

(1959) 08 AP CK 0005
In the Andhra Pradesh High Court
Case No : Appeal No. 200 of 1955

Commissioner for Hindu Religious and Charitable Endowments, Andhra APPELLANT

Vs

Kasi Nattukottai Nagara Chatram, Managing Society by its authorised agent R.M.P.A. Annamalai Chettiar and Another RESPONDENT

Date of Decision : 18-08-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Limitation Act, 1908 — Article 120

Citation : AIR 1960 AP 535

Hon'ble Judges : Satyanarayana Raju, J;Munikanniah, J

Bench : Division Bench

Advocate : D.S. Sastry, for N.S. Raghavan, Principal Govt. Pleader and D.V. Reddipantulu, for the Appellant; N. Bapiraju, for the Respondent

Final Decision : Dismissed

Judgement

Munikanniah, J.—This appeal is directed against the judgment and decree of the Subordinate Judge, Rajahimundry, declaring the title to the choultry known as "Nagara. Viduthi" at Aryapuram, Rajahmundry in favour of the plaintiff who is the managing society of that choultry. The appellant is the Commissioner for the Hindu Religious and Charitable Endowments, Andhra. The 1st respondent is the managing society represented by its authorised agent and the 2nd respondent is the Gurukul of Sri Marakata Vinn-yakaswamy temple situate in the precincts of the chatram,

2. The facts leading to this litigation maybe briefly stated: The building of Nagara Viduthi was purchased on 25-8-1920 by the plaintiff-society who is the 1st respondent herein. It consists of a large terraced building with a spacious compound measuring about 2,400 Sq. yards. It serves as a private lodge; and boarding and Other amenities. to the members of the Nattukottai Chettiar Vysya Community who visit the place are provided. In a place adjacent to this choultry,

a temple which occupies 15" x 20" has been built and the idol of Sri Marakatha Vinayakaswamy has been installed in it. The Gurukul who performs and attends to lighting and formal Nivedyam and cooks rice and offers it to the deity is paid Rs. 7/- per month for his services and expenses.

About Rs. 15/- is also spent on the temple-and this expenditure is treated as part of the establishment charges of the chatram. In 1934 the then managing trustee of the Chatram presented an application to the Hindu Religious Endowments Board praying for a declaration that the temple of Sri Marakatha Vinayakaswamy Varu is a private one and therefore is exempt from any contribution to the Board. On 3-1-1935 orders u/s 84 of the Hindu Religious Endowments Act were passed in O. A. No. 128 of 1934 to the effect that that temple with the choultry is a public institution as defined under clause 12 of Section 9 of the Madras Act II of 1927 and that the Act is applicable to it and to its endowments.

A notice D/- 14-6-1946 was issued to the Gurukul or trustee of the temple calling on him to pay contribution at the rate of Rs. 30/- for each fasli for three faslis and also audit fees, totalling to Rs. 105/-. The management of the chatram filed on 29-7-1946 objections thereto which questioned the levy as illegal and improper. But these objections were rejected on 12-9-1946 and thereupon the contribution as demanded was paid on 1-10-1946. Thereafter as a preliminary to the step to obtain an effective and complete adjudication in regard to the right of the Hindu Religious Endowments Board to levy contribution, notice was issued to the Board On 25-2-1947 by the plaintiff u/s 80 of the Code of Civil Procedure.

As in spite of the notice the Board continued to levy the contribution, the plaintiff filed O. Section No. 164 of 1948 on the file of the City Civil Court, Madras only against the Board but that suit was dismissed on the ground of want of jurisdiction. A.A.O. No. 589 of 1949 filed in the High Court of Madras was also dismissed on 10-4-1951, on the same ground. The Board thereafter persisted in issuing demands for contribution in successive faslis. The managing society of the Chatram had thereupon to file the present suit on 2-1-1953 in the Court of Subordinate Judge, Rajahmundry praying for declaration that the choultry and the temple belong to the plaintiff (1st respondent).

The 1st defendant who is the 2nd respondent herein remained ex parte and the suit was contested by the appellant only. By the time the suit which gave rise to this appeal had been filed, the Board disappeared and is replaced by the Commissioner, and hence the suit was filed by the 1st respondent against the appellant. The suit is resisted by the appellant on the ground that in O. A. No. 128 of 1934 the Board declared the temple with the choultry as a public institution and that as there was no application filed as provided under Section 84(2) of the Hindu Religious Endowments Act, there can be no adjudication by a civil court.

The bar u/s 70(2) of the Act is also pleaded in regard to the levy of contribution. Objection is taken to the filing of the suit on the ground that Section 14 of the

Limitation Act would not apply, as the plaint now presented is not the same as that which was returned by the City Civil Court, Madras, and the cause of action for the suits and prayers therein are different. The want of a fresh notice u/s 80 C.P.C. to the Commissioner is also pleaded. It is pointed out that the Board alone was made party to the earlier suit in the City Civil Court and the appellant was not a party to that suit. Yet another objection that there is no proper representation of the plaintiff's society, was also taken. On the pleadings, the necessary issues have been framed; and the trial court declared the title of the plaintiff society to the choultry but excluded the area occupied by the temple.

3. The same contentions raised in the trial court are reiterated in this appeal. But the question of proper representation of the plaintiff-society has not been pressed before us.

4. The main question for determination in this appeal is whether the choultry and the temple constitute a public institution as held in O. A. No. 128 of 1934 by the Hindu Religious Endowments Board, or whether the conclusion reached by the lower court that the choultry is a private one is correct. It is contended for the appellant by Mr. Sreerama Sastry that when there is an adjudication by the Board under Sub-section (1) of Section 84, the affected party-trustee can question it only by filing an application in the court under Sub-section (2) to modify or set aside that decision within one year and that since the plaintiff has not taken advantage of this provision, the decision of the Board has become final.

It is no doubt true that the plaintiff has not resorted to the remedy which was available to him as provided under Sub-section (2) of Section 84. But it has to be observed that Ex. B-2 D/- 3-1-1935 which is in order of the Board in O. A. No. 128 of 1934 has not only concluded that the temple "is a public institution within the definition of the term in Clause (12) of Section 9 of the Hindu Religious Act" but has gone to the extent of making that decision apply to the choultry also on, the ground that the choultry is attached to the temple. Even on the contentions raised before the Board in O. A. No. 128 of 1934, it could not have been urged that the choultry formed a "Religious Endowment". We have now to see whether any claim to a religious endowment, such as this choultry is alleged to be, could be a matter for adjudication under Sub-section (1) of Section 84. That section in Act No. II of 1927 reads:--

"If any dispute arises as to whether a Math or temple is one to which this Act applies or as to whether a temple is an excepted temple, such dispute shall be decided by the Board."

The jurisdiction, therefore, conferred by this section on the Board is in respect of a dispute where the decision has to relate to the question whether an institution is a Math, Temple, or an Excepted Temple as defined in Clause (5) of Section 9. But the Board has no concern to relate this finding even to a "religious endowment" while purporting to act under this Section. The Hindu Religious Endowments Act as it stood did not contain any provision in respect of any

matter when the dispute related to a religious endowment.

Therefore, the position of a decision in regard to a temple stood on a different footing from that relating to a "religious endowment" inasmuch as no suit would be barred if the application contemplated under Sub-section (2) of Section 84 is not filed within one year. Viewed in this manner, the objection taken by the appellant would not save the decision of the Board under Ex. B-2 D/- 3-1-1935 as regards the religious endowment viz., the choultry is concerned, but is valid and enforceable in so far as the temple is declared to fall under the category as defined in Clause (12) of Section. 9.

We would, therefore, uphold the view taken by the trial court that it is not possible to reopen the decision of the Board in so far it concerns the temple. We are also in agreement with the trial court that if this question can be gone into, the finding should be that the temple is not a public institution to which the Hindu Religious Endowments Act would apply. "Temple" as defined in Clause (12) of Section 9 is a place of public religious, worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community, or any section thereof, as a place of religious worship.

The phraseology in which this definition is couched makes it plain that it should be a place of public religious worship which is dedicated to, or kept for the benefit of the Hindu community or any section thereof. There is no evidence in this case that even though this temple was used as place of religious worship, it was dedicated to the Hindu community Or a section thereof. The temple itself came into existence a year or two after the purchase of the building for the choultry in 1920. The only evidence that is on record is that expenses of the temple are met from the incomes-of the choultry.

Though an attempt was made to make it appear that the public contributed of the performance of such festivals, the lower court found that there is no reliable evidence in Support of it The oral assertion of D. W. 1" that he paid subscription for the Utsavams and of D.W, 4 who deposed that his mother used to pay Rs. 2/- or Rs. 3/- for Navarathri celebrations and the residents of the locality used to pay subscriptions for Ganapathi Navarathri celebrations has not been given credence to. D.W. 4 has also stated that though the main entrance to the temple opened into the road, it was closed in 1939.

It is not denied that the temple has no Gopuram. Though for sometime before the closing of the entrance the public were allowed to worship, that permission seems to have been withdrawn from 1939. The plaintiff's witnesses deposed that the public worshipped at the temple and it has an idol installed in it. But the public did not resort to it as a matter of right. All the same the witnesses for both the plaintiff and the defendant are agreed that money for offering worship or Nivedyam or to the person who looked after this function is paid from the incomes of the choultry.

In those circumstances, the trial court relied upon the decision in the Madras

Hindu Religious Endowments Board Vs. V.N. Deivanai Ammal by Power of Attorney agent T.V. Mahalinga Aiyar, for taking the view that since no dedication of this temple to the public has been made out, the fact that members of the public were allowed to worship in the temple Or that the choultry met the expenses would not render the temple a public one so as to lie governed by the Hindu Religious Endowments Act. Having regard to the evidence on record, we are unable to disagree with this finding of the lower court.

AS we already mentioned, this matter cannot be gone into afresh on the merits as the decision of the Hindu Religious Endowments Board in O. A. No. 128 of 1934 has become final in so far as the temple is concerned. We also consider that the application of the principle enunciated in Rao Bahadur S.A.S. Rm. Ramanathan Chettiar Vs. M.P. Palaniappa Chettiar and Others, that the utilisation of the part of the income from a property is not indicative of dedication, is but proper.

5. As to the question whether the choultry or "Nagara Viduthi" could be found to be a "religious endowment" belonging to the temple of Sri Marakata Vinayakaswamy Vara, the glaring aspect that this choultry has not been given or endowed for the support of the temple or for the purpose of any service or charity connected therewith, stares in the face, so as to make it impossible to find that the choultry is the religious endowment of the temple. It is in the evidence of D.W. 2 that a sum of Rs. 15/- used to be spent for daily Pooja from out of the rents realised by letting out rooms Or portions of the choultry and that as even the income from the choultry is not sufficient, the Kasi choultry which is the principal institution, used to send Rs. 200/- to this chatram every year.

The accounts filed by P. W. 3 marked ns Ex. A-19 relate to the years from 1948 to 1952. They contain the Pooja expenses katha relating to the temple. But from the mere fact that a portion of the income is used for the Pooja of the temple, it cannot be taken as proof of dedication. P.W. 3 has stated that the accounts from 1939 to 1948 could not be produced as they were filed in another suit and that accounts prior to 1939 are unavailable as they were sent to Rangoon and were lost when Rangoon was bombed. This explanation has found acceptance with the trial court. Thus the evidence so far available cannot be relied upon by the defendant to establish that the choultry is an endowment made or dedicated for Sri Marakata Vinayakaswamy temple. It is in evidence that the temple came into existence only as a result of the practice of the members of Nat-tukottai Chettiar community to visit a temple before taking meals and the particular temple served that purpose. Even the Municipal registers bear out the fact that the temple is not made to own. this choultry, but the property stood registered in the name of an individual chettiar. The conclusion that the choultry did not belong to the temple but is a private one owned by Sri Kasi Nattukottai Nagara Chatram managing society is irresistible in view of what has been stated. The argument that the plaintiff has not proved that the choultry is a private institution has therefore little or no force.

6. As already pointed out, there can be no decision of the Board u/s 84 in regard to the properties claimed by others when they do not consist of a Math, Temple Or Excepted Temple. The provisions of the unamended Act II of 1927, are to be applied to this case. Later on in 1946 in pursuance of the policy adopted, the category of Excepted Temples hits been abolished and taken out from the purview of the Act. The words "excepted temple" had been replaced by "specific endowment". This specific endowment has been defined in Section 9 (1.1-A) as hereunder:--

"(11-A) "Specific endowment" means any property Or money endowed for the performance of any specific service or charity in a temple or math." This is in contradistinction with the "religious endowment". After the passing of the amending Act X of 1946, Section 84 stood thus:

(1) "If any dispute arises as to-

(a) Whether an institution is a math or" temple as defined in this Act,

(b) Whether a trustee is a hereditary trustee as defined in this Act or not, or

(c) Whether any property or money endowed is a specific endowment as defined in this Act. or not.

such dispute shall be decided by the Board and no court in the exercise of its original jurisdiction shall take cognizance of any such dispute.

(2) Any person affected by a decision under Sub-section (1) may, within six months, apply to the court to modify or set aside such decision.

(3) From every order of a District Judge, on an application under Sub-section (2), an appeal shall lie to the High Court within three months from the date of the order.

(4) Subject to the result of an application under Sub-section (2) or of an appeal under Sub-section (3), the decision of the Board shall be final".

The mention therefore of "specific endowment" in Section 84 thereafter cannot be taken to comprise within its scope the determination by the Board of a case of a "religious endowment" also. It is only in Clause (c) of Section 57 of the Madras Hindu Religious and Charitable Endowments Act (Act 19 of 1951.) that the scope of the Enquiry and decision by the Deputy Commissioner has been enlarged so as to include the determination whether any property or money is a "religious endowment". The decision of the Board in O. A. No. 128 of 1934 therefore cannot be taken as also deciding that) the choultry in the instant case is a religious endowment of Sri Marakata Vinayakaswami Varu temple.

In this view it has necessarily to be held that the decision of the Board u/s 84 is not on the same footing as that relating to the temple, but remained as a matter which can be agitated in any competent civil court. The reasoning in T.K. Thiruvengadam Pillai and Another Vs. The Madras Hindu Religious Endowments

Board, in excluding the case of a specific endowment from the scope of Section 84 before the amendment of that Section in 1946, equally applies, in our view, to the case of a religious endowment. We, therefore, agree with the trial court that the previous order of the Board does not bar the plaintiff from contending that the property in question is not an endowment of the 1st defendant Deity.

7. It is next argued that inasmuch as the suit which gave rise to the present appeal was hied with a view thereby to question the right of the Board to levy the contribution, such an action will not lie as it should be considered that Sub-section (2) of Section 70 negatives such a claim. It is therefore necessary to read Section 70 which is as follows:

"(1) The costs, expenses and contributions payable under Sections 68 and 69 shall be assessed on and notified to the trustee of even math and temple in the prescribed manner.

Where the contribution or a portion of the contribution has to be paid by a specific endowment, the same shall be assessed on and notified to the trustee of the specific endowment also.

(2) Such trustee shall, within three months of his receipt of such notice or within such further time as may be granted by the Board or Committee, pay out of the funds of the math or temple concerned the amount so demanded to the President of the Board or Committee, as the case may be, or to any person authorised by him; and, in default of his doing so, the court shall, on the application of the President of the Board or Committee, recover the amount by the court against the religious endowment concerned;

Provided that the court may for reasonable cause postpone the recovery of the amount or order payment thereof in instalments."

Sub-section (2) enjoins upon the trustee to pay up any levy within three months of the receipt of notice or within such further time that may be granted by the Board or Committee, and in default of doing so, the court On the application of the President or the Committee, cannot but recover the amount as if the demand is a decree. It is, therefore, contended that when the court's duty is only to proceed in execution of the demand, it cannot entertain any suit questioning the levy of the contribution. But, in our view, that would be so, if the temple admittedly owned a religious endowment.

Otherwise, the right to question the levy of contribution in respect of a private institution to which the Madras Religious Endowments Act would not apply, would certainly be outside the scope of that Act, and the right of suit in such a case is not taken away. It is not the temple of Marakata Vinayakaswamy Varu that is questioning the contribution levied in regard to the choultry; hut the suit is by the owner of that choultry. The decision in *Hindu Religious Endowments, Madras v. Koteswara Rao* AIR 1937 Mad 852 relied upon by the appellant which rules that a court cannot enter into questions of its validity or propriety but it must

execute the demand made by the Board is therefore distinguishable, and is of no assistance. The objection that a suit cannot lie for this reason is therefore overruled.

8. Mr. Srirama Sastry also contended that the notice (Ex. A-3) u/s 80 C.P.C. issued by the plaintiff to the Board of Commissioners, Hindu Religious Endowments Board, Madras and to the President is ineffective to serve the purpose of the plaintiff. A point is sought to be made that as the suit was instituted against the Commissioner appointed under the Hindu Religious and Charitable Endowments Act (19 of 1951) and the Board was dissolved by that time, a fresh notice ought to have been issued before instituting the suit.

But the history of this litigation discloses that O. Section No. 164 of 1948 on the file of the City Civil Court, Madras was filed on 20-2-1948 and the matter was taken up on appeal to the High Court, and the High Court dismissed that appeal on 10-4-1951. Nevertheless it is in respect of the same claim for declaration that the choultry is not a religious endowment but is a private institution, that the present suit was filed on 2-1-1953 in the court of the Subordinate Judge, Rajahmundry as this court alone had jurisdiction to entertain it. It cannot therefore be said that the present suit is not a continuation of the proceedings instituted in the City Civil Court, Madras.

And we also find no variation between the notice and the plaint except the Board was substituted by the Commissioner as the latter has succeeded to the former. It is also clear that in Act 19 of 1951 there is no specific provision terminating any pending proceedings. Sec. 102 of the Hindu Religions and Charitable "Endowments Act makes a specific mention that any reference to the Board or its President contained in any enactment in force in the State of Madras or in any notification, order, scheme, rule, form or by-law made under any such enactment and in force in the State, shall, on and from the commencement of this Act, be construed as a reference to the Commissioner appointed under this Act.

It is futile therefore to contend that there is no notice to the Commissioner when, under the repealed Hindu Religious Endowments Act, the members and the President of the Board were served with a notice u/s 80 of the Code of Civil Procedure, and the present suit is a continuation of that filed in the Madras City Civil Court against the successor of the Board.

9. Another contention that the plaintiff cannot avail the benefit of Section 14 of the Limitation Act on the facts of this case is equally devoid of force. There is no dispute that the plaint was returned ultimately on account of the decision of the Madras High Court D/- 10-4-1951 in A.A.O. No. 589 of 1949. It is no doubt true that the very plaint returned by the City Civil Court, Madras, has not been represented. But all the same, we agree with the trial Court that the plaintiff prosecuted the previous suit bona fide. The cause of action for the two suits is also the same. It therefore seems to us that Section 14 of the Limitation Act will be attached to this case.

But then, as has been pointed out by the trial court, the question for determination would be not what time is taken in conducting the litigation which resulted in the return of the plaint, but the period of limitation provided for the institution of a suit of this type which, as has been pointed out, is one for declaration of the plaintiffs title to the choultry. In para 13 of the plaint, we find that the demand made on 26-10-1949 is also depended upon for the purposes of cause of action, If this demand is to be construed as a fresh attack on title or invasion of right, we have no hesitation in accepting the contention of the respondent that each fresh attack gives right to a new cause of action.

The decision in Midnapore Zamindary Co. Ltd. Vs. Secretary of State, Supports this view. As has been held by the trial court, the suit filed on 2-1-1953 is within six years from the date of Exs. A-8, A-9 and A-10, which are demand notices for the contribution. The suit in our view would therefore be within time as it is not disputed that Article 120 of the Limitation Act will not apply to such a case.

10. For the aforesaid reasons, it follows the appeal should fail. In the result, the appeal is dismissed with costs.