

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4355-4364/2003

COMMNR. OF INCOME TAX, GUJARAT

Appellant (s)

VERSUS

HAZARAT PIR SHAH-E-ALAM ROZA ESTATE TRUST

Respondent(s)

With SLP(C)..... CC 5063-5064/2003

SLP(C) Nos.16501-16508/2003 (with appln.(s) for c/delay in filing SLP and with office report)

SLP(C) Nos.22003-22008/2003 (with appln.(s) for c/delay in filing SLP),

C.A. No.162/2004 (with office report)

Date: 06/12/2005 These Appeals were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant(s)

Mr. Harish Chandra, Sr. Adv.

Mrs. Kiran Bhardwaj, Adv.

Mr. B.V. Balram Das, Adv.

Mr. Ravinder Agarwal, Adv.

For Respondent(s)

Mr. Abdul Sattar Qureshi, Sr. Adv.

Mr. Shakeel Ahmed, Adv.

Mr. Rasheed Qureshi, Adv.

Miss Rajani C.S., Adv.

UPON being mentioned by counsel the Court made the following

O R D E R

Delay condoned.

Leave granted.

The Appeals are dismissed in terms of the signed order.

(K.K. Chawla)

(Madhu S

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Court Master

Court M

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[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4355-4364 OF 2003

COMMNR. OF INCOME TAX, GUJARAT

Appellant (s)

VERSUS

HAZARAT PIR SHAH-E-ALAM ROZA ESTATE TRUST

Respondent(s)

WITH

CIVIL APPEAL NOS. _____ OF 2005

[ARISING OUT OF SLP (C) NOS. _____ OF 2005]

CC NOS.5063-5064/2003

WITH

CIVIL APPEAL NOS. _____ OF 2005

[ARISING OUT OF SLP (C) NOS.16501-16508 OF 2003]

WITH

CIVIL APPEAL NOS. _____ OF 2005

[ARISING OUT OF SLP(C) NOS.22003-22008 OF 2003]

WITH

CIVIL APPEAL NO.162 OF 2004

O R D E R

Delay condoned.

Leave granted.

In these Appeals the question is whether the properties in question belonged to the Hazarat Pir Shah-E-Alam Roza Estate Trust (hereinafter referred to as "the Trust") or to the Sajjadanashin individually.

The Tribunal held that the property in question namely at Rasulabad, Vasna, Ishanpur and Sarsa lands belonged to the Trust. The Tribunal noted that the Charity Commissioner had come to the conclusion that the properties belonged to the Trust. It was also noted that the Trust was registered under The Bombay Public Trust Act, 1950. At the instance of the revenue several questions were raised and referred to the High Court for its opinion. The gist of the questions has been formulated at the outset. The High Court considering the circumstances of the case affirmed the decision of the Tribunal and held:

"20. In the above view of the matter, we are of the opinion that the Tribunal was right in holding that the judgment of the Bombay High Court did not operate as res-judicata, and that Sayed Musamiya was not prevented from taking up a stand that the properties belonged to the Roza Trust. It was also right in holding that the Roza Trust, was a wakf and that the complex of buildings and the lands at Rasulabad were the wakf properties belonging to it, and that the lands of Vasna,

Isanpur and Sarsa were also wakf properties belonging to the Roza Trust. It also correctly held that the exemption under Section 11 of the said Act was available to the assessee Roza Trust in respect of the income spent as 'Madan-E-Maash' on the maintenance of the Sajjadanashin, his family and his descendants to the extent of Rs.30,000=00 a year, and that the exemption under section 11 of the said Act was available in respect of that amount to the aforesaid extent. The Tribunal has also rightly held that the exemption under section 11 of the said Act was available to the assessee Roza Trust, provided the conditions mentioned therein were fulfilled. It, therefore, rightly restored the matter to the assessing officer to assess the income of Rasulabad, Vasna, Ishanpur and Sarsa lands as the income of the Roza Trust and to grant benefit under section 11 of the said Act, subject to the fulfillment of the conditions mentioned therein. The Tribunal also rightly held that the amount of Rs.30,000=00 a year received by the Sajjadanashin would be the income to be taxed in his hands."

In that view of the matter all the questions referred to the High Court by the Tribunal were answered in affirmative and in favour of the assessee-Trust. We see no reason to interfere with the findings of the Tribunal as well as the directions, quoted earlier. The Appeals are accordingly dismissed.

...J.

.....
(Ruma Pal)

...J.

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(Dr. AR. Lakshmanan)

New Delhi;

December 06, 2005