

CIVIL MISCELLANEOUS.

Before Bal Raj Tuli, J.

BHAGWANT KAUR ETC.—Petitioners

versus

Sikh Gurdwara Judicial Commission, Amritsar etc.—Respondents.

Civil Writ No. 3367 of 1970.

April 28, 1971.

Punjab Sikh Gurdwaras Act (VIII of 1925) — Sections 76 and 142 — Judicial Commission — Whether competent to try a petition under section 142(1) against the legal representatives of a deceased employee of the Board or Gurdwara — Order of the Judicial Commission on a preliminary issue relating to the maintainability of such petition — Appeal against — Whether lies—Constitution of India (1950)—Article 226—Alternate remedy—Whether a bar to writ petition.

Held, that under section 142(1) of Punjab Sikh Gurdwaras Act, 1925, a petition can be made against any office-holder or past office-holder or against any employee, past or present, of the Board or Gurdwara in respect of any alleged malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers etc. This section does not provide that a petition under it can be filed against the legal representatives of any such person mentioned in section 142(1) and so on the language of sub-section (1) of section 142, a petition against the legal representatives of a deceased employee is not maintainable. Sub-section (1) of section 76 also makes it clear that the Judicial Commission has no jurisdiction over any proceedings other than what is expressly vested in it by the Act. As no jurisdiction has been vested in the Judicial Commission to entertain a petition under section 142 of the Act against the legal representatives of a deceased employee, the provisions of section 76(1) of the Act also cannot be relied upon to vest the Judicial Commission with such a jurisdiction. Sub-section (3) of section 76 only provides that the proceedings of the Commission shall be conducted in accordance with the provisions of the Code of Civil Procedure but subject to the provisions of the Act. Under section 146 of the Code a suit can be filed against the legal representatives of a deceased party, but a petition under section 142 of the Act is not a suit and section 146 is not applicable to it. (Para 3)

Held, that no appeal under section 142(3) of the Punjab Sikh Gurdwaras Act is competent against the decision given by the Judicial Commission on a preliminary issue relating to the maintainability of a petition filed under section 142(1) of the Act when no order on merits has been passed. (Para-2)

Held, that the non-availing of an alternative remedy is not an absolute bar to a petition under Article 226 of the Constitution of India. Where the

plea taken in the writ petition goes to the root of the jurisdiction of a Tribunal, a writ petition is competent against the decision of the Tribunal on such a plea. (Para 2)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, or any other appropriate writ, order or direction be issued, quashing the order of the Sikh Gurdwara Judicial Commission, Amritsar, dated 29th January, 1969 and directing the Sikh Gurdwara Judicial Commission Respondent No. 1, not to proceed with the said application of respondent No. 2 and further praying that the operation of the impugned order be stayed and proceedings before the respondent No. 1.

A. N. MITTAL, ADVOCATE, for the petitioners.

NARINDER SINGH, ADVOCATE, for respondent No. 2.

JUDGMENT.

TULI, J.—(1) The petitioners are the legal representatives of Jaimal Singh, who was an employee of the Shiromani Gurdwara Parbandhak Committee, Amritsar (respondent No. 2). He had been appointed as Lease Land Inspector in 1956 and also worked as a Revenue Clerk. He realised a sum of Rs. 13,686.36 Paise from the lessees and did not deposit the same in the account of respondent No. 2. He died on October 27, 1966 and respondent No. 2 filed a petition under section 142 of the Punjab Sikh Gurdwaras Act, 1925 (hereinafter called the Act), before the Judicial Commission, respondent No. 1, on January 25, 1967, impleading the petitioners as respondents to that petition. An objection was raised on behalf of the petitioners that the petition under section 142 of the Act was not competent against them. A preliminary issue was framed by the Judicial Commission reading as under :—

Is the petition maintainable under section 142 of the Sikh Gurdwaras Act against the respondents ?

That issue was decided in favour of respondent No. 2 on January 29, 1969 and the present petition is directed against that order. A written statement has been filed by respondent No. 2 supporting the order passed by the Judicial Commission.

(2) A preliminary objection has been raised by the learned counsel for respondent No. 2 that the petitioners could file an appeal against the impugned order and not having done so, this writ petition should be dismissed on the ground that the statutory remedy

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provided in section 142(3) of the Act has not been followed. That appeal was to be filed within 90 days of the date of the order. I, however, find no force in this submission. No order on merits has been passed under section 142 and, therefore, no appeal was competent against the decision on one of the issues involved in the petition. Moreover, it is well settled that the non-availing of an alternative remedy is not an absolute bar to a petition under Article 226 of the Constitution. The plea taken in the writ petition is that respondent No. 1 has no jurisdiction to proceed against the petitioners on a petition filed by respondent No. 2. This objection goes to the root of the jurisdiction of the Judicial Commission and was raised before it. The present petition is, therefore, competent. I accordingly repel the preliminary objection raised by respondent No. 2.

(3) Section 142 of the Act provides a summary remedy by means of a petition to the Judicial Commission against the persons mentioned in sub-section (1) thereof and reads as under :—

“142. (1) Notwithstanding anything contained in section 92 of the Code of Civil Procedure, 1908, or in the Specific Relief Act, 1877, any person having interest in a Notified Sikh Gurdwara may, without joining any of the other persons interested therein, make an application to the Commission, against the Board, the Executive Committee of the Board, or the Committee, or against any member or past member of the Board, of the Executive Committee or of the Committee, or against any office-holder or past office-holder of the Gurdwara or against any employee past or present of the Board or Gurdwara in respect of any alleged malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers conferred by this Act or any alleged expenditure on a purpose not authorised by this Act and the Commission, if it finds any such malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers or expenditure proved, may consistently with the provisions of this Act and of any other law or enactment in force for the time being, direct any specific act to be done or forbore for the purpose of remedying the same and may award damages or costs against the person responsible for the same, and may order the removal of any office-holder or member of the Board, Executive Committee, or committee, responsible

for the same and may also disqualify any member of the Board, Executive Committee, or committee, thus removed from such membership for a period not exceeding five years from the date of such removal :

Provided that no such application shall be entertained by the Commission, if it is made more than six years after the date of the act or omission from which the right to make an application under this sub-section accrues and, in the case of an application against a member of the Board, the Executive Committee of the Board or the Committee, if it is made after such period or after six years of the date of his ceasing to be a member, whichever is later."

Under this section a petition can be made against any office-holder or past office-holder or against any employee, past or present, of the Board or Gurdwara in respect of any alleged malfeasance, misfeasance, breach of trust, abuse of powers, etc. This section does not provide that a petition under it can be filed against the legal representatives of any such person mentioned in sub-section (1) of section 142, and so on the language of sub-section (1) of section 142, a petition against the legal representatives of a deceased employee is not maintainable. Learned counsel for respondent No. 2, however, relies on section 76 of the Act and urges that having regard to section 146 of the Code of Civil Procedure, the petition under section 142 of the Act against the petitioners was maintainable. Section 76 of the Act reads as under :—

"76. (1) The Commission shall for the purpose of deciding any matter which it is empowered to decide under the provisions of this Act have the same powers as are vested in a court by the Code of Civil Procedure, 1908, and shall have jurisdiction unlimited as regards value throughout Punjab, and shall have no jurisdiction over any proceedings than is expressly vested in it by this Act.

(2) A decree or order of the Commission shall be executed or otherwise given effect to by the District Court of the district in which the Gurdwara in connection with which the decree or order was passed is situated, or by the District Court to which the Commission directs that any decree or order shall be sent for this purpose, as if the decree or order had been a decree or order passed by such court.

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- (3) The proceedings of the Commission shall, so far as may be and subject to the provisions of this Act, be conducted in accordance with the provisions of the Code of Civil Procedure, 1908, and, save as otherwise provided by this Act, all orders of the Commission shall be final.”

Sub-section (1) of section 76 makes it clear that the Judicial Commission has no jurisdiction over any proceedings other than what is expressly vested in it by the Act. As I have shown above, no jurisdiction has been vested in the Judicial Commission to entertain a petition under section 142 of the Act against the legal representatives of a dead employee, and, therefore, the provisions of section 76(1) of the Act do not help respondent No. 2. Sub-section (3) of section 76 only provides that the proceedings of the Commission shall be conducted in accordance with the provisions of the Code of Civil Procedure but subject to the provisions of the Act. Under section 146 of the Code of Civil Procedure a suit can be filed against the legal representatives of a deceased party. Respondent No. 2 is not entitled to take advantage of the provisions of that section because the petition under section 142 of the Act is not a suit. It is a special remedy provided against the delinquent officer or employee similar to the one provided in section 235 of the Companies Act, 1913, corresponding to section 543 of the Companies Act, 1956. Under those Acts, it has been held that the proceedings started against a Director or a Liquidator cannot be continued against his legal representatives after his death. It was so held in *Manilal Brij Lal v. Vendravandas C. Jadav and others* (1), *The Peerdan Juharmal Bank Ltd. (in liquidation) by its Joint Official Liquidator*, (2) and *Vishwa Pal Sharma v. Sukh Sancharak Co. (P) Ltd. and others* (3).

(4) The Judicial Commission has relied on a judgment of the Allahabad High Court in *Ghulam Rashid v. Muhammad Abdul Rab and others* (4). That was a case of a suit and not of a special remedy provided under the said Act as is the case when a petition is filed under section 142 of the Act or under section 543 of the Companies Act, 1956. Similarly another case, *Tirunarayana Pillai and another v. P. R. Y. Manickavachagam Chettiar and others* (5), relied upon by the Judicial Commission is the case of a suit like

(1) A.I.R. 1944 Bom. 193.

(2) A.I.R. 1958 Mad. 583.

(3) A.I.R. 1962 All. 88.

(4) A.I.R. 1941 All. 187.

(5) A.I.R. 1934 Mad. 448.

the Allahabad case. There is no dispute that a suit is competent against the legal representatives of a deceased employee for malfeasance, misfeasance, breach of trust, etc., but proceedings under section 142 of the Act cannot be taken against the legal representatives. It is also well settled that if a decree is obtained against the delinquent person in his lifetime, that decree can be executed even after his death because it has to be recovered from the estate left by the deceased. The judgment of the Lahore High Court in *Mahant Salig Ram v. Charan Dass and another* (6) is of that kind. In that case a decree had been obtained by Kirpa Ram, father of the respondents against Mahant Salig Ram, appellant in a sum of Rs. 100 on account of compensation for malicious prosecution. On appeal the amount of compensation was enhanced to Rs. 200, which was maintained on second appeal by the High Court. During the course of execution proceedings, Kirpa Ram died and it was urged on behalf of the appellant, Salig Ram, that the right to execute the decree did not survive. That contention was repelled and it was held that the execution proceedings did not abate and could be continued by the legal representatives of the decree-holder. That case is also distinguishable. Learned counsel for respondent No. 2 has relied on the judgment of a Division Bench of this Court (Mahajan and Dhillon, JJ.) in *Shiromani Gurdwara Parbandhak Committee, Amritsar v. S. Lakhwant Singh* (7), which, however, has no relevance. The question that was debated in that case was that Judicial Commission had no power to determine whether a notification issued by the Punjab Government was valid or not. It was held that this matter could be decided while hearing the delinquent officer under section 142 of the Act. That case did not relate to a petition under section 142 having been made against the legal representatives of a deceased delinquent officer.

(5) For the reasons given above, I hold that the petition filed by respondent No. 2 against the petitioners under section 142 of the Act before the Judicial Commission was not competent and the Judicial Commission has no jurisdiction to try the same. I accordingly accept this writ petition and quash the impugned order passed by respondent No. 1 with the result that the petition filed by respondent No. 2 under section 142 of the Act is dismissed. The petitioners are entitled to their costs to be paid by respondent No. 2. Counsel's fee Rs. 100.

B. S. G.

(6) A.I.R. 1939 Lah. 492.

(7) F.A.O. No. 177 of 1965 decided on 20th November, 1970.