(1969) 07 MAD CK 0029

In the Madras High Court

Case No : Special Appeal (Admn.) No. 79 of 1966

Arumugha Goundar and Others APPELLANT

Vs

Thirugnanam Pillai and Others RESPONDENT

Date of Decision : 07-07-1969

Acts Referred:
Constitution of India, 1950 — Article 10, 8

Citation : (1970) ILR (Mad) 282

Hon'ble Judges : Sadasivam, J;Ramakrishnan, J

Bench : Division Bench

Advocate : N. Arunachalam, for the Appellant; S. Venkatarama Iyer and V.S. Ramakrishnan, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramakrishnan, J.—This Special Administrative appeal is filed by the Respondents in Case No. 11 of 1963, on the file of the conseil Du Contentieux Administratif at Pondicherry. The jurisdiction of this Court that is invoked is the jurisdiction of the Conseil d'' Etat at Paris, which is conferred on this Court by Act XLIX of 1962. Though there is a certain amount of controversy about the origin and nature of an institution called Kalvimadam situate in Villianur village near Pondicherry, we will, for the sake of this appeal, refer to the contentions of the Appellants themselves about the institution raised in their Memorandum of Appeal, because it will suffice for dealing with the appeal before us, and it will not also cause any prejudice to the Appellants themselves:

3. There is an old Mutt called Kalvi Madam situate in the South Car Street, Villianur village, Villianur commune, five miles west of Pondicherry, It was built there centuries ago, in the year 1563 of Salivahana Era,-corresponding to 1641 A.D. by Mallika Arjuna Deva Maharaya who was the then monarch of Vijayanagar at the request of the prominent members of Vanniya Community of Tiruvakkarai Adhinam of South Thondamandalam for educational purposes and for the creation of a Chair of Religious Head for that community, with seat at Vallianur.

4. The premises for the Kalvi Madam consists of a Sanctuary of Ekambareswarar Sabha Mantapam, private rooms and a choultry for the distribution of meal during festivals. There is also a garden attached. The Kalvi Madam as it is called, is a combination of all these.

5. Silandi Chakravarthi Yogiswarar was first appointed as the Religious Head of the Vanniya community and he assumed the name and style Meygnana Mamuni Desigar and this name was to be transmitted to every successor to the Office and Chair of Religious Head. The name Desikar is not assumed by any Vellala. No concession of any kind was made in the lower Tribunal that the Head of the Kalvi Madam was a Vellala. The reference to such a concession is a misunderstanding and an error.

6. For the maintenance of the Kalvi Madam, a lasting system of contribution payable by the whole population of the Vanniya community was arranged, besides the earmarking of 27 acres of land as perpetual properties of the Madam

It is clear from the above averments that the Kalvi Madam is primarily a mutt and it is intended to be presided over by a Religious Head, who has to impart religious instruction. The sanctuary of Ekambareswarar in the Kalvi Madam must be viewed only as an adjunct to the main mutt. The institution is clearly not a temple.

2. It would appear that the last Head of the Mutt passed away in 1952. The Government of Pondicherry, according to the averments of the Appellants, provisionally entrusted the management of the Mutt to the trustees of the Thirukameswarar temple of Villianur. That temple is situated very near the Mutt. In 1957, the Appellants herein were appointed by the Government of Pondicherry as the Board of Trustees. After Pondicherry came under the administration of the Chief Commissioner, the order appointing the Appellants as the Board of Trustees was confirmed by the Chief Commissioner in 1963.

3. At this stage, the Vellala community of the village claimed that the Kalvi Madam was built by one Ananthammal a lady of the Thuluva Vellala community and that only that community had the right to manage the Madam and the Vanniya community had no right. Certain members of the Vellala community who were also trustees of the Thirukameshwarar temple, took the matter as an administrative dispute, for decision before the Conseil du contentieux Administratif at Pondicherry. The learned Judge who presided over that Court held, in an elaborate order, dated 27th November 1965, that the Pondicherry Government had exceeded their powers (exces du pouvoir) in appointing the Appellants as trustees of the Mutt. It was observed by Conseil du Contentieux Administratif that the power of interference with the management of religious institutions is conferred on the Government by Arrete, dated 29th June 1918. This arrete, as its preamble itself shows, was intended to govern the management of temples (Pagodas). It will not confer power to interfere with the management of mutts. There is a clear distinction known to Hindu law and

usage, between mutts and temples. Article 8 of the above arrete divides temples into two categories, (i) those enjoying grants from the Government and (ii) those that do not get any grant from the Government but possess properties worth more than Rs. 1,000 or get an annual revenue of Rs. 150. There is a residual clause dealing with temples other than those under the two categories above. It is clearly established even from the averments of the Appellants themselves extracted above, that the institution called Kalvi Madam is a mutt and is not a temple or a pagoda to which the arrete of 1918 would apply, so as to give a power of interference in its management by the Government of Pondicherry. Article 10 of the same Arrete refers to establishments (culturels) of the third category mentioned in Article 8. But establishments (culturels) mean only places of religious worship. Mutts are primarily places where religious instruction is imparted, and where the head of the institution trains disciples, religious worship if at all is only an incidental part of the functions of a mutt. The Head of a mutt has got a much larger right in disposing of the property than the trustee of a temple. These are well known propositions under the Hindu Law and as observed, in Vidyapurna Thirtha Swami v. Vidyanidhi Thirtha Swami ILR (1904) Mad. 435 (head-note):

The custodian (or dharmakarta) of a temple is a mere trustee who is bound to apply the funds at his disposal in carrying out the object of the trust, such as the conduct of daily worship and the performance of ceremonies. The head of a mutt is not a mere trustee but a "corporation sole" having an estate for life in the permanent endowments of the mutt and an absolute property in the income derived from offerings, subject only to the burden of maintaining the institutions.

4. There was a decret, dated 18th September 1877, which provided for certain powers of interference by the Government in matiere de caste that is disputes affecting caste. There is a provision therein for parties who have got such disputes regarding caste matters to go to the Government. But there is no purpose served by referring to this decret of 18th September 1877, for the present case. The reason obviously is that that decret deals with caste disputes; whereas, what we have here is not a caste dispute. It is a dispute between rival groups concerning the right of management of a mutt, which is endowed with valuable properties. Therefore, it is not a dispute on a matter of caste that is in issue in this case, but valuable rights to manage a mutt and its property are in issue; One group of people desire to have their right established as against another for such management. That is clearly outside the scope of the decret of 18th September 1877. Since the institution is a mutt and not a temple the dispute is also outside the scope of the arrete of 29th June 1918.

5. For the above said reasons, we are of the opinion that the decision of the Conseil du Contentieux Administratif holding that the order of the Government of Pondicherry in appointing the Appellants as trustees of the Mutt known as Kalvi Madam was in excess of its jurisdiction involving a case of exces du pouvoir, is correct, and the Conseil du contentieux Administratif was, therefore, justified in

setting aside the order of the Chief Commissioner, dated 15th February,1963.

6. The appeal is, therefore, dismissed. But there will be no order as to costs.

