

Court No. - 2

Case :- WRIT - C No. - 1482 of 2024

Petitioner :- Masjid Eidgah Kabristan Management Trust,
Barabanki Thru. Manager And Another

Respondent :- State Of U.P. Thru. Secy. Revenue, U.P. Govt.
Civil Sectr. Lucknow And Others

Counsel for Petitioner :- M.Usman Siddiqui

Counsel for Respondent :- C.S.C.

Hon'ble Vivek Chaudhary,J.

Hon'ble Om Prakash Shukla,J.

1. Heard learned counsel for the petitioners and learned Standing Counsel for State-respondent Nos.1 to 4.

2. Petitioner No.1, is a Trust and petitioner No.2 is its Manager, they have approached this Court claiming that they are the Trust for management of the Qabristan situated at Gata No.145 village, Kasba Suratganj, District Barabanki.

3. The said Qabristan is claimed to be existing since the year 1925. They claim that it was wrongly entered into the revenue record as the Qabristan/Shamshan during the course of chak bandi proceedings around the year 1980. They say that the said entry were wrongly incorporated in the revenue record also and one of the khatauni of the year 1987-92 (1394-99 fasli) is filed along with present writ petition. Claim of the petitioners is that it should be noted as Qabristan and word Shamshan is to be deleted.

4. In the State of U.P., there exist large number of Qabristans in villages, since time immemorial. When the U.P. Zamindari Land Abolition and Rehabilitation Act (U.P. Z.A & L.R.) Act was brought into force in the year 1951, all the estates, including such Qabristan, vested in the State Government, by virtue of Section 4 of the U.P. Z.A.& L.R. Act. The status of such Qarbistans, which existed even before coming into force of the U.P. Z.A&L.R. Act, was considered by a Division Bench of this Court way back in Case of ***Mohd. Naki Khan and Others Vs. State of U.P. & Other and another***, reported in **1965 All LJ 609**. Relevant paragraphs of the said judgment are quoted below:-

" 2.The four plaintiffs are residents of village Jeanpur in district Azamgarh. In this village there is one plot with an area of 304 links. The plot has been a grave-yard since time immemorial. There are a number of trees standing in this plot. The plot and the trees are dedicated property.

The Muslims of the locality have the right to bury dead bodies in this plot. But the Pradhan of the Gram Samaj has been interfering with the Muslims' rights in this plot. The Pradhan has been disposing of the trees in this plot on the footing that the trees have vested in the Gram Samaj. The plaintiffs, therefore, filed the suit to restrain the defendants from interfering with the right of Muslim residents in the grave-yard and the trees standing on the plot.

4. When the second appeal was heard by a learned Single Judge of this Court, he was of the opinion that the question whether a Muslim grave-yard vests in the State under the provisions of U.P Zamindari Abolition and Land Reforms Act, (U.P Act No. 1 of 1951), hereafter referred to as the Act, is of considerable importance. He, therefore, referred the entire appeal to a larger Bench.

9. In the present case it was stated in para. 2 of the plaint that the plot in question has been used as a graveyard from time immemorial. Muslim residents of the village have been burying dead bodies in the plot for generations. This allegation was admitted in the written statement. It was conceded that even now Muslim residents have the right of burial in this plot.

10. We thus find that from immemorial time Muslim residents of Jeanpur have been burying their bodies in this plot. This right is being recognised by the defendants even after the passing of the Act. From these circumstances, one may safely presume that the plot was dedicated by the original owners of the land for use as a grave-yard. By such dedication, the plot became wakf property. That was the position, which obtained before the passing of the Act. We have to examine whether that position was altered as a consequence of the Act. Mr. Iqbal Ahmad appearing for the appellant contended that the land did not vest in the State under the provisions of the Act. On the other hand, Mr. Gopi Nath appearing for the respondents contended that the land did vest in the State.

11. Sec. 4 of the Act provides for vesting of estates in the State. The question, therefore, arises whether the plot in dispute ever formed an estate as defined by the Act. For this purpose, we have to turn to the definition of 'estate' contained in Cl. (8) of Sec. 3 of the Act.

" 'estate' means and shall be deemed to have always meant the area included under one entry in any of the registers described in Cl. (a), (b), (c) or (d)..... of Sec. 32 of the U.P Land Revenue Act, 1901,...."

12. Sec. 32 of the land Revenue Act provided for the record of rights. A number of registers were prescribed by Sec. 32, Land Revenue Act. Cl. (a) of Sec. 32, Land Revenue Act prescribed a register of all the proprietors in the mohal including the proprietors of specific areas.

13. There is on the record an extract of the Khasra for village Jeanpur. In this extract plot No. 28 with an area of 304 links was recorded as grave-yard. There is also reference to khata No. 149. Neither party has filed any extract from the khewat or the khatauni. It may safely be assumed that this plot must have been comprised in some khewat khata. The learned Civil Judge remarked:

"It was not asserted before me that the land was not situated within an

estate and as such I shall presume that it was situated within an estate."

14. In the grounds specified in the second appeal there is no specific ground that the learned Civil Judge was wrong in making that presumption. We have found that the plot in question was at one time wakf property. It meant that the property vested in God. That would not preclude an entry in the register prescribed by Cl. (a) of Sec. 32 of the land Revenue Act. Whether land belonged to a private person or vested in the Almighty, the land had to be mentioned in the register of proprietors. So, even wakf land will be covered by the definition of estate given in Cl. (8) of Sec. 3 of the Act.

15. Chapter IV of the Act provides for payment of compensation for loss of rights of intermediaries. Sec. 69 provides for payment of compensation to wakf, trust or endowment. Sec. 69 gives an indication that even wakf lost rights under the provisions of the Act. Considering the definition of the terms estate given in Sec. 3 of the Act and the liability of the State Government to pay compensation to wakf, it appears that even wakf property vested in the State under Sec. 4 of the Act.

16. In State of Bihar v. Kameshwar Singh it was pointed out that, a charity created by a private individual is not immune from the sovereign's power to compulsorily acquire that property for public purposes. It is incorrect to say that the vesting of these properties in the State under the provisions of the Act in any way affects the charity adversely because the net income that the institutions are deriving from the property has been made the basis of compensation awarded to them.

17. There is no indication in the Act that wakf property is exempted from the operation of Sec. 4 of the Act. On the contrary, there is specific provision for payment of compensation for wakf property. It, therefore, appears that Sec. 4 of the Act operates as regards wakf property also. So, although the plot at one time vested in the Almighty, the plot vested in the State under Sec. 4 of U.P Act No. 1 of 1951. In spite of the vesting of the land, the defendants have recognised the right of Muslim residents of the village to bury dead bodies in the plot. The plaintiffs should have, therefore, no grievance on this ground.

18. Now we have to consider the question of ownership of the trees, Sec. 6 of the Act describes the consequences of vesting of an estate in the State. Various rights of all intermediaries vest in the State. According to sub-Cl. (1) of Cl. (a) of Sec. 6 of the Act, trees other than trees in village abadi, holding or groves vest in the State. In the present case we are dealing with trees standing on grave-yard. This is not abadi, holding or a grove. So, under Sec. 6 of the Act, all these trees vested in the State.

19. Sec. 117 of the Act provides for vesting of certain property in Gram Samaj. The property so vesting in Gram Samaj includes all trees other than trees in a holding or on the boundary thereof or a grove or abadi. The present case does not fall within the exceptions given in Cl. (3) of Sec. 117 of the Act. The combined effect of Secs. 4, 6 and 117 of the Act is that the trees in dispute now vest in the Gram Samaj. The Gram Samaj is competent to dispose of the trees. The plaintiffs cannot claim any injunction with respect to the trees.

20. The defendants conceded the plaintiffs' right of burial. The plaintiffs'

title to the trees has not been established. The learned Civil Judge was, therefore, justified in dismissing the plaintiffs' suit."

5. Thus, it is settled that all Qabristan which are old, stood vested in the State Government. The said Division Bench judgment stands good till date and has been followed repeatedly in large number of cases. We also find the same to be in accordance with law.

6. In the present case, there is nothing on record to show that the land in question belongs to petitioners. No Khatuani to the above effect is filed by petitioners. The petitioners, therefore, had no right to create any trust for management of the land which belongs to the State Government, hence, the writ petition is not maintainable.

7. The writ petition is **dismissed**.

(Om Prakash Shukla, J.) (Vivek Chaudhary, J.)

Order Date :- 15.2.2024
Shubhankar