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MAHANT SRI SRINIVAS RAMNUJ DAS, MAHANT OF EMAR MATH, PURI

v.

THE AGRICULTURAL INCOME TAX OFFICER, PURI & ANR.

B

September 12, 1978

[P. N. BHAGWATI, V. D. TULZAPURKAR AND R. S. PATHAK, JJ.]

Orissa Agricultural Income Tax Act, 1947, *S.* 8(1), *whether suffers from the vice of discrimination and as such hit by Art.* 14 *of the Constitution—Scope of* 8(1), 9 *and* 16 *of the Act.*

The appellant is the Mahant of Emar Math of Puri which is an ancient
C Public Hindu Religious Trust. Being a trustee, the appellant has been assessed in the status of an "individual" under the Orissa Agricultural Income Tax Act. 1947 for the assessment years 1948-49 to 1967-68 in respect of the income derived from agricultural lands owned by the trust. These assessments were made after granting the exemption under s. 8(1) of the Act which provides that "any sum derived from land held under such trust and *actually spent for the said purpose* (charitable or religious purposes) shall not be includ-
D ed in the total agricultural income of such assessee."

The appellant challenged the constitutional validity of s. 8(1) of the Act under which the assessments were made principally on the ground that s. 8(1) was discriminatory and hit by Art. 14 of the Constitution, in as much as under the said provision, in respect of non-public muslim trusts created for religious or charitable purposes the exemption contemplated therein was confined to such agricultural income or was actually spent for the public purposes
E of charitable or religious nature, while in the case of muslim trusts (Waqfs) the entire agricultural income whether spent for charitable or religious purpose or not, was exempt from the operation of the Act under s. 9 of the Act. The Orissa High Court, negatived the said contention on an examination of the provisions of Sections 8 and 9 in the context of the scheme of the Act and dismissed the Writ Petition.

F Dismissing the appeal by special leave the Court.

HELD : (1) S. 8(1) of the Orissa Agricultural Income-tax Act, 1947 is free from the vice of discrimination under Art. 14 of the Constitution and the said provision is perfectly valid and constitutional. [663 G-H]

(2) The scheme of the Act is that under the charging provision agricultural income-tax is levied on the total agricultural income of the previous year of every assessee subject to the exemption which have been provided for under
G Sections 8, 9 and 16. [661 C-D]

The legislative intent of granting of limited exemption is brought out by Sections 8(1) and 16 of the Act. Whereas exemption in regard to the amount actually spent for charitable purposes under S. 8(1) is in relation to the agricultural income of a public charitable trust, the exemption of similar nature and extent contemplated by s. 16 is in regard to the agricultural income of
H any assessee who may not be a trustee owning lands under a public charitable trust, in other words, in either case, the exemption is confined to such part of the agricultural income which is actually spent by the assessee for charitable purposes. [661 D-E]

(3) Section 9 of the Act, in terms, says that the exemption thereunder is confined to Muslim Trusts "referred to in s. 3 of the Musalman Waqf Validating Act, 1913". S. 3 of the Validating Act refers only to muslim trusts which are in the nature of Waqf-alal-aulad. The exemption in s. 9 of the Act, therefore clearly applies only to Muslim trusts which are in the nature of Waqf-alal-aulad. The marginal note to s. 9 as well as the proviso to the section make this clear [662 B, 663 B-C]

If that be so, then all muslim trusts other than Waqf-alal-aulad squarely fall under s. 8(1) and to all such waqfs the limited exemption contemplated therein would apply. If that be so, the gravamen of complaint that all waqfs (Muslim Trusts) other than waqf-alal-aulad are receiving favourable treatment as against non-Muslim public charitable trusts must fall to the ground. [663 C, E]

As regards Muslim trusts which are in the nature of waqf-alal-aulad which alone are covered by s. 9 the proviso clearly shows that the share of the beneficiary under such a trust far from being exempted is brought to tax and the tax is made realisable from the *mutawali* and read with the proviso the main provision really confines the benefit of exemption only to ultimate illusory or remote public charitable or religious purpose and is thus completely consistent with the object and scheme of the Act. [663 F-G]

Fazlul Rabbi Pradhan v. *State of West Bengal & Ors.*, AIR 1965 SC 1722, applied.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1770 of 1972.

Appeal by Special Leave from the Judgment and Order dated 30th November, 1971 of the Orissa High Court in O.J.C. No. 48 of 1968.

P. K. Chatterjee and *Rathin Dass* for the Appellant.

S. V. Gupte, Attorney General and *G. S. Chatterjee* for the Respondent.

The Judgment of the Court was delivered by

TULZAPURKAR, J.—The short question raised in this appeal by special leave is whether s. 8(1) of the Orissa Agricultural Income Tax Act, 1947 suffers from the vice of discrimination and as such is hit by Art. 14 of the Constitution?

The appellant is the Mahant of Emar Math at Puri, which is an ancient public Hindu Religious Trust. The trust owns considerable endowed properties both agricultural and non-agricultural. After the passing of the Orissa Agricultural Income Tax Act, 1947 (hereinafter called 'the Act'), the appellant as a trustee has been assessed in the status of an 'individual' under the Act for the assessment years 1948-49 to 1967-68 in respect of the income derived from agricultural lands owned by the trust. It appears that these assessments have been made after granting the exemption under s. 8(1) of the Act which provides that "any sum derived from land held under such trust and *actually spent for the said purposes* (charitable or

religious purposes) shall not be included in the total agricultural income of such assessee". By a Writ Petition No. 48 of 1968, filed under Arts. 226 and 227 of the Constitution, the appellant challenged the constitutional validity of s. 8(1) of the Act under which the assessments were made principally on the ground that s. 8(1) was discriminatory and hit by Art. 14 of the Constitution inasmuch as under the said provision in respect of non-Muslim public trusts created for religious or charitable purposes the exemption contemplated therein was confined to such agricultural income as was actually spent for the public purposes of charitable or religious nature while in the case of Muslim trusts (wakfs) the entire agricultural income, whether spent for charitable or religious purposes or not, was exempt from the operation of the Act under s. 9 of the Act. The contention was refuted on behalf of the respondents. On an examination of the provisions of ss. 8 and 9 in the context of the scheme of the Act the Orissa High Court negatived the said contention and dismissed the Writ Petition on November 30, 1971. The appellant has come up in appeal to this Court.

Since counsel for the appellant raised the self-same contention before us in support of the appeal it will be desirable to set out the provisions of ss. 8 and 9 of the Act in order to appreciate his submissions on the point. Section 8 runs thus :

> "8. *Exemption of charitable or religious trusts* :— (1) Where the assessee is a trustee and the trust under which he holds the property is a trust, created for public purposes of a charitable or religious nature, any sum derived from land held under such trust and actually spent for the said purposes, shall not be included in the total agricultural income of such assessee.
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> (2) In this section purposes of a charitable nature include relief of the poor, education, medical relief and advancement of any other object of general public utility."

Section 9 runs thus :

> "9. *Exemption of Wakf-alal-aulad.*—All agricultural income of Muslim trusts referred to in section 3 of the Musalman Wakf Validating Act, 1913, created before the commencement of this Act, shall be excluded from the operation of this Act :
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> Provided that the share of a beneficiary under a trust under the aforesaid Act, commonly known as *Wakf-alal-*

aulad, shall not be exempted and the tax may be realised from the *mutawali* and the basis of taxation shall be the share of each beneficiary.

Explanation.—For the purposes of this section, a beneficiary means the settler, his family, children and descendants."

Since s. 9 refers to Muslim trusts 'referred to in section 3 of the Musalman Wakf Validating Act, 1913', it would be proper to set out the provisions of s. 3 of the Musalman Wakf Validating Act, 1913. Section 3 of that Act runs as follows :—

"3. *Power of Mussalmans to create certain wakfs.*—It shall be lawful for any person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of Musalman law, for the following among other purposes :—

(a) for the maintenance and support wholly or partially of his family, children or descendants, and

(b) where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his life-time or for the payment of his debts out of the rents and profits of the property dedicated :

Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognised by the Mussalman law as a religious, pious or charitable purpose of a permanent character."

Mr. Mukherjee for the appellant contended that the exemption contemplated by s. 8(1) of the Act is confined only to such part of the income derived from agricultural lands held under a public charitable or religious trust as is actually spent for the charitable or religious purposes while under s. 9 all agricultural income of Musalman trusts (wakfs) irrespective of whether the same is spent on public purposes of charitable or religious nature or not is exempt from the operation of the Act; in other words in the matter of granting exemption between the agricultural income of two types of public trust created for charitable or religious purposes, the Act has practised hostile discrimination against agricultural income of non-Muslim public trusts, the classification having no reasonable nexus with the object sought to be achieved by the statute which is to tax agricultural income derived from lands and to exempt the income so derived

by a public charitable or religious trust. According to him though s. 9 refers to all agricultural income of Muslim trusts "referred to in s. 3 of the Musalman Wakf Validating Act, 1913, (Act VI of 1913), the wakfs contemplated by s. 3 of the said Act (Act VI of 1913) include not merely *Wakf-alal-aulad* but also other wakfs where property has been permanently dedicated for any purposes recognised by the Musalman Law as religious, pious or charitable and this, he argued, becomes clear from sub-clause (a) of s. 3 which speaks of wakf created by a Muslim for the maintenance and support *wholly or partially* of his family, children or descendants; in other words, according to Mr. Mukherjee, s. 9 of the Act is not confined to Muslim trusts known as *wakf-alal-aulad* but is applicable to all wakfs and, therefore, in case of wakfs other than *wakf-alal-aulad* the exemption granted by s. 9 of the Act which is in respect of all agricultural income must be regarded as discriminatory as against the exemption granted by s. 8(1) of the Act. He, therefore, urged that s. 8(1) which grants a limited exemption would be violative of Art. 14 of the Constitution. On the other hand, the learned Attorney-General appearing for the respondents contended that s. 9 is confined to Muslim trusts commonly known as *wakf-alal-aulad* and all other Muslim trusts are covered by s. 8(1) of the Act with the result that to all such Muslim trusts, other than *wakf-alal-aulad,* the limited exemption is applicable. He urged that *wakfs-alal-aulad* do stand in a class by themselves and as such have been dealt with by s. 9 in keeping with the objective of the Act. He further urged that sections 8(1), 9 and 16 showed the scheme of the Act and if these provisions were considered in light of the main objective of the enactment it was clear that s. 8(1) could not be held to be discriminatory or violative of Art. 14.

Before considering the rival contentions touching the constitutional validity of s. 8(1) of the Act it would be proper to keep in mind the main objective as well as the scheme of the Act, particularly in regard to the charging provision and the provisions dealing with exemptions contained therein. The Act, as its preamble would indicate, has been put on the Statute Book with the object of imposing a tax on agricultural income derived from lands situated in the State of Orissa. Section 2(a) defines the expression "agricultural income" comprehensively. The charging provision is contained in s. 3 which provides that agricultural income tax at the rate or rates specified in the Schedule shall be charged for each financial year in accordance with and subject to the provisions of this Act on the total agricultural income of the previous year of every person; the proviso, however, states that no agricultural income tax shall be

charged on the agricultural income of the Central Government or any State Government or any local body. Section 5 prescribes limits of taxable income while s. 6 prescribes the method and manner of determining the agricultural income of every assessee. Then come the two material provisions dealing with exemptions, namely, ss. 8 and 9 which have been reproduced above. The other material section which deals with exemption is s. 16 which provides that agricultural income tax shall not be payable by an assessee in respect of any amount actually spent by him out of his total agricultural income for the benefit of the people of the State or for charitable purposes, but this exemption is subject to the proviso that agricultural income tax shall be payable on the remainder of the total agricultural income of such assessee at the rate which would have been applicable if such deduction had not been made. It is unnecessary to refer to other provisions as they are not material for our purposes. The scheme if the Act, as disclosed by the aforesaid provision, is that under the charging provision agricultural income tax is levied on the total agricultural income of the previous year of every assessee subject to the exemptions which have been provided for under ss. 8, 9 and 16. It is also clear that whereas the exemption in regard to the amount actually spent for charitable purposes under s. 8(1) is in relation to the agricultural income of a public charitable trust, the exemption of similar nature and extent contemplated by s. 16 is in regard to the agricultural income of any assessee who may not be a trustee owing lands under a public charitable trust; in other words, in either case the exemption is confined to such part of the agricultural income which is actually spent by the assessee for charitable purposes. The legislative intent of granting such a limited exemption having been thus clearly brought out by ss. 88(1) and 16 of the Act, the question would be whether by enacting s. 9 the Legislature really intended to accord or has actually accorded favourable treatment to Muslim trusts in the matter of granting exemption in the manner suggested by counsel for the appellant?

Having regard to the submissions made by counsel for the appellant the question raised for determination may be formulated thus : Whether ss. 8 and 9 while providing for exemption to charitable or religious trusts discriminate between agricultural income derived from lands held under non-Muslim public trusts and those held under Muslim trusts and accord to the latter a favourable treatment as against the former by confining the exemption in the former case to such income as has been actually spent for public purposes of charitable or religious nature? In other words is s. 8(1) which confers a limited exemption as compared to s. 9 hit by Art. 14? It

A has not been disputed before us that Muslim trusts known as *Wakf-alal-aulad* constitute a distinct class from other types of wakfs but the discrimination complained of is founded upon plea that s. 9 of the Act covers all Musalman wakfs and not merely wakfs known as the *Wakf-alal-aulad* and, therefore, it will be necessary to examine
B the provisions of s. 9 in order to ascertain whether the plea that it covers all Musalman wakfs is warranted or not. Section 9 in terms says that the exemption thereunder is confined to Muslim trusts "referred to in s. 3 of the Musalman Wakf Validating Act, 1913" and the question is what wakfs are referred in s. 3 of the Musalman Wakf Validating Act, 1913 (hereinafter called 'the Validating Act').
C The Validating Act, as we shall indicate presently, was enacted only for the purpose of validating wakfs in the nature of *wakf-alal-aulad*. As has been pointed out by this Court in *Fazlul Rabbi Pradhan* v. *State of West Bengal and others,*(1) wakfs (which were primarily family settlements) in which the benefits to charity or religion were either illusory or postponed indefinitely while the property so dedi-
D cated was being enjoyed from generation to generation by the family of the wakif were regarded as opposed to the rule against perpetuity as contained in the Indian Succession Act and the Transfer of Property Act. The leading decision of the Privy Council in that behalf rendered in *Abul Fata Mahomed Ishak and Others* v. *Russomoy Dhur Chowdhery and Others,*(2) caused considerable dissatisfac-
E tion in the Muslim community in India resulting in a representation being made to the Government of India and consequently the Validating Act came to be enacted with the primary object of removing the difficulties created by that decision. The preamble of the Act makes this very clear. Section 3 declares the right of a person professing Musalman faith to create a wakf (which in all other respects is in
F accordance with the provisions of Musalman law) for the maintenance and support wholly or partially of his family, children or descendants and in the case of a Hanafi Mussalman also for his own maintenance and support during the life time or for payment of his debts out of the rents of the property dedicated provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for
G any other purpose recognised by the Musalman law as a religious, pious or charitable purpose of a permanent character. Section 4 also declares that no such wakf as is referred to in s. 3 shall be deemed to be invalid merely because of remoteness of benefit to charity. In fact, s. 3 s declaratory of a right of a Muslim to

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(1) A. I. R. 1965 SC 1722.
(2) 22 Indian Appeals 76.

create a valid wakf of the type described therein and the proviso makes it clear that but for the reservation of ultimate benefit to charity that has to be made, such family settlement (private wakfs) would be invalid. It is conceivable that a deed or instrument of wakf may be a composite one, partly incorporating public wakf and partly private wakf but s. 3 of the Validating Act unquestionably refers to that part of the instrument which incorporates a private wakf—*wakf-alal-aulad,* the vaildity of which must depend upon whether in that part of the instrument the ultimate benefit is expressly or impliedly reserved for charitable or religious purposes or not. It is thus clear that s. 3 of the Validating Act refers only to Muslim trusts which are in the nature of *wakf-alal-aulad.* The exemption in s. 9 of the Act, therefore, clearly applies only to Muslim trusts which are in the nature of *wakf-alal-aulad.* This is also clear from the marginal note to s. 9 as well as the proviso to the section. If that be so then all other wakfs would squarely fall under s. 8(1) and to all such wakfs the limited exemption contemplated therein would apply. Even if the instrument of wakf is a composite one partly incorporating a public wakf and partly a private wakf that part which deals with public wakf will fall under s. 8(1) and the other part will be covered by s. 9, for, the language of s. 8(1) is wide enough to include such a deed to the extent that it incorporates a public wakf. In other words, Muslim trusts i.e. wakfs other than *wakf-alal-aulad* would be covered by s. (8)(1) and to such wakfs the limited exemption contemplated by s. 8(1) would apply. If that be so, the gravamen of complaint that all wakfs (Muslim trusts) other than *wakf-alal-aulad* are receiving favourable treatment as against non-Muslim public charitable trusts must fall to the ground.

As regards Muslim trusts which are in the nature of *wakf-alal-aulad* which alone are covered by s. 9, the proviso clearly shows that the share of the beneficiary under such a trust far from being exempted is brought to tax and the tax is made realisable from the *mutawali* and read with the proviso the main provision really confines the benefit of exemption only to ultimate illusory or remote public charitable or religious purpose and is thus completely consistent with the object and scheme of the Act.

In the result, we are clearly of the view that s. 8(1) of the Act is free from the vice of discrimination under Art. 14 of the Constitution and the said provision is perfectly valid and constitutional. The appeal is, therefore, dismissed with costs.

S.R. *Appeal dismissed.*