

Swaminarayan Jethalal Chimanlal and others *since* *Appellants*
deceased represented by Sheth Baldevdas
Vallabhdas Parikh and others

v.

Acharya Shri Devendraprasadji - - - - Respondent

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 13TH MARCH, 1946

Present at the Hearing:

LORD MACMILLAN

LORD DU PARCQ

SIR JOHN BEAUMONT

[Delivered by SIR JOHN BEAUMONT]

These are consolidated appeals from the judgment and two decrees of the High Court of Judicature at Bombay, in its Appellate Jurisdiction, both dated 10th October, 1934, the first modifying a decree of the Joint Judge of Ahmedabad dated 30th June, 1927, and the second a decree of the First-class Subordinate Judge of Ahmedabad dated 3rd January, 1929.

The appeals relate to the affairs of the Northern Diocese of the Swaminarayan sect, the head of which is the Acharya of Ahmedabad. The appellants are members of the said sect who have been substituted for the original plaintiffs in the suit who died pending the hearing of this appeal.

It is common ground that the Swaminarayan sect was founded in the early part of the 19th century by a religious reformer of northern India, named Sajanand. He built a number of temples, the principal of which were the Nar Narayan temple at Ahmedabad, and the Lakshmi Narayan temple at Vadatal in the Kaira district. In 1827 three years before his death he divided India into two dioceses, north and south, the centre of the former being at Ahmedabad, and of the latter at Vadatal, and, on his death, he appointed one of his nephews Acharya of one diocese, and another nephew Acharya of the other diocese. For the upkeep of the Institution Sajanand provided that his followers should pay a tax known as dharmada which is a percentage on income. Two other forms of money payment came to be made, namely, "nam vero" which is a poll tax paid by every follower to the Acharya each year, and "bhets" which are voluntary offerings to the Acharya made on special occasions.

The questions in this appeal relate solely to the Ahmedabad temple but, in order to understand the main question raised, it is necessary to mention that in the year 1922 a scheme was framed by the High Court of Bombay relating to the Vadatal temple. The High Court held in that case that the Acharya in the southern diocese was not the absolute owner of "nam vero" and "bhets" but was only entitled to be maintained out of them.

and any surplus had to be applied for the general purposes of the Institution, and the charge on the rest of the property for the maintenance of the Acharya would not attach unless and until the "nam vero" and "bhets" proved insufficient. The scheme provided that personal expenditure on account of the Acharya in excess of Rs.2,000 a month should be subject to the sanction of a Committee, and the term "personal expenditure" was defined to exclude household expenses, including expenses of residence, food, clothing, servants, horses, carriages and elephant, and all customary expenditure on official tours or other official occasions. This definition will be referred to more particularly at a later stage of this judgment.

In the year 1901 the Acharya of the Ahmedabad temple died, having by will appointed Vasudev Prasad, who was defendant No. 1 and was in 1901 a minor of the age of 2½ years, as his successor, and provided that certain named persons as trustees should manage the affairs of the Institution during the minority of defendant No. 1.

In the year 1902, certain members of the sect filed suit No. 22 of 1902 in the court of the District Judge of Ahmedabad under the provisions of section 539 of the then Code of Civil Procedure (corresponding with section 92 of the present Code) asking for the removal of the trustees, appointment of fresh trustees, accounts, and the framing of a scheme.

On the 12th April, 1905, the District Judge gave judgment in the suit holding that the property in suit (which was the property belonging to the Northern Diocese) was public religious property, but he declined to remove the trustees and thought it unnecessary to frame a scheme. An appeal was preferred to the High Court of Bombay which dismissed the appeal except only in respect of "nam vero" and "bhets." The High Court amended the finding of the lower court upon this question by declaring that the property in suit was public religious property except in so far as it consisted of accumulations of "nam vero" and "bhets," or investments thereof. The position therefore as regards "nam vero" and "bhets" was not the same in the two dioceses.

On the 27th November, 1920, the original plaintiffs who were members of the congregation of the Ahmedabad temple filed the present suit with the consent of the Collector of Ahmedabad under Section 92 of the Code of Civil Procedure in the court of the District Judge of Ahmedabad against defendant No. 1 who had attained his majority in the year 1917, the surviving trustees, and the Mahant of one of the subordinate temples, alleging misconduct on the part of defendant No. 1 and of the trustees, praying for the removal of defendant No. 1 and the trustees from management, and for a scheme and accounts.

On June 30th, 1927, the Joint Judge of Ahmedabad gave judgment. He thought it unnecessary to remove defendant No. 1 from the management of the Trust, but considered that a Committee of Management should be associated with him under a scheme to be framed by the court. As to "nam vero" and "bhets" he considered that the plaintiffs were bound by the finding in the suit of 1902 that the Acharya was entitled to "nam vero" and "bhets" and accumulations and investments thereof, and that defendant No. 1 was bound by the finding in the same suit as to the character of the property in suit. He considered, however, in so far as the matter was open, that any undisposed of and unspent surplus from "nam vero" and "bhets" which the Acharya had not earmarked and kept separate from the trust property must descend to his successors in office and not to his heirs under the ordinary law of inheritance. He directed a scheme to be framed by the court, which was to be on the lines of the Vadtal scheme, and that until the scheme was sanctioned, defendant No. 1 should be paid as a personal allowance the sum of Rs.1,000 a month.

On the 3rd January, 1929, a scheme was duly framed by the First-class Subordinate Judge of Ahmedabad. So far as the allowance to the Acharya was concerned the scheme provided that the Acharya should meet his personal expenditure out of his "nam vero" and "bhets," and that in case the income from the above sources was less than Rs. 1,500 per mensem on the average the Institution should pay the deficit from the trust funds to the Acharya for his personal expenditure not exceeding Rs.750 per mensem. The scheme adopted the definition of "personal expenditure" included in the Vadtal scheme.

Appeals to the High Court of Bombay both from the decree of the Joint Judge dated 30th June, 1927, and from the decree of the First-class Subordinate Judge sanctioning the scheme were lodged and judgment in both appeals was given on the 10th of October, 1934. The leading judgment was given by Mr. Justice N. J. Wadia, Mr. Justice Macklin giving a short concurring judgment. Mr. Justice Wadia in his judgment noticed that both parties had been represented by counsel of great experience through whose conciliatory efforts the extreme views of either party had not been pressed. During the course of the hearing counsel for defendant No. 1 offered to give up many of his client's claims if a scheme were framed on the lines of the Vadtal scheme, and in particular to give up his client's right to nam vero and bhets provided his client were given a personal allowance of Rs.2,000 per mensem. Counsel for the respondents accepted most of the suggestions made on behalf of defendant No. 1, including the suggestion that a scheme should be framed on the lines of the Vadtal scheme. He had no objection to the Acharya receiving a personal allowance of Rs.1,500 per mensem inclusive of nam vero and bhets provided that the income from all the subordinate temples were received at Ahmedabad.

Mr. Justice Wadia discussed in detail all the points in issue and particularly the question as to the personal allowance which should be made to defendant No. 1. Whilst noting that the income of the Vadtal temple was about Rs. 8 lacs a year, whereas the income of the Ahmedabad temple was about Rs. 3 lacs a year, he considered that it was undesirable that the Acharya of Ahmedabad temple should be placed in an inferior position to that enjoyed by the Acharya of the Vadtal temple, and that the funds of the Ahmedabad temple were amply sufficient to provide the Acharya with the personal allowance claimed by him. He therefore came to the conclusion that the Acharya should receive a fixed allowance of Rs.2,000 per mensem for his personal expenditure, other than the expenses of his household, including expenses of residence, food, clothing, servants, horses, carriages and elephant, and all customary expenditure on official tours or other official occasions which were to be met out of the funds of the Institution. The amount of the personal allowance has been the principal ground upon which the judgment of the High Court and the scheme framed by it have been challenged before their Lordships' Board. It has been argued that the definition of "personal expenditure" was taken bodily from the Vadtal Scheme and is open to the criticism that it excludes arbitrarily from the expression "personal expenditure" many items which would normally fall within such expression. This, no doubt, is true, but the intention of the High Court clearly was to give to the Acharya a sum of Rs.2,000 per mensem for his private purposes over and above his normal cost of maintenance which would naturally fall upon the funds of the Institution. If the High Court thought fit to follow the Vadtal scheme and to give effect to its intention by a special definition of the expression "personal expenditure", rather than by providing that the costs of maintenance of the Acharya should be paid out of the funds of the Institution, and that in addition a sum of Rs.2,000 per mensem should be paid to him as a personal allowance, the matter is really one of language and involves no question of principle. It was in the discretion of the High Court to provide that the Acharya should receive what it considered to be a suitable personal allowance; the learned Judges in no

way misdirected themselves, and their Lordships can see no ground whatever upon which they should interfere with the exercise by the High Court of its discretion.

The only other point on which the judgment of the High Court has been challenged before their Lordships is in relation to a sum of Rs.27,356.9.6 comprised in a sum of Rs.60,000 City of Bombay Improvement Trust Bonds mentioned in the judgment of the High Court. The facts giving rise to this dispute are that Keshav Prasad, in the years between 1881 and 1885, being then the Acharya of the Ahmedabad temple, advanced certain monies amounting to some Rs.70,000 upon mortgage of the village of Vastral. The High Court has found, as facts, that out of those monies a sum of Rs.30,000 was provided by Mota Vahuji the senior wife of Keshav Prasad, that she died in the year 1889, and on her death the sum due to her amounted to Rs.27,356.9.6 and this sum was stated in the accounts of the Institution to have been thereupon written off. In the year 1910 a suit was filed by the trustees of the will of Purshottam Prasad, the former Acharya, against the mortgagor for recovering the monies due on this mortgage and, in due course, the trustees received the monies and invested part of them in the purchase of City of Bombay Improvement Trust Bonds for Rs.60,000. Whether these bonds were "registered" or "bearer" bonds does not appear from the record, nor is it clear what the trustee actually did with the bonds; but from the fact that defendant No. 1 admitted that the whole of the property of the Institution was handed over to him after he attained his majority in the year 1917, it may be assumed that these bonds were transferred, or handed over, to him. At the trial defendant No. 1 claimed that the whole of the monies advanced on mortgage of Vastral village were his private monies, and did not belong to the Institution, but the trial judge held that this claim was not proved. In appeal, the claim of defendant No. 1 was limited to the sum of Rs.27,356.9.6 which, as already stated, the High Court held to have been advanced by Mota Vahuji out of her own money. On these findings of the High Court, which have not been challenged, it is clear to their Lordships that the appellants have no claim to these monies. The only right of the appellants against the Acharya is for an account of the monies of the Institution, and this sum never belonged to the Institution. No question as to the liability of the Acharya to account to the heirs of Mota Vahuji arises in these proceedings, and the appellants are not concerned in any such question. The High Court in its judgment treated the present Acharya as being the grandson of Mota Vahuji, and as such entitled to this sum. That is admittedly a mistake, and if this money was part of the Stridhan of Mota Vahuji, the record does not show who is her heir. In its decree the High Court directed "In addition to the properties which the lower Court has declared to be the private properties of the Acharya a sum of Rs. 27,356.9.6. out of the amount of Rs.60,000 invested in Improvement Trust Bonds is declared to be the private property of the Acharya". In their Lordships' opinion this declaration goes too far, and the decree should be amended by striking out the passage quoted and substituting therefor a declaration that the sum of Rs.27,356.9.6 out of the amount of Rs.60,000 invested in Improvement Trust Bonds does not form part of the property of the Institution on behalf of which the appellants sue.

On the appeal to the High Court against the scheme framed by the First-class Subordinate Judge, the High Court with the assistance of counsel, framed a fresh scheme, based largely on the Vadtal scheme and the scheme prepared by the First-class Subordinate Judge. Mr. Pringle before their Lordships' Board has objected to certain details in the scheme, apart from the personal allowance, but these objections were of a trivial character and were advanced without regard to the fact that under section 34 of the scheme liberty is reserved to apply to the High Court for modifications of the scheme from time to time. Other objections to the scheme taken before the High Court were decided against the Acharya, who has not appealed.

In the result, both these appeals fail, and in their Lordships' view ought not to have been brought by persons purporting to act in the interests of this Institution. Their Lordships have been invited to direct that the costs of all parties should be paid out of the funds of the Institution, but they are not prepared to adopt this course.

Their Lordships will, therefore, humbly advise His Majesty that the judgment of the High Court dated 10th October, 1934, should be slightly varied in the manner above indicated, but that subject thereto both appeals should be dismissed and that the appellants be directed to pay the costs of the respondent of this appeal. Any costs which the respondent may fail to recover from the appellants can be paid or retained out of the funds of the Institution.

In the Privy Council

SWAMINARAYAN JETHALAL
CHIMANLAL AND OTHERS SINCE
DECEASED REPRESENTED BY SHETH
BALDEVIDAS VALLABHDAS PARIKH
AND OTHERS

2.

ACHARYA SHRI DEVENDRAPRASADJI

DELIVERED BY SIR JOHN BEAUMONT