

(1997) 12 MAD CK 0176

In the Madras High Court

Case No : Second Appeal No. 632 of 1984

1. The Commissioner, H.R. and C.E. (Admn.), Madras - 34 APPELLANT
and Assistant Commissioner, H.R. and C.E. (Admn.),
Cuddalore

Vs

Krishnaswamy Padayachi, Vadivel Padayachi, Rajamanickam RESPONDENT
and Krishnamoorthy

Date of Decision : 24-12-1997

Acts Referred:

Constitution of India, 1950 — Article 25, 26

Citation : (1997) 12 MAD CK 0176

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : B. Mani, for the Appellant; R. Subramanian, (Amicus Curiae), for the Respondent

Judgement

K. Sampath, J.—Defendants 1 and 2 are the appellants in the Second Appeal. The suit O.S. No. 389 of 1979 was filed by the respondents herein as representing the temple Arulmigu Muthallamman Temple, Vellakarai village, before the District Munsif Court, Cuddalore, for a declaration that Arulmigu Muthallamman Temple, Vellakarai village, is a denominational temple exclusively belonging to the Vannia Community of Vellakarai Village and for a permanent injunction restraining the appellants and the third defendant Area Committee from interfering with the affairs of the Management of the said temple and its properties. The case as set out in the plaint was that Arulmigu Muthallamman Temple situate in Vellakarai village was a very ancient temple and the same was founded by the members of Vannia Community of Vellakarai village. The present temple structure was actually constructed by the members of Vannia Community of Vellakarai village out of the funds contributed by the Vannia Community. The entire management of the temple had always been with the Vannia Community. The festivals were celebrated in the suit temple by the members of Vannia Community of Vellakarai by collecting the funds from the members of Vannia

Community. The Trustees also had been elected from among the members of the Vannia Community of Vellakarai. Except the members of the Vannia Community of Vellakarai, nobody had got title or interest in the suit temple; the suit temple was a denominational temple exclusively belonging to the Vanniars of Vellakarai village, the village itself consisted of only Vannia Community. The H.R. & C.E. Department had no jurisdiction over the suit temple. The second appellant was taking steps to appoint non-hereditary Trustees for the suit temple and trying to interfere with the administration of the temple by the Trustees appointed by the Vannia Community of Vellakarai village." The suit had therefore been filed for the relief already mentioned.

2. The second respondent filed a written statement and it was adopted by the first respondent and the third defendant. The averments as set out in the written statement of the second respondent are as follows :

The suit temple was not a denominational temple exclusively belonging to the Vannia Community of Vellakarai village. The provisions of Hindu Religious and Charitable Endowments Act were applicable and the appellants and the third defendant were entitled to appoint Trustees in respect of the suit temple. The respondents were not the duly elected Trustees of the temple. It was also not correct to say that there were no other community people in the suit village. The temple was not liable to be exempted from the provisions of the H.R. & C.E. Act. It was brought to the notice of the second appellant that the temple had not been properly managed and as such, by invoking the provisions of Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, notice was issued to the temple. The Department was entitled to appoint Trustees and the suit was liable to be dismissed.

3. The trial court framed five main issues and one additional issue. The only issue relevant for consideration was the additional issue which was as follows:

"Whether the suit temple is a denominational temple belonging exclusively to the members of the Vannia Community of Vellakarai village?"

4. The trial court found that there was no acceptable evidence to show that the temple was actually founded for the exclusive worship and management by the members belonging to the Vannia Community. Even in the statement Ex. B1 given by the Trustees of the temple it was not claimed that the said temple was a denominational temple. The respondents had filed to establish that the suit temple was founded exclusively by the Vannia Community, that the same was meant to be the exclusive property of the Vanniars of Vellakari and that the Vellakari Vanniars alone were entitled to manage the affairs of the temple to the exclusion of the members of other community. So holding, by his judgment and decree dated 23.10.1981 the District Munsif, Cuddalore, dismissed the suit.

5. The respondents filed appeal A.S. No. 34 of 1982 before the Subordinate Judge, Cuddalore. The learned Subordinate Judge relied on the criteria laid down by this Court in W.P. Nos. 804, 805/57 for constituting a denominational temple,

which were as follows:

"To constitute a denominational temple, the use of the temple and the worship therein need not be confined to the members of a particular community. But if the temple belonged to a religious denomination of a particular community and if that community was entitled to manage the temple, it would be a denominational religious institution".

And held that the suit temple satisfied the criteria. He reasoned that Vannia Community people alone had been living in the suit village for several years, that it was not anybody's case that the site on which the suit temple stood belonged to the Government, that the temple was put up by collecting donations from other communities, that other community people were participating in the administration of the temple that the people of other communities came and worshipped as of right was not anybody's case. No other community people had filed petition and claimed exclusive right over the temple. In that view, by his Judgment and decree dated 9.7.1982, learned Subordinate Judge allowed the appeal, set aside the decree of the trial court and decreed the suit as prayed for. Aggrieved, the present second appeal has been filed.

6. At the time of admission, the following substantial questions of law were framed for consideration in the second appeal.

(1). Whether the suit is maintainable in view of Sections 63 and 108 of the Hindu Religious and Charitable Endowments Act? (2). Whether even denominational temples do not come u/s 6(2) of the Tamil Nadu H.R. & C.E. Act? (3). Whether in particular the question regarding the improper administration of the temple is not within the exclusive jurisdiction of the Department? (4). Whether the question cannot be gone into without issues being framed for the purpose?

7. Mr. B. Mani, learned Government Advocate appearing for the appellants contended as follows:

The lower appellate court failed to note that non of the documents relied on by the respondents showed that the temple was a denominational one. There was no violation of Article 26 of the Constitution of India in exercising control over the secular affairs of the suit temple. The main issue involved in the suit could be decided in proceedings u/s 63 of the Act and in the appellate forum therefrom and that the suit was not maintainable. The temple was accessible to the general public also. In fact, the general public of the locality got a right of worship in the temple. The lower appellate court made a serious mistake in holding that because there was no dispute and there was no claim made by members of other communities, the suit temple was a denominational one. Even the documents produced by the respondents clearly showed that the temple was not the exclusive temple of the respondents or that it was established by the Vannia Community of Vellakarai village. The lower appellate court clearly erred in holding that the expression "village" mentioned in Clause 16 of Ex. A1 related only to the members of the Vannia Community of that village. The lower

appellate court also failed to note that there was no custom or practice in the temple which was peculiar to the Vannia community. There was nothing to show that the temple was a denominational temple. The lower appellate court also omitted to see that it was clearly admitted by the respondents that the temple itself had come into existence only recently. Vannia Community also could not be stated to be a denomination.

8. Though the respondents had been served they had not appeared and having regard to the importance of the question, this court appointed Mr. R. Subramanian, Advocate to assist the court in deciding the matter as Amicus Curiae.

9. S.S. Subramani, J. in Appusamy Vs. A.V. Sundararajan and Others, has analysed the concept of religious denomination with reference to several decided cases of the Supreme Court and this court and came with a check-list for being considered a religious denomination to claim the right under Article 26 of the Constitution of India.

(1) The persons claiming to be a religious denomination must have a common faith based on religion.

(2) They must have a spiritual organization.

(3) They must have a distinctive name.

(4) They must have belief in a particular religious teacher or Guru.

(5) They must have common religious tenets and preachings prescribed by the said Guru (the basic cord that connects them should be religions and nothing else). The temple which is claimed to be a denominational temple should have been founded by a religious leader of the community for the spiritual benefit of the said community. Special poojas or ceremonies should be conducted exclusively for the particular community without admitting members belonging to other communities.

10. In T.T. Kuppaswamy Chettiar v. State of Tamil Nadu (100 L.W. 1031), it was found that there was enough evidence to show that the temple had been maintained by the Beri Chetty caste from time immemorial but still the claim to the appellation "denominational temple" was rejected on the ground that it had not been established as a temple for the spiritual benefit of the Beri Chetty caste by any founder of the community.

11. In the light of the above, if we examine the instant case, it can be stated without any fear of contradiction that the tests laid down are not satisfied. In fact, even the basic averments are absent in the plaint. The evidence also is next to nothing. It is not the case of the respondents that their community was formed by any Guru, that the prescribed common religious tenets based on any particular religion. It is also not the case of the respondents that special poojas or ceremonies were conducted exclusively for their community without admitting

the members of other communities. It is also not their case that the temple itself was constructed by any Guru or spiritual leader or at his instance or on his instructions.

12. Mr. R. Subramanian, appearing as Amicus Curiae also brought to my notice the judgment of the Supreme Court in *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Others Vs. State of U.P. and Others*, , in particular paragraphs 31 to 33 which run as follows:

"The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of the religion. In *Seshammal and Others, Vs. State of Tamil Nadu*, on which great reliance was placed and stress was laid by the counsel of either side, this Court while reiterating the importance of performing rituals in temples for the idol to sustain the faith of the people, insisted upon the need for performance of elaborate ritual ceremonies accompanied by chanting mantras appropriate to the deity. This Court also recognized the place of an archaka and had held that the priest would occupy place of importance in the performance of ceremonial rituals by a qualified archaka who would observe daily discipline imposed upon him by the Agamas according to tradition, usage and customs obtained in the temple. Shri P.P. Rao, learned Senior Counsel also does not dispute it. It was held that Articles 25 and 26 deal with and protect religious freedom. Religion as used in those articles requires restricted interpretation in etymological sense. Religion undoubtedly has its basis in a system of beliefs which are regarded those who profess religion to be conducive to the future well-being. It is not merely a doctrine. It has outward expression in acts as well. It is not every aspect of the religion that requires protection of Articles 25 and 26 not has the Constitution provided that every religious activity would not be interfered with. Every mundane and human activity is not intended to be protected under the Constitution in the garb of religion. Articles 25 and 26 must be viewed with pragmatism. By the very nature of things it would be extremely difficult, if not impossible, to define the expression "religion" or "matters of religion" or "religious beliefs or practice". Right to religion guaranteed by Articles 25 and 26 is not absolute or unfettered right to propagate religion which is subject to legislation by the State limiting or regulating every non-religious activity. The right to observe and practice rituals and right to manage in matters of religion are protected under these articles. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to state regulation but the religion and religious practices which are an integral part of religion are protected. It is a well-settled law that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation. This Court upheld the A.P. Act which regulated the management of the religious institutions and endowment and abolition of

hereditary rights and the right to receive offerings and plate collections attached to the duty.

32. It would, therefore, be necessary to consider whether the Act infringes the right of the Hindus who believe in Shaiva form of worship. In *A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others*, this court pointed out that in matters of performing pooja in Shiva Temple, 28 Agamas are applicable whereas in Vaishnava Temples Panchratna Agama contain elaborate rules regulating how the temple would be constructed, whereat the principal deity is to be consecrated, whereat the other idols are to be installed and what would be the place where the worshippers would stand and worship the deity. Accordingly, in para 5, it was held that to integrate the people, all people are entitled to participate in all forms of worship. The only prohibition was as to the entry into sanctum sanctorum in which the priest would be entitled to enter. The form of worship and absence of prohibition for devotees to enter the sanctum sanctorum in the Temple has already been pointed out and needs no reiteration.

33. Thus, it could be seen that every Hindu whether a believer of Shaiva form of worship or of pancharatra form of worship, has a right of entry into the Hindu Temple and worship the deity. Therefore, the Hindu believers of Shaiva form of worship are not denominational worshippers. They are part of the Hindu religious form of worship. The Act protects the right to perform worship, rituals or ceremonies in accordance with established customs and practices. Every Hindu has right to enter the Temple, touch the Linga of Lord Sri Vishwanath and himself perform the pooja. The State is required under the Act to protect the religious practices of the Hindu form of worship of Lord Vishwanath, be it in any form, in accordance with Hindu Shastras, the customs or usages obtained in the Temple. It is not restricted to any particular denomination or sect. Believers of Shaiva form of worship are not a denominational sect or a section of Hindus but they are Hindus as such. They are entitled to the protection under Articles 25 and 26 of the Constitution. However, they are not entitled to the protection in particular, of clauses (b) and (d) of Article 26 as a religious denomination in the matter of management, administration and governance of the temples under the Act. The Act, therefore, is not ultra vires Articles 25 and 26 of the Constitution."

13. In the Judgment in *Appusamy v. A.V. Sundarajan* already referred to, Subramani, J. in paragraph 20 has observe as follows:

"It is settled law that in the State of Tamil Nadu all the temples are considered to be "public temples", and if any person claims a particular temple as a private temple or denominational temple. It is for that person to prove the same. How far that presumption is rebutted in this case is to be decided, taking along with the definition of "religious denomination" and also how far the ingredients of Art. 26 of the Constitution of India are satisfactorily proved, in the sense that the Community has established and maintained the schedule temple."

14. It should also be noticed that the temple was not shut out for other

community people. It is a matter of admission by the respondents that the people belonging to other communities also were allowed to enter the temple and offer worship. May be as pointed out by the trial court, there were not many other community people residing in the suit village at the time the suit was instituted. There is no prohibition for other community people to settle down in the suit village. In these circumstances, the conclusion reached by the lower appellate court that the suit temple was a denominational temple, does not merit acceptance. As already pointed out, none of the criteria laid down for an entitlement to the appellation of "religious denomination" or "denominational temple" is satisfied in the instant case. As has been held by the Supreme Court in *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Others Vs. State of U.P. and Others*, the denominational status in respect of the suit temple is something nonexistent and Articles 25 and 26 do not protect the suit temple. The intervention of the Department is required for regulating the affairs of the temple. It was more in the nature of a secular activity. Consequently, I find that the suit temple Arulmigu Muthallamman Temple, Vellakarai village, is not a denominational temple nor is the community of Vanniar in the said village a religious denomination.

15. The substantial questions of law raised in the appeal are therefore answered in favour of the appellants. The second appeal is allowed. No costs. I should place on record, the able-assistance rendered by Mr. R. Subramanian, as Amicus Curiae to the court in deciding the case by drawing the attention of the court to several aspects in the pleadings, oral and documentary evidence and also by referring to a number of authorities touching the point.