(2001) 11 AP CK 0079

In the Andhra Pradesh High Court

Case No : AS No. 770 of 1985

Assistant Commissioner, Endowments Department, Chittoor	APPELLANT
Vs	
Arya Vysya Hostel, Madanapalli and Another	RESPONDENT

Date of Decision : 30-11-2001

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 — Section 77

Citation : (2002) 2 ALD 796

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Government Pleader for HMA and Endowments, for the Appellant; T.S. Anand, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The Assistant Commissioner, Endowments Department, Chittoor, the plaintiff in OS No.1 of 1981 on the file of the District Judge, Chittoor is the appellant. The suit OS No.1 of 1981 on the file of District Judge, Chittoor was filed for setting aside the order dated 31-3-1980 of the Deputy Commissioner of Endowments, Kurnool made in OA No. 16 of 1969 as illegal and unsustainable in law or facts, declaring the schedule mentioned properties as a public property and a charitable institution.

2. The case of the appellant-plaintiff is that Arya Vysya Sangham is a registered body and the site on which the Arya Vysya Hostel was constructed, was gifted to the Sangham by one Tangutoori Ramaiah Chetty and the gift was made for the purpose of constructing a hostel to the students belonging to the Arya Vysya community and to provide sufficient site for purpose of marriage of persons of that community and a building with two floors was constructed on the site gifted and it comprises large number of rooms for the residence of the students and a big marriage hall, kitchen and dining facility attached to it and the funds for such construction of buildings were raised from the members of the society and

others. It was also further pleaded in the plaint that Sri T.N. Kantharaja Chetty representing the Arya Vysya Sangham was managing the affairs of the hostel and the site over which the hostel and Kalyana Mandapam was constructed had been gifted to the sangham for specified charitable purpose i.e., to render help to the students by providing residence and food at no profit basis and the object of such provision is to render held to the students belonging to Arya Vysya community in the matter of prosecuting their higher studies and hence it is a specific charity. It was also pleaded that the said institution is required to be registered u/s 30(8) of the Hindu Religious and Charitable Endowments Act, Act 17 of 1966 (hereinafter to referred to in short as Act for the purpose of convenience) and the representatives of the said sangham had refused to registered it and hence the Deputy Commissioner, Kurnool had instituted a suo molu enquiry in OA No. 16 of 1969 to consider whether Arya Vysya Hostel represented by Arya Vysya Sangham is a charitable institution or not and the said Deputy Commissioner by his order dated 31-3-1980 held that the Arya Vysya Hostel is not a charitable institution and aggrieved by the said order of the Deputy Commissioner of Endowments, Kurnool the suit was instituted for setting aside the said order raising several grounds. It was also further pleaded that the learned Deputy Commissioner, Endowments should have called upon the defendants to produce the by-laws of the sangham registered under the Societies Registration Act and also the learned Deputy Commissioner had failed to appreciate the evidence properly. It was also further pleaded that if the sangham, the hostel and Kalyana Mandapam were not intended for charitable purposes, the sangham would have been assessed to income tax and if it were really managing the hostel and Kalyana Mandapam on commercial basis it should have run in such a manner that it would earn appropriate income over the investment and it is not the case of the defendants that they are earning profits and distributing the same among the members and the collection of electricity charges and boarding charges on dividing basis is not inconsistent with the institution being a charitable one and the motive in providing facility is to encourage students belonging to Arya Vysya Community to continue their higher studies at a less cost. Similarly the provision of Kalyana Mandapam is also no doubt to achieve the same object. They collect the charges for merely meeting the actual expenses of running the institution.

3. The first defendant in the suit filed a detailed written statement denying the allegations made in the plaint and at the relevant time it was pleaded that there is no President at all for the hostel and one Sri N. Rajagopal Chetty was the President at the relevant time of the Arya Vysya Sangham and the hall. It was also pleaded that there is no registered body known as Arya Vysya Sangham and the allegation that the site was gifted to the Sangham by one T. Ramaiah Chetty is not true and the said site was purchased by T.Ramaiah Chetty in his capacity as the President of Arya Vysya Sangham for the benefit of the sangham. It was admitted that the said sangham constructed a hostel building and Kalyana Mandapam in the said site and those properties belong to a registered body

known as Arya Vysya Sangham. There is no dedication of any property whatsoever for any charitable purpose either private or public and that Arya Vysya Sangham provides accommodation in the hostel to the students belonging to the Vysya community at favourable rates of rent. The boarding charges for the hostel are met by the students on dividing system. The allegation that several persons contributed monies for the construction of the hostel building is a fact indicating that the said contributions were made as a charity is untenable. On the basis of the respective pleadings of the parties, the Court below had framed the following issues:

(1) Whether the disputed sangham is a public charitable institution or a private body?

(2) Whether the order of the Deputy Commissioner in OA No.16 of 1969 is liable to be set aside?

(3) To what relief?

4. The parties had not adduced any oral evidence, but however the documents Exs.A1 to All and Exs. Bl to B4 were marked on behalf of the respective parties.

5. Ex.A1 dated 13-5-1978 is the deposition of K. Krishnamoorthy(RWl)deposed in OA No.16 of 1969 before the Deputy Commissioner, Endowments Department, Kurnool, Ex.A-2 is dated 29-11-1979 is the deposition of H.V. Hanumantha Rao (RW2) in OS No. 16 of 1969 of Deputy Commissioner, Endowments Department, Kurnool, Ex.A3 in dated 1-8-1983 is the copy of the Rules and Regulations of Arya Vysya Sangham, Madanapalle, Ex.A4 is dated 1-8-1983 is the copy of Memorandum of Association of Arya Vysya Sangham, Madannapalle, Ex.A5 is dated 21-3-1968 is the letter addressed by the Endowments Department to the President Sri Arya Vysya Hostel, Madanapalle (marked as Ex.Bl in OA No, 16 of 1979), Ex.A6 is dated 29-4-1968 is a letter by the President of Arya Vysya Hostel, Madanapalte addressed to the Endowments Department (marked as Ex.B2 in OA No. 16 of 1979), Ex.A7 is dated 2-9-1968 is a letter written by the President of Arya Vysya Hostel, Madanapalle addressed to the Endowments Department (marked as Ex.B3 in OA No. 16 of 1979), Ex.A8 is dated 18-7-1977 is the report of the Deputy Commissioner, Endowments Department, Madanapalle submitted to the Assistant Commissioner, Endowments Department, Chittoor (marked as Ex.B4 in OA No.16 of 1979, Ex.A9 is dated 2-7-1977 is the statement of the President of Sri Arya Vysya Hostel, Madanapalle recorded by the Inspector, Endowments Department, Madanapalle (marked as Ex.B5 in OA No.16 of 1979), Ex.A10 is dated 31-3-1980 is a copy of order of the Deputy Commissioner, Endowments Department, Kurnool in OA No.16 of 1979 and Ex.A1l is the counter filed in OA No.16 of 1979 filed by the Assistant Commissioner, Endowments Department, before the Deputy Commissioner, Endowments Department, Kurnool.

6. Ex.BI is dated 24-2-1980 is the deposition of T.N, Kanthi Raj in OA No.16 of 1969 before the Endowments Department, Kurnool (marked as RW-3 in OA

No.16 of 1969), Ex.B2 is dated 20-4-1933 is a typed copy of sale deed for Rs.2999-00 executed by V. Ramamoorthy Ayyangar in favour of Sri Ramaiah Chetti, Ex.B3 is the printed receipt books (2) from 24-1-1970 maintained by the Arya Vysya Hostel, Madanapalle for room rents and electricity charges (marked as Ex.B6 and 7 in OA No.16 of 1979 and Ex.B4 is dated 29-9-1972 is additional counter filed in OA No.16 of 1979 on behalf of Arya Vysya Vidyarthi Hostel.

7. The Court below while answering issues Nos.1 and 2 had arrived at a conclusion that the 1st defendant in the suit i.e., the 1st respondent in the appeal cannot be said to be a charitable institution and it ultimately dismissed the suit. Aggrieved by the same, the present appeal is preferred.

8. Initially the learned single Judge had referred the following question to the Division Bench "whether the Deputy Commissioner u/s 77(1)(a) of the Endowments Act is competent to decide whether the institution in question is a public charitable institution or endowment or not" and the Division Bench ultimately arrived at a conclusion and observed that "We accordingly answer the reference and hold that it does not make a difference for the purposes of filing the suit u/s 78 as to whether the Deputy Commissioner has decided whether an institution is a private charitable institution or a public charitable institution. Once an order is passed u/s 77 by the Deputy Commissioner suit is maintainable. We may however point out that this was not the controversy before the Deputy Commissioner. Before the Deputy Commissioner it was contended that the institution was not at all a charitable institution." Thus, the reference was answered and the matter is again placed before this Court.

9. Heard Sri Jagannadha Sharma, the learned Government Pleader for appeals and Sri T.S. Anand, Counsel for respondent No. 1, the learned Counsel representing the appellant/plaintiff had contended that the Court below had not properly appreciated the objects and also the memorandum of association and the Court below mainly had arrived at a conclusion that the 1st respondent/Ist defendant (sic ''not'') a charitable institution on the ground that some charges are being collected from the Arya Vysya students and hence it cannot be charity and also following the Division Bench decision of this Court in Kanyakaparameswari Varthaka Sangham Vs. Commissioner of Endowments, Andhra Pradesh, Hydrabad and Others, , which is not applicable to the facts of the case. The learned Counsel also had pointed out that the very fact of providing accommodation on favourable rates of rents and collecting the charges on dividing system nominally without having any profit motive will definitely fall within the meaning of charity. The learned Counsel also had contended that even if it is not a gift and even if it is by virtue of sale transaction the charitable purposes and be gathered from the objects and memorandum of association. The learned Counsel had drawn my attention to both the objects and also the memorandum of association in this regard. The learned Counsel had drawn my attention to the definition of charity in Law Lexican Halsbury''s Laws of England and also placed reliance on several decisions 1933 Chancery Division 115 and

1923 Chancery 407. The learned Counsel had also drawn my attention to the correspondence between the parties and also the membership fee being only Re.1/ - and the life membership and several other aspects revealed by the objects and memorandum of association and contended that for constituting a charitable purpose even relief of poverty or distress can be sufficient and the predominant object is only the facility by way of charity and the mere fact that certain nominal charges are being charged will not alter the nature of charitable institution into any other form and hence the learned Counsel had strenuously contended that the Court below also had totally erred in dismissing the suit confirming the order of the Deputy Commissioner, Kurnool made in the OA. The learned Counsel also had pointed out that the Court below also had totally erred in following the decision in K.V. Sangham (supra), which is not applicable to the facts of the case on hand.

10. Sri T.S. Anand, learned Counsel representing Sri T. Veerabhadraiah, the learned Counsel representing the 1st respondent had contended that Clause 10 of the Memorandum of Association is of a general nature and at any point of time the activities can be expanded. The predominant test is that there must be express dedication and here there was no gift at all, but in fact the purchase was by a sale transaction and if the objects and also the memorandum of association are read, it cannot be said that these purposes are charitable purposes and the test is that the predominant purpose should be charitable and on mere reference of certain charitable purposes cannot be said that the institution is a charitable institution. The learned Counsel had placed reliance on Javvadi Sriranganayakulu and Another Vs. Sabbella Pulla Reddy and Others, , K.V.Sangham (supra) and also had pointed out to the objects and also the Memorandum of Association relating to the 1 st defendant.

11. Heard both the Counsel.

12. The points that arise for consideration in this appeal are:

(1) Whether the 1st defendant is a charitable institution?

(2) Whether the judgment and decree made in OS No.1 of 1981 confirming the order of the Deputy Commissioner, Kurnool made in OA. No. 16 of 1969 are to be confirmed or liable to be set aside?

(3) To what relief?

13. Point Nos.1 and 2 being interconnected, both of them can be dealt together. The facts are not in serious dispute. The Deputy Commissioner of Kurnool on his own had initiated proceedings u/s 77 (1)(a) and (d) of the Act, but ultimately as stated supra the Deputy Commissioner had arrived at a conclusion that the 1st respondent/1st defendant is not charitable institution. Section 2(4) of the Act defines charitable institution means "any establishment, undertaking, organization or association formed for a charitable purpose and includes a specific endowment." Section 2(5) of the Act defining the charitable purpose

specify charitable purpose includes (a) relief of poverty or distress; (b) education; (c) medical relief; (d) advancement of any other object of utility or welfare to the general public or a section thereof, not being an object of an exclusively religious nature; The learned Counsel representing the appellant had stressed on "relief of poverty or distress."

14. The learned Counsel had placed reliance on the definition of charitable purpose in the Law Lexicon by Sri P. Ramanathan at Page 195, which reads as follows:

"Charitable purpose. In Charitable Endowments Act "Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship. Act VI of 1890 (Charitable Endowments), Section 2.

The expression "Charitable purpose" has acquired a technical meaning in this (Bombay) Presidency, and it includes all purposes within the meaning of Statute 43 Eliz., C4. 16B2I7.

Per Mukerji, J., The expression "Charitable purposes" in Act XXI of 1860 should be understood in a wide sense. If relief of wants occasioned by lack of pecuniary means is charity, adoption of preventive measures to ward off pecuniary wants is also charity. 51 CLJ 272 - Asalata Roy Vs. Society for the Protection of Children of India,

Charitable purposes, technically, and in the eye of a Court of Justice, "has a meaning so extensive as to include everything which is expressly described as a ''charitable use'' in 43 Eliz. C.4, S.1, or is within what has been called the equity of the statute, but there is perhaps not one person in a thousand who knows what is the technical and legal meaning of the word ''charity'' Per Lord Cairns in Dolan v. Macdermott (1868) 3 Ch. App. 678."

15. In Halsbury''s Laws of England, 3rd Edition, Volume 4 at Page 213, the expression charitable purposes is defined as follows :

Subject: (1) Relief of the Aged, Impotent and Poor--

492. General and Particular relief. The relief of "aged, impotent and poor people" is charitable (t); and these words are to be read disjunctively (u), so that the relief of aged people who are not also poor comes within them (v), and the relief of impotence without any element of poverty is a charitable purpose (w).

Aged persons have been held proper objects of charity under a gift not containing any express direction or indication for relief(x), but it does not appear that the element of relief is necessarily implied in any gift to the aged; persons not under fifty years of age have been held to be aged (a).

A home of rest for those needing it is a provision for the impotent (b); the prevention of cruelty to children is almost certainly charitable as being for the benefit of impotent persons (c).

"Poor" is a relative term not confined to the destitute (d).

16. In 1933 (1) Chancery Page 115 while dealing with the aspect of valid charitable trust it was observed that "One of those wishes, expressed also in the same clause, was that in considering the suitability of a candidate for admission to the home the candidate''s financial position should not be taken into account; another was that persons admitted might be required to pay according to their means for board, lodging and other benefits, and, where reasonably possible, for medical attendance and treatment, for which, however, the funds of the home might be drawn upon at the trustees'' discretion ".

17. In Chancery 1923 Volume II at Page 407 while dealing with the Charitable trust and also poverty it was observed that "Poverty" is a relative term, and the expression "poor people", for the purposes of a legal charity, is not necessarily confined to the destitute poor, but may extend to comprise persons of moderate means.

On the strength of these decisions and also on the definition in the Act the learned Counsel appearing for the appellant strenuously contended that mere fact that some charges are being charged without any profit motive and not taking of one''s own advantage will not alter the character of charitable purpose of institution. It is also relevant to have a look at Clause 13 of the Rules and Regulations dealing with utilisation of the funds of the sangham, which reads as follows:

(a) The income and property of the Sangham derived from whatever source shall always be applied towards the promotion of the objects of the sangham more fully set out in the Memorandum of the Sangham; provided that nothing therein contained shall prevent the payment in good faith remuneration to any employee or servant of the sangham or to any other person in return for his services actually rendered, provided further that no member of the EC shall be appointed to any salaried office of the sangham or shall be entitled to any fees except repayment of expenses incurred by him for the work of the sangham.

(b) The EC shall work gratuitously. The committee may debit to the sangham''s account any expenditure actually incurred by them in doing the work of the sangham in the manner indicated below:

i. Postal charges supported by proper vouchers and correspondence;

ii. Travelling expenses of member of the CE for journeys made by them in connection with the work of the sangham;

iii. Establishment charges of a permanent or a temporary ....S. Prabhakara Gupta, EC Member ....7 character sanctioned by the EC.

iv. House-rent, furniture, cost of samans, stationery, electric current charges and other defined charge within the annual budget allotment sanctioned for each year by the General Body.

v. No portion of the funds shall be paid or transferred directly or indirectly to any of its members through any means.

18. Aims and objections of the Association specified under Clause 3 of the Memorandum of Association reads as follows:

1. To unite all the members of Arya Vysya Community residing within the limits of Madanapalle Municipality with a view to create a spirit of unity and co-operation and work for the economic, educational, social and cultural betterment of the members of the sangham.

2. To administer and manage the Arya Vysya Hostel, the Kalyana Mandapam and appurtenances thereto, godowns and other properties of the sangham.

3. To organize cultural, religious, philosophical and spiritual conferences symposis, discourses for the propagation of Hindu Sanathana Dharma in general and life and message of Sri Vasavi Kanyaka Parameswari in particular.

4. To start an Arya Vysya Educational Society and render monetary help for education of Arya Vysyas in deserving cases.

5. To start a Reading Room and a Library which will be opened to the public.

6. To act as trustees of Sri Vasavi Bhavan and manage the same.

7. To acquire lands, buildings, and other property moveable and immovable, for the sangham.

8. To print, publish and distribute leaflets, books, journals, periodicals and the like for the attainment of all of any of the objects of the sangham.

9. To promote the spiritual and cultural life of the community.

10. In general to pursue such other activities as may help the advancement of the community.

19. The objects of the 1st respondent as specified above definitely disclose that most of them are in relation to the social and also to some extent the commercial activities in relation to the Arya Vysya Community in general and also as far as Kalyana Mandapam is concerned at certain times it is being given to other communities of the Hindus. Thus, the evidence which was recorded before the Deputy Commissioner i.e., marked as Ex.A1 and Ex.A2, the evidence of RWs 1 and 2 in OA No. 16 of 1969 and Ex.Bl in OA No. 16 of 1969 clearly go to show that there is no dedication of these properties at any point of time and the very plea of gift of the property raised by the appellant had been found to be an unsustainable plea. Apart from it, from the objectives, which had been specified above, it is clear that apart from certain charitable purposes there are several other purposes, which are even to be enlarged at any point of time in view of the general powers covered by Clause 10.

20. In fact, the Deputy Commissioner, Endowments, Kurnool had clearly observed that the evidence adduced relating to the nature of charities and charitable purposes is highly insufficient and it cannot be held that the institution is a charitable institution which had been in fact confirmed even by the learned District Judge, Chittoor. It is no doubt true that in M. Dasaratharami Reddy v. D. Subba Rao, AIR 1957 SC 797, it was held that "Dedication to charity need not necessarily be by instrument or grant. It can be established by cogent and satisfactory evidence of conduct of the parties and user of the property, which show the extinction of the private secular character of the property and its complete dedication to charity. But, however, such evidence was not available in this case.

21. In fact, in para 438 of Mayne''s Hindu Law 9th Edition it was observed:

"The last case arises where the founder applies his own property to the creation of a pagoda or any other religious or charitable foundation, keeping the property itself, and the control over it, absolutely in his own hands. The community may be greatly benefited by this arrangement so long as it lasts, but its continuance is entirely at his own pleasure. It is like a private chapel in a gentleman''s park, and the fact that the public have been permitted to resort to it will not prevent its being closed, or pulled down, provided there has been no dedication of it to the public.

22. In Hindu Law of Religious and Charitable Trusts" (3rd Edition) F.B. Mukharji observed:

"The tests of a bona fide or nominal endowments are: how did the founder treat the property or how have the descendants treated it, has the income of the endowed lands been continuously applied to the object of dedication? ....In order to establish a valid endowment it must be proved that the grant was made with the intention that the profits should be applied for the particular religious purpose and that the profits have been so applied. No endowment is created if the deed was not meant to be acted upon and the founder had other or ulterior motives, e.g., tying up of property out of the reach of the creditors. When however the acts and conduct of the parties show that the income of the property was employed in the performance of religious rites laid down by the founder, the mere fact that the members of the grantor''s family were nominated shebaits, or they were to be remunerated out of the endowed fund are not proper grounds for holding the dedication to be nominal."

23. I am no doubt conscious of the fact that here it is not a case of endowment as such but the principle underlying the same may be relevant. In Javvadi Sriranganayakulu and Another Vs. Sabbella Pulla Reddy and Others, , it was held that "to constitute a valid endowment, it must be established that the settler intended to divest himself of the ownership in the property dedicated. There should be an express dedication to the public. The intention to create a trust

must be indicated by acts or words with reasonable certainty. In order to establish that a charitable institution has been constituted, strong and clear evidence is required. The charitable purpose should be clearly specified and the property intended for the enjoyment should be set apart or dedicated for that purpose. Each case must be considered on its facts and the intention of the parties must be determined, even in the absence of a document, from their conduct". In K. V. Sangham (supra) it was held that "the charitable purpose of the charitable institution must be the sole or at least the dominant object of the Association before it can be called a charitable institution." In Leprosy Investigation and Treatment Centre Zaheerabad rendered in WP No.8919 of 1983 the learned single Judge of this Court while dealing with the inclusive definition of "Charitable purpose" held that the institution established for medical relief to leprosy patients without having any gain or profit motive is a charitable institution within the provisions of the Act. In AS No.366 of 1972 while dealing with the legal meaning of the word "Charitable" the Division Bench of this Court held that "The legal meaning of the word "charitable" is in its origin and the four heads was the classification made first by Sri Samuel Ramily (then Mr. Ramily) arguing in Morice v. Bishop of Darhan (2) (1805) 10 Ves 52. These heads were first relief of the indigent, second advancement of learning, third the advancement of religion, fourth the most difficult the advancement of objects of general public utility. This classification substantially was adopted by Lord Macnangten in Income Tax Commissioner v. Pemel (3) (1801) AC 531. Lord Simond about five decades thereafter, adverting to this classification, in Williams Trusters v. Inland Revenue Commissioner 1947(4) AC 447, said "that the classification of charity in its legal sense into four principal divisions must always be read subject to the qualifications appearing in the judgment of Lindley L.J., in Re Macduff (5). This classification was adopted in Indian Central Parliament and various State Legislatures. In Deputy Commissioner v. Vijayawada Gosam rakshana Sangham 1985 (2) APLJ 220, it was held that "From the objects of the Vijayawada Gosamrakshana Sangham and the evidence which is made available in the suit leave no doubt that the society in question answers the description of public charitable endowment." In Trustees of Gordhandas Govindram Family Charity Trust, Navalgadh Vs. The Commissioner of Income Tax (Central), Bombay, , it was held that "Hindoos as the trustee may consider deserving of help in the manner and to the extent specified therein and subject to the directions contained in the next following clauses. Under the subsequent clauses the members of the family were to be the first objects of charity both in respect of maintenance and marriage expenses. It was only after all the members of the family were exhausted that a section of the public, the Vaishyas or other Hindus could take any benefit under the Trust held to be not for a charitable purposes.

24. In the light of the foregoing discussion and on the material available on record and also the evidence of RW-1 and RW-2 recorded in OA and the findings recorded by the Court below, I am of the considered opinion that the findings recorded by the learned District Judge, Chittoor are in accordance with both facts

and law. In fact, there is no express dedication at any point of time for any specific or predominant charitable purposes and further all the activities as can be spelled out from the objects of the sangham cannot be said to be charitable activities and the predominant object cannot fall within the meaning of the charitable purpose and hence inasmuch as on appreciation of the evidence available on record the learned Deputy Commissioner, Endowments, Kumool and also the learned District Judge had recorded the findings on the basis of facts that the institution in dispute is not a charitable institution, I do not see any valid reasons to disturb those findings recorded on the basis of the material on record. Hence points Nos.1 and 2 are answered accordingly.

25. Coming to the point No.3 "to what relief, for the reasons recorded above, the appeal is devoid of merit and accordingly the same is dismissed. But, however, in view of the facts and circumstances of the case each party to bear their own costs.

