

(1957) 04 MAD CK 0035
In the Madras High Court

Commissioner, Hindu Religious and Charitable Endowments	APPELLANT
Vs	
S. Kalayanasundara Mudaliar	RESPONDENT

Date of Decision : 17-04-1957

Acts Referred:

Citation : (1957) 70 LW 850 : (1957) 2 MLJ 463

Hon'ble Judges : Rajamannar, C.J

Bench : Single Bench

Judgement

Rajamannar, C.J.—The only question in this appeal against the judgment of Raghava Rao, J., in A.S. No. 128 of 1949 is whether the temple known as the Sree Subramaniaswami temple in the village of Vadamadurai in Tiruvallur Taluk in the district of Chinglept is a temple which falls within the definition of " temple " in Section 9(12) of Madras Act (II of 1927.) That definition is as follows:

Temple" means a place, by whatever designation known, used as 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.

2. The question arose on account of the action taken by the Hindu Religious Endowments Board, Madras. The hereditary trustee of the temple filed a petition u/s 84(2) of the Act for a declaration that the said temple is a private temple not falling within the definition of "temple" in the Act. The learned District Judge of Chingleput held that the institution in question is a temple as defined in the Act and hence dismissed the petition. On appeal to this Court, Raghava Rao, J., reversed the decision of the learned District Judge and held that the institution did not fulfil the requirements of the statutory definition of a temple. He therefore allowed the appeal and the petition of the trustee. This is an appeal against the decision of Raghava Rao, J, by the Commissioner, Hindu Religious and Charitable Endowments

3. The following facts are not in dispute. One Raju Mudaliar, the maternal uncle of the respondent, was born in the village of Vadamadurai where he owned

landed property. He subsequently migrated to Madras and there prospered and made a large fortune. He had no wife and children; and his nearest relation was his nephew the respondent. Raju Mudaliar himself was living in Madras in his own house in Govindappa Naicken Street. Evidently Raju Mudaliar was of a very pious and charitable disposition. He constructed a Dharmachatram in 1919 and endowed property for the upkeep of the chatram. He thereafter constructed a temple for Sree Subramaniaswami and installed therein the idols of Sree Subramaniaswami, Sree Valli and Sree Deva Sena. The stone inscription in the said temple gives details of the construction and the installation. In so far as it is material for the purpose of this appeal, this inscription runs thus:

I have constructed a new temple for Sree Subramaniaswami and raised a flower garden in S. No. 295-A-1 in the said Vadamadurai village...and installed therein the Sree Sivasubramania idol with Sri Valli, Deva Sena; performed kumbabishekam for the same For meeting the expenses of the daily morning and evening puja and panchaparva utsavam to be conducted for the same according to dittam I have executed a settlement deed. If anybody intend causing any harm to the aforesaid charity after my death, he shall be guilty of the sin of having killed a karampasu...at Benares.

4. The deed of settlement, Exhibit B-4, is dated 5th July, 1937. The terms of this deed are very important and, in our opinion, practically conclusive of the matter in dispute. The following are the relevant clauses in this deed:

I have constructed with my funds on a piece of 27 cents land in S. No. 295-A-1, A/2 in the said Vadamadurai village a temple for Sree Subramaniaswami, a well and a vahana mandapam, a house for the residence of the Gurukkal and a kitchen, etc., and installed in the temple the idols of Sree Subramaniaswami, Sree Valli and Deva Sena, and for the utsava vigahams (procession idols) pertaining to the same. I got jewels, vahanams made for them, and I have been getting the morning and evening pujas conducted for them.

I have reared a nandavanam on a piece of land measuring 10 cents in S. No. 295-A-1/B in the aforesaid Vadamadurai village for supply of flowers for the daily puja of the aforesaid Sree Subramaniaswami and built stone walls all round it, got flower plants planted and the said flowers are being utilised for the pooja of the said idols.

In order that the said charity may be conducted hereafter also permanently, till the sun and moon last, in the said Devasthanam in the same manner as I have been doing hitherto, I have endowed the properties mentioned in the B schedule herein for its maintenance. I shall myself conduct the said service during my lifetime and for conducting the same after my death, I have appointed Kalyanasundara Mudliar, son of my brother-in-law Sabapathi Mudaliar, who is a member of my family as Dharmakatha trustee. I have also appointed the undersigned five persons as members to assist him. After my lifetime the aforesaid Kalyanasundara Mudaliar shall, from the income derived

from the property mentioned herein, pay the Government assessment, etc., payable therefor, meet the expenses of the said choultry and the said temple as per list given hereunder, maintain the accounts of receipts and expenses therefore and once in every year, within the 30th of March, render the accounts of that year to the aforesaid members and get their signature. The aforesaid members shall inspect the management of the aforesaid Kalyanasundaram Mudaliar then and there and at the end of the year look into the accounts maintained by the aforesaid Kalyanasundara Mudaliar and sign the same. The aforesaid Kalyanasundara Mudaliar shall manage the aforesaid charitable services and after his death, his descendants, or his direct heir, shall be the Dharmakarthas. In case any one of the aforesaid members should die or resign from membership expressing his inability to continue as member, the other members and the Dharmakarthas shall accept the resignation and all of them together shall appoint another member in the vacancy so caused. In case the aforesaid Kalyanasundara Mudaliar or his descendants who may become Dharmakarthas fail to conduct the charities regularly and properly maintain accounts of receipts and expenditure and render the accounts to the members, the aforesaid members shall remove him after issuing a notice to him and in his stead appoint another person from among the said family members, as Dharmakarthas. As regards honours due from the temple, the Dharmakarthas shall receive the honours first and other honours shall be done according to the usage of the village.

5. The five members appointed by Raju Mudaliar belonged to different castes and were not related to him.

6. There was very little oral evidence adduced in the case. The trustee (the respondent herein) himself gave evidence as P.W. 1 and also examined the Gurukkal of the temple. The respondent deposed that his uncle Raju Mudaliar built the suit temple with his own funds and for the family, that he did not get any contribution from any member of the public and that though puja and utsavams are going on, no money is taken from the public. The villagers do not go and perform archanas; nor do they discharge vows in the temple. The Gurukkal performs pooja and he was appointed by Raju Mudaliar. The salary of the Gurukkal is met from out of the income of the endowed properties. The respondent admitted that there is a Dwajasthambam and a Balipectam. There is a Garbagraham and a mandapam in front of the temple. Processions were taken on occasions like Skandasashti, Arudra, Vinayachaturthi, etc. If anybody offers Deeparathana during the procession, the deity will be stopped to receive it. P.W. 2, the Gurukkal, deposed that the temple was a private temple and the worship done is only "atmartha", that is, only for the benefit of the founder. His evidence is that the villagers do not come and worship; nor do they do archanas, nor perform utsavams; and that the founder and his heirs pay for and incur every expense.

7. On the side of the Board, an advocate of Madras was examined as R.W. 1. He

is a native of Vadamadurai and owns lands and a house there. He is a, hereditary trustee of another temple in the same village and he knows the suit temple, though being a Vaishnavite he would not enter it. He deposed that though he does not visit the temple, he has seen the deity being taken in procession and the villagers doing archana to the deity and that generally villagers go to the Subramaniaswami temple for worship except of course strict Vaishnavites. There is a separate gateway leading to it which had been generally kept open but after disputes with the Board, it appears to have been closed. He also speaks to processions and to the fact that the villagers will be allowed to offer Deeparadana.

8. The second witness for the Board is the Inspector of the Hindu Religious Endowment Board, who sent up a report stating that the temple was a temple within the meaning of the Act. He says that he found the villagers participating in the worship going on at the temple. This is all the evidence, oral and documentary, in the case.

9. To fulfil, the requirements of the definition in Section 9(12) of the Act it is necessary, (1) that the place in question should be used as a place of public religious worship ; and (2) that it must be 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.

10. Now, is the temple in question, a place used as a place of public religious worship? In our opinion this question must be answered in the affirmative. It is nobody's case that the temple is an abandoned building and no worship goes on there. Indeed it is common ground that the temple is a place of religious worship. What remains to consider is whether it is a place of public religious worship, or it is a place of private religious worship. There cannot be a tertium quid. When the entire evidence in the case is before us, we think it of little profit to embark on an enquiry as to the party on whom the burden lies. The question is this. Is the evidence consistent with the place being a place of public religious worship; or is it consistent with its being a place of private religious worship. There is no evidence in this case that the place has ever been used exclusively by the members of the family of Raju Mudaliar, the founder. Even the respondent-trustee, does not say that the only worshippers of the temple are the members of the family of Raju Mudaliar. It is true that the funds for the construction of the temple and for its maintenance were provided by Raju Mudaliar. But that does not mean that the temple, when constructed, was intended for private religious worship. The declaration contained in the stone inscription and in the deed of settlement clearly shows that what was intended by the founder was a temple where " public religious worship " would be carried on.

11. The above question is intimately bound up with the other question, viz., whether the institution in question has been 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. We agree with Mr. A. Sundaram Ayyar, learned Counsel for the

respondent, that the evidence is not sufficient to support a finding that the temple is used as of right by the Hindu community or any section thereof, as a place of religious worship. But the learned Government Pleader argued that the temple has been dedicated to, or for the benefit of, the Hindu community, or a section thereof. The dedication is to be found both in the language of the stone inscription and in the deed of endowment.

12. That the institution was never intended by the founder to be in the nature of an exclusive family institution in which the members of the public had no interest whatever, is clear from certain of the clauses in the deed of endowment. After providing for succession to the office of trustee in his family, Raju Mudaliar provided for the appointment of five persons as members to assist such trustee from his family. These five members, as already stated, belong to different castes, and certainly are not members of the family of Raju Mudaliar. These members who are described as residents of Vadamadurai village as well as Madras, are given the right to inspect the management of the temple by the respondent and his assessors in office. In case the respondent, or his descendants who may become trustees, fail to conduct the charities regularly and properly maintain accounts of receipts and expenditure and render accounts to the members, the members are given the power to remove such trustee after issuing a notice to him and in his stead appoint another person from among the said family members as Dharmakartha. Clause 6 of Exhibit B-4 which relates to honours of the temple demonstrates in the most unambiguous manner that the institution is not a mere private affair, but is one in which the entire village was interested. In an exclusive family or private temple, it is only the members of the family that would be entitled to receive any honours. In the case of this temple, however, the honours are not confined to the hereditary Dharmakartha but the honours are also intended to be done to others in the village "according to the usage of the village ". These two provisions, viz., the appointment of an advisory committee and the giving of honours to persons other than the members of the family, in our opinion, establish almost conclusively that there was a dedication, to or for the benefit of, the Hindu community, or in any event, to a section of the Hindu community.

13. When along with the aforesaid terms of the deed of endowment, we take also the other features of the temple like the existence of a Dwajasthambam and Balipeetam and Utsava Vighrams, the carrying of the deity in procession and accepting Deeparadana from the members of the public on that occasion, it appears to us to be conclusively established that the institution in question is a place of public religious worship dedicated to, or for the benefit of, the Hindu community or, in any event, to the saivite section of that community in the village as a place of religious worship. Reference may also be made to the judgment of the Supreme Court reported in *Deoki Nandan v. Murlidhar* (1957) S.C.J. 75, in which most of the features present in this case are present and it was held by their Lordships that the temple was not a private temple but a public temple.

14. Mr. A. Sundaram Ayyar, learned Counsel for the respondent relied firstly on the fact that the deed of endowment did not expressly say that the temple was intended for the public. To our minds it appears unreasonable to find any statement in a deed of endowment expressly declaring that the temple is intended for the public. On the other hand it is natural, when the founder intends the temple to be purely a family temple, that he should make it clear by expressing his intention to that effect. In the absence of any such declaration about the exclusive character of the institution, we think it reasonable to infer that the dedication is for the benefit of the worshipping public and not only for the benefit of the members of the family.

15. Mr. Sundaram Ayyar also relied upon the admitted fact that the construction of the temple was entirely with the funds of Raju Mudaliar and that the expenses of maintenance are also met from and out of the income of Raju Mudaliar's properties and that no contributions were ever received from the public. The facts are true. But we do not think that these facts, by themselves, or taken along with any other facts, establish that the temple was intended to be a place of private religious worship only. There is nothing to prevent a rich and pious man to build a temple at his own cost to glorify his deity and intending it to be for the benefit of the entire Hindu community or any specified section of it. While it is true that any evidence of contribution from the public will go some way in support of the contention that the temple is clearly a place of public religious worship, the absence of such contribution is inconclusive.

16. Mr. Sundaram Ayyar relied upon the fact that there was no evidence that the public were frequenting the temple. But it must not be overlooked that the temple is situated in a small out-of the way village with hardly 50 houses, with some of the villagers presumably following a different persuasion who do not worship Sree Subramaniaswami. We see no reason to reject the evidence of the advocate, R.W. 1, that generally villagers do come and worship in the temple. So long as the place is kept as a place of public religious worship and there is proof of dedication to the public, we think it matters little if actually very few members of the public make use of the place as a place of religious worship.

17. On a consideration of the entire evidence and the circumstances in the case we are unable to agree with the learned Judge, Raghava Rao, J., in his finding. In our opinion the decision arrived at by the learned District Judge was right. We therefore allow the appeal, set aside the order of Raghava Rao, J., and restore the order of the learned District Judge. There will be no order as to costs, but the Commissioner, Hindu Religious and Charitable Endowments, Madras, will be entitled to take his costs from the funds of the endowments.