IDOL OF THAKURJI SHRI GOVIND DEOJI MAHARAJ

v.

BOARD OF REVENUE, RAJASTHAN, AJMER & OTHERS

August 24, 1964

(P. B. GAJENDRAGADKAR, C.J., J. C. SHAH AND N. RAJAGOPALA AYYANGAR JJ.)

The Jaipur Matmi Rules, 1945, *rr.* 4 *and* 5—*"State grant" in favour of idol—Liability for "Matmi dues"—Practice—Writ Petition—Maintainability by affected party.*

The appellant, an Idol, is the grantee of certain lands. They are "State grants" under r. 4 of the Jaipur *Matmi* Rules, 1945, having been made or recognised by the Ruler of the State. All State grants are subject to *Matmi* dues under the Rules, that is, to the amount payable to the State by the successor of a deceased grantee, on his recognition as such. There had been changes in the person of the Shebait of the idol twice, the previous incumbent dying and his son being recognised as the successor. The respondent therefore passed an order demanding *Matmi* dues from the present Shebait. The appellant by a Writ Petition disputed the validity of the order, but the petition was dismissed. On appeal,

HELD: (i) The grants in question being grants made in favour of the idol and not in favour of the Shebaits, no question of the death of the grantee or his successor could arise and consequently, the respondent could not claim any *Matmi* dues from the appellant. [100F-H].

(ii) Though the order for payment of *Matmi* dues had been nominally passed against the Shebait, as they were intended to be enforced against the properties belonging to the appellant, the appellant's Writ Petition was maintainable. [102E-G[.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 326 of 1962.

Appeal from the judgment and order dated September 10, 1959 of the Rajasthan High Court in D. B. Civil Writ Petition No. 10 of 1957.

B. K. Bhattacharya and *S. N. Mukherjee,* for the appellant.

G. C. Kasliwal, Advocate-General for the State of Rajasthan, K. K. Jain and *R. N. Sachthey,* for the respondents.

The Judgment of the Court was delivered by

Gajendragadkar C. J. The short point of law which arises in this appeal is whether under rule 5 of the Jaipur *Matmi* Rules, 1945, the appellant, the Idol of Thakurji Shri Govind Deoji Maharaj, is liable to pay the *Matmi* amount in question. It appears that respondent No. 1, the Board of Revenue, had passed an order on November 6, 1956, directing that the Matalaba *Matmi* amounting to Rs. 15,404/14/6 be recovered from the Shebait of the appellant temple. The appellant disputed the

validity of this order and filed a Writ Petition (No. 10 of 1957) in the High Court of Rajasthan contending that the said amount was not recoverable from the appellant. The High Court has dismissed this writ petition and the appellant has come to this court with a certificate granted by the High Court.

In its petition, the case for the appellant was that several lands had been granted to the appellant from time to time and that these grants were made in the name of the Idol, and that the Seva Pooja of the Idol and the management of its properties was entrusted to the Goswami ever since the Idol of Thakurji Shri Govind Deoji Maharaj was taken to Jaipur from Brindaban. On the death of the ninth Shebait, Goswami Shri Krishna Chandra succeeded to the Shebaitship in 1888 and continued to be in management as such Shebait until 1935. On his death, his eldest son Goswami Bhola Nath succeeded and Seva Pooja was looked after by him during his lifetime. On the death of Goswami Bhola Nath in 1945, his eldest son Goswami Pradumna Kumar succeeded to the Shebaitship and has been carrying on the management of the properties of the temple and looking after the Seva Pooja of the Idol. It was during the management of Pradumna Kumar that the impugned order has been passed by respondent No. 1. According to this order, Matmi has been sanctioned "in favour of Goswami Bhola Nath on the death of Krishna Chandra Deo and in favour of Pradumna Kumar Deo on the death of Bhola Nath" and the total amount directed in that behalf is Rs. 15,404/14/6. The appellant's petition specifically averred that the property in question had been granted to the Idol itself and that the Shebaits have been performing the Seva Pooja of the Idol and managing the properties of the temple as such Shebaits. On these allegations, the appellant prayed that an appropriate writ, order or direction should be issued prohibiting respondent No. 1 and the Collector, Sawai Madhopur, respondent No. 2, and their nominees or agents from recovering or from taking any step for the recovery of any Matalaba Matmi under the impugned order of respondent No. 1 from the petitioner's estate. The appellant also claimed that an appropriate order or direction or writ should be issued quashing the said impugned order as well as the prior order dated April 20, 1954 on which the latter order was based.

Respondents 1, 2 and the State of Rajasthan which was joined as respondent No. 3 disputed the appellant's claim and made several pleas. In regard to the allegation of the appellant that the properties in question had been granted to the Idol, the

respondents' reply merely stated that, that allegation was not admitted as the documents regarding the original grants were not traceable. The respondents urged that the Matalaba Matmi had been properly levied by respondent No. 1 against the Shebaits and that the appellant's grievance that its properties were not liable to pay the said amount was not well-founded.

The High Court has proceeded to deal with this dispute on the basis that the appellant, the Idol of Thakurji Shri Govind Deoji Maharaj was the owner of the properties. It, however, took the view that since the Shebaits were managing the properties and performing the Seva Pooja of the appellant Idol, Shebaitship itself being property the relevant Rules applied, because the beneficial interest which the Shebaits held could be said to amount to a 'State grant' within the meaning of r.4(1). On this view, the High Court came to the conclusion that what is contemplated in the Matmi Rules is the succession to a Shebait. In that connection, the High Court referred to the fact that the predecessors of the present Shebait had applied for Matmi and the present Shebait himself had similarly filed an application in that behalf. According to the High Court, the plain meaning of the definition of 'Matmi' is that it is payable at the time of the recognition of the succeeding Shebait. In this connection the High Court has also observed that the writ petition had been filed by the Idol and though the Shebait appeared as the agent of the Idol, it was not a petition filed by the Shebait as such, and since the impugned order had been passed against the Shebait, the grievance made by the Idol was technically not justified. Even so, since the High Court was inclined to take the view that by virtue of the beneficial interest which the Shebaits have in the property of the temple the impugned order had been properly passed, the High Court considered the merits of the writ petition filed by the appellant and dismissed it with costs. The main judgment has been delivered by Bhandari J. Modi. J. has agreed with the conclusions of Bhandari J. and in a brief order he has indicated the principal grounds on which his conclusions rested. Modi J. also held that it was not possible for the Court to help the appellant in view of the Rules as they stand. He thought that the only relief which the appellant can secure is by moving respondent No. 3 to exercise its discretion under clause (xvii) of r.20 and get exemption from the payment of the amount in question. It is against this decision that the appellant has come to this Court.

The Jaipur Matmi Rules came into force in 1945 and some of the relevant provisions of these Rules must now be considered

Rule 4 contains definitions. Rule 4(i) defines a 'State grant' as meaning a grant of an interest in land made or recognised by the Ruler of the Jaipur State and includes a jagir, muamla, suba, istimrar, chakoti, badh, bhom, inam, tankha, udak, milak, aloofa, khangi, bhog or other charitable or religious grant, a site granted free of premium for a residence or a garden, or other grant of a similar nature. Rule 4(2) defines a person holding a State grant as a 'State Grantee'. Rule 4(3) refers to 'Matmi' and defines it in these terms:

> "Matmi" means mutation of the name of the successor to a State grant on the death of the last holder. The person in whose name matmi is sanctioned is called the "matmidar" and the sum payable by him on his recognition as such by the State is called "matalba matmi".

Rule 4(4) defines 'Nazarana' thus :

> "Nazrana" is the sum payable, in addition to matalba matmi, by an adopted son or by a successor other than a direct male lineal descendant of the last holder".

It will thus be noticed that under r. 4(i) a State grant means, *inter alia*, a grant of an interest in land made by the Ruler of the Jaipur State and it includes a charitable or religious grant. The High Court has dealt with the present writ petition on the basis that the grant has been made in favour of the Idol. In fact, the two grants to which our attention was invited fully support this view. The copy of the Patta dated 21st Ramzan St. 1123 (Annexure Exbt. 4) shows that the villages Dehra and Salampukh Balahadi in Pargana Hindaun Baseshu Prasad were allotted for "Punya Bhog" of Thakurji Sriji. Similarly, the copy of the Patta dated Katik Badi 8 of Smt. 1808 (Annexure Exbt. 5) shows that the village Govindpur Bas Hathyod Tehsil Qasaba Sawai Jaipur was allotted for the Bhog (food offerings) of Thakurji Sriji. Therefore, we feel no difficulty in dealing with the present appeal on the same basis which the High Court has adopted in its judgment. The grants in question were grants made in favour of the Idol and not in favour of the Shebaits. It is well-known that a religious grant can be made either in favour of the Idol as such or may be made to a person burdening the grantee with the obligation to render requisite services to the temple. It is with the first category of grants that we are concerned in this appeal. The grant is one to the Idol and if the Shebait manages the properties granted to the Idol, it is by virtue

of his Shebaitship and not because he is in any manner a grantee from the State as such.

Rule 5 provides that all State grants shall be subject to Matmi with certain exceptions. With these exceptions we are not concerned. Rule 6 provides for the submission of death reports by persons claiming succession to a grant. Rule 7 prescribes the penalty for the successor's failure to make the report. Rule 8 provides for attachment of State grants pending Matmi. Rule 9 provides for the Bhograj expenses during attachment of a bhog grant. Under Rule 12, a claim for succession to a State grant, if not made within a year of the last holder's death, shall be rejected as time-barred and the grant resumed. Rule 13 deals with the question of the persons entitled to succeed. Rule 14 deals with the same problem in the absence of a direct male lineal descendant. The proviso to rule 14 lays down, *inter alia*, that in the case of a grant for the maintenance of a temple, other than a Jain temple, it shall be within the discretion of the Government to select as successor any one of the male lineal descendants of the original grantee, with due regard to his suitability for the performance of worship. With the rest of the Rules we are not concerned in the present appeal.

The question which arises is, can the grant made to the appellant be said to attract the operation of rule 5 ? Rule 5 prescribes for the levy of Matmi in respect of State grants and if the said rule applies, the appellant would have no case. In deciding the question as to whether the appellant's estate is liable to pay Matmi under r. 5 it is necessary to examine the nature of this Matmi, and find out whether a claim in respect of it can be made against the appellant. We have already noticed that Matmi means mutation of the name of the successor to a State grant on the death of the last holder. It is obvious that in the case of a grant to the Idol or temple as such there would be no question about the death of the grantee and, therefore, no question about its successor. An Idol which is a juridical person is not subject to death, because the Hindu concept is that the Idol lives for ever, and so, it is plainly impossible to predicate about the Idol which is the grantee in the present case that it has died at a certain time and the claims of a successor fall to be determined. That being so, it seems difficult to hold that any claim for Matmi can be made against the appellant, and that must clearly lead to the inference that no amount can be recovered from the properties belonging to the Idol on the ground that Matmi is claimable

against a person who claims to be the successor of the Shebait of the appellant.

The learned Advocate-General was unable to dispute this position. He, however, attempted to argue that all grants pertaining to the properties of the appellant were not before the Court, and so, it may not be proper to proceed on the basis that all the properties of the appellant have been granted to the appellant in its own name. We are not impressed by this argument. We have already noticed that a specific averment was made by the appellant in paragraph 3 of its writ petition that all the State grants made to the appellant from time to time were in the name of the Idol, and though the respondents did not specifically admit this averment, they pleaded that since the documents regarding the original grants were not traceable, they required the appellant to prove its case in that behalf. The appellant produced two grants and it appears from the judgment of the High Court that the matter was proceeded with on the basis that the Idol is the grantee of all the properties. That being so, we do not think it is open to the Advocate-General now to contend that some of the properties may have been granted to the Shebaits no doubt burdened with the obligation to perform the services of the Idol.

The High Court appears to have taken the view that because a Shebait has some kind of a beneficial interest in the property of the temple, that beneficial interest itself could be treated as a State grant and it is on this basis that the High Court held that the impugned order passed by respondent No. 1 was valid. In the present case we are not concerned to enquire whether for recognising a succeeding Shebait any Matmi can be recovered by the respondents; but since the High Court has laid emphasis on the fact that the Shebait has a beneficial interest in the properties granted to the appellant, it is necessary to point out that though the Shebait by virtue of the special position attaching to Shebait under the Hindu law can claim some beneficial interest, that interest is derived not by virtue of the grant made by the State, but by virtue of the provisions of Hindu law, or custom, or usage of the temple or locality where the temple is situated. In *Tilkayat Shri Govindalalji Maharaj etc.* v. *State of Rajasthan & Ors.*,(1) the position of the Shebaits was incidentally considered, and the observations made by Mr. Justice Ameer Ali in *Vidya Varuthi Thirtha Swamigal* v. *Balusami Ayyar*(2) were cited with approval. "In almost every case", said Mr. Justice Ameer Ali, "the Mahant is given the right to a part of the usufruct, the mode of

enjoyment and the amount of the usufruct depending again on usage and custom. In no case was the property conveyed to or vested in him, nor is he a trustee in the English sense of the term, though in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for mal-administration." Therefore, it seems to us that the High Court was in error in holding that the beneficial interest of the Shebaits in the properties granted to the appellant amounted to a State grant, and so, the impugned order was perfectly valid. The incidental effect of the conclusions reached by the High Court may perhaps be taken to be that the order passed by respondent No. 1 being valid, the amount in question can be recovered from the properties of the appellant. That is why we thought it necessary to clarify the position in law on this point.

In fact, by Civil Misc. Petition No. 1081 of 1964 it has been brought to our notice by the appellant that it had made a compensation claim because lands granted to the appellant had been resumed by the State of Rajasthan by notification No. F.(388)/ REV/1.A/53 dated Jan. 1, 1959 and that an annual sum by way of annuity to the Deity had been sanctioned by the State of Rajasthan under its order dated April 24, 1962. This order has, however, directed that the amount of Rs. 15,404/14/6 which has been ordered by respondent No. 1 to be recovered by way of Matmi should be deducted and that, it is urged before us by the appellant, cannot be done. This fact clearly shows that the appellant is justified in apprehending that, though the order of Matmi dues has been nominally passed against the present Shebait, it may be enforced against the properties belonging to the appellant. Since we have held that the properties granted to the appellant constitute State grants under r. 4(1), but do not become liable to pay Matmi dues under r. 4(3), we must hold that the appellant's writ petition was justified inasmuch as it asked for an appropriate direction restraining the respondents and their nominees or agents from recovering the said amount from the appellant's estate. Therefore, prayer made by the appellant in paragraph 16(1) of its writ petition must be allowed. Since we are not concerned with the validity of the order passed by respondent No. 1 against the present Shebait, we propose to express no opinion in regard to the merits of the prayer contained in paragraph 16(2) of the writ petition.

The result is, the appeal is allowed, the order passed by the High Court is set aside and the appellant's writ petition is allowed with costs.

Appeal allowed.