but only if we disconnect it with the rest of the provisions of the Act and its dominating object as revealed in its preamble. Obviously we should not approach the interpretation of section 14 as detached from its context in the whole of the statute. Section 14 therefore also must be held to refer to such mosques, temples or other religious establishments as would have come under the control and management of the Boards of Revenue in pursuance of the provisions of the two Regulations had those Regulations been still in force.

Hasan, C. J.

This interpretation is supported by a decision of the High Court at Calcutta in *Jan Ali* v. *Ram Nath Mundul* (1). The arguments which the learned Judges of the Calcutta High Court have advanced in the decision just now mentioned in support of this interpretation are so full and convincing, if I respectfully say so, that I realize that it will serve no useful purpose to make efforts to improve upon those arguments. I fully agree with the view taken by those learned Judges and hold that the provisions of section 14 of the Religious Endowments Act are not applicable to temples for the maintenance of which no endowment in land has been made and this is my answer to the question.

RAZA, J. :—I agree. I can find nothing that I may usefully add to what has been said by the learned Chief Judge in his judgment.

(1) (1881) I.L.R., 8 Calc., 32.

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SRIVASTAVA, J. :—I am of the same opinion. Act XX of 1863 is entitled the Religious Endowments Act. The object of it as stated in the heading is "an Act to enable the Government to divest itself of the management of Religious Endowments".

The relevant portion of the preamble is as follows :—

> "Whereas it is expedient to relieve the Boards of Revenue and the local agents . . . from the duties imposed on them by Regulation XIX, 1810, of the Bengal Code . . . and Regulation VII, 1817, of the Madras Code . . . so far as those duties embrace the superintendence of lands granted for the support of mosques or Hindu temples and for other religious uses; appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith and the appointment of trustees or managers thereof; or involve any connexion with the management of such religious establishments; it is enacted as follows :"

Thus the title, the heading and the preamble which afford the keynote to the Act, show clearly that the Act was intended to replace certain provisions of the two Regulations so as to relieve the Boards of Revenue and the local agents from the duties imposed on them under the said Regulations. An analysis of the provisions of the Act shows clearly that sections 3, 7, 8, 9, 11 and 12 refer to religious establishments to which the provisions of either of the Regulations specified in the preamble of the Act were applicable and nomination of the trustee, superintendent or manager thereof at the time of the passing of the Act was vested or was to be exercised by or was subject to confirmation of the Government or by any public officer. Sections 4, 5 and 6 relate to religious establishments under the management of any trustee, manager or superintendent whose nomination

shall not vest in nor be exercised by nor be subject to the nomination of the Government or any public officer. It is also clear that both groups of sections above referred to, relate to religious establishments to which the Regulations were applicable. Section 14 comes in the wake of these two groups of sections. It does not make specific reference to the Regulations, yet there can be little doubt that the mosque, temple or religious establishment mentioned therein must refer to the mosque, temple or religious establishment dealt with in the preceding sections. This is also the interpretation most consistent with the preamble. The scope of Act XX of 1863 cannot, in my opinion, be wider than that of the Regulations which it has replaced. The application of the Act must, therefore, be confined to religious establishments which were governed by the Regulations mentioned in the preamble or at most to institutions which could fall within the scope of the said Regulations. It is not disputed that the Bengal Regulation XIX of 1810 contemplates endowment of land only and the Madras Regulation VII of 1817 contemplates endowments of money, land and produce of land.

My answer therefore to the question referred for opinion is that section 14 of the Religious Endowments Act is inapplicable to temples for the maintenance of which no endowment has been made.

APPELLATE CIVIL.

Before Mr. Justice Muhammad Raza and Mr. Justice Bisheshwar Nath Srivastava.

1932 *March*, 2.

KANHAIYA LAL AND ANOTHER (PLAINTIFFS-APPELLANTS) *v.* GULAB SINGH AND OTHERS (DEFENDANTS-RESPONDENTS).*

Transfer of Property Act (IV of 1882), section 92—Subrogation—Mortgagee getting his mortgage renewed—Priority

*Second Civil Appeal No. 139 of 1931, against the decree of Pandit Bishambhar Nath Misra, District Judge of Unao, dated the 26th of January, 1931, confirming the decree of Pandit Krishna Nand Pande, Additional Subordinance Judge of Unao, dated the 26th of August, 1930.