
(1952) 10 MAD CK 0022
In the Madras High Court
Case No : A.A.O. No. 425 of 1949

Commr. Hindu Religious and Charitable Endowments Board	APPELLANT
Vs	
Gangamma and Another	RESPONDENT

Date of Decision : 30-10-1952

Acts Referred:

Madras Hindu Religious Endowments Act, 1926 — Section 9(12)

Citation : AIR 1953 Mad 950 : (1953) 66 LW 454 : (1953) 2 MLJ 82

Hon'ble Judges : Raghava Rao, J

Bench : Single Bench

Advocate : M. Seshachalapathy, for the Appellant; C. Kondayya, for the Respondent

Final Decision : Allowed

Judgement

Raghava Rao, J.—There are three temples situated in Adoni with reference to which a declaration was sought by the respondent before me that they were not temples as defined by Section 9 Sub-clause 12 of the Madras Hindu Religious Endowments Act but private institutions for private worship for the benefit of herself and to all the members of the families to which she (P. W. 1) belongs -- the Hyati family as it is described in the records and the court family with which the Hyati family was connected by marital ties. The respondent before me succeeded in her application to the District Court u/s 84 of the Madras Hindu Religious Endowments Act although she had failed before the Hindu Religious Endowments. Board in the enquiry which preceded the petition in the District Court.

2. The entire material relevant to the decision of the matter before me lies in a short and narrow compass. The oral evidence given, before the District Court consisted of the petitioner before it as P. W. 1 and seven witnesses on the opposite side. The report of the Assistant Commissioner of the locality for the Endowments in question was also put before the Court as a document which came into existence as a result of the enquiry by the Inspector in which several

persons of the locality were examined by him. The documentary evidences further consisted of Ex. E. 2 series, certain receipts for payment of municipal taxes.

3. On these materials which have been very carefully canvassed by learned counsel on both sides before me at very great length I have come to the distinct conclusion that the only possible view to take of this matter is that the places of worship in question are temples as defined by the Madras Hindu Religious Endowments Act.

4. Mr. Kondayya the learned advocate for the respondent has emphasised the following considerations as supporting the view taken by the District Court: (1) that the temples were constructed long long ago about a century back not out of the funds from the public but presumably from out of the funds contributed by the ancestors of his client, (2) that for marriages performed within the precincts of the temples or for bhajanas conducted therein the permission of the members of his client's family used to be taken, (3) that the expenses for the worship in the temples inclusive of all the food preparations and other preparations were found only by the members of the families of her ancestors, and (4) that the poojari of the temples would after worship was over handover, the keys of the temples to one or other persons in the management of the temples who were persons belonging either to the Hyati family or the court family. Learned counsel has also urged that but for some spite and illwill that arose between R. W. 7 and P. W. 1 there would not have been the slightest attempt on the part of the Endowments Department to claim these places of worship as temples under the Act. It is not disputed before me by the learned counsel for the respondent that the lands at Rampur and the houses round about the shrines stand registered in the names of the deities concerned. Nor could it be disputed by him as the evidence on record on both sides is all one way to that effect, that for ordinary purposes of worship in the shrine any Hindu member of the locality irrespective of his caste or creed could very well visit. All the seven witnesses on the side of the respondent before the Court below have definitely sworn that there is absolute freedom of worship for such people in the shrines. It is significant to notice that there is no statement in the deposition of P. W. 1 herself that there were any restrictions on such worship. Relying on these facts which have been practically found by the Court below in its judgment, Mr. Seshachalapathi for the appellant has argued that the character of the shrines must be regarded as that of temples according to the definition of the Act.

5. He has also relied on a number of decisions of this Court -- amongst these I may mention -- "Vasudevan Atisseripad v. Konarupettamanna", AIR 1916 Mad 78, (A) -- "Subramania Aiyar v Lakshmana Gomidan", AIR 1920 Mad 42 (B) and -- A.K.T.K.M. Narayanan Nambudripad Vs. Board of Commissioners for Hindu Religious Endowments, in support of his submission that it the user of these shrines as places of worship is established there is the presumption that the user is as of right and that unless the presumption stands rebutted by the evidence on

record the places must be regarded as temples within the meaning of the Act. As against these decisions Mr. Kondayya the learned advocate for the respondent has drawn my attention to a decision of the Privy Council reported in -- AIR 1940 7 (Privy Council) which goes to show that the dedication of a private shrine to the public ought not to be readily inferred but its historical background must, when a question of dedication has to be decided, be taken into account. In this submission, Mr. Kondayya is, in my opinion, perfectly correct. The question however, is whether there is anything in the historical background regarding the origin of the shrines with which we are now concerned which goes to show that there was an original creation of these shrines as private institutions. If such material existed, undoubtedly the burden of proving that what was a private institution at the inception became a public institution subsequently would lie heavily on the party alleging it. Likewise, if, as was the situation in the reported case of the Privy Council the question arose whether certain lands granted to an individual were granted to him in his capacity of the holder of the shrine or in his own individual capacity, the origin of the grant would have to be investigated with reference to appropriate facts which may bear on the question whether the properties in dispute are properties belonging to the shrine or the individual claiming them. I may also state what I consider to be a guiding factor for me in the present case that if the evidence on record left any doubt with reference to the user as of right or of dedication inferable therefrom I should dismiss this appeal as the burden lying upon the appellant cannot in my opinion stand discharged by his pointing to nicely balanced considerations derived from the evidence on record showing the equal possibility of the judgment appealed against being wrong as well as right.

6. After the careful consideration I have bestowed on the matter, the first thing which I have to mention is regarding the practice of worship. As the learned advocate for the appellant rightly emphasised, the ordinary religious worship associated with, the shrines in question is open to all the Hindu residents of the locality and without any sort of restriction, from any body whatsoever. With reference to the construction of another shrine within the same precincts at a later date, namely, the shrine of Kasi Visweswaraswami and with reference to other kinds of worship than the usual worship associated with the shrines with which we are concerned there is the evidence of permission from some people belonging to the Hyaty family or the court family. There is no such restriction talked of by P. W. 1 with reference to the usual worship in the shrines. The fact that bhajanas, marriages and upanayanams are acts done in the shrines except with permission of the persons in charge of the management of the shrines does not in my view affect the determination of the question now before me. What I may refer to as one other material factor for my decision is not so much the circumstances or fact referred to in the decisions cited before me the constituting relevant tests to be applied as the exact language of the statutory definition which I consider to be the paramount if not exclusive factor for consideration. Bearing this in mind I may leave out of consideration a number of details

adverted to before me for the appellant, namely, that there is a dwajasthambam, in front of the shrine, that there are bells ringing there in and that the size of the idols installed in the shrines is fairly big and such as one would expect only in the case of public temples. There is, however, one feature adverted to by the learned advocate which is of some significance in the context of my discussion and to which I must refer, namely, that there is evidence on record which points out unequivocally that there are "utsava vigrahas" inside the shrines which are taken out in procession for the worship of the public in the streets. This feature is important as showing facilities for public worship by means of processions given to the residents of the locality by those in management of the shrines.

7. It is true that if notwithstanding the evidence of user which have in one voice and to one effect, on record there was evidence of any kind of interruption afforded on any particular occasion to the usual mode of worship by the residents of the locality, that would be a very important matter which I must take into account on the side of the respondent before me but of such interruptions by the members of the Hyati family or the court family there is no evidence at all on record. Where dedication is asserted by one side and denied by the other one such act of interruption by the party disputing the dedication would as the Privy Council pointed out be a more conclusive kind of material than any amount of assertion of right on the part of the party claiming the dedication. Mr. Kondayya has pointed out relying upon Privy Council decision reported in AIR 1940 7 (Privy Council) that in case of shrines or places of religious worship founded even by a private individual for the benefit of himself and the members of his family it is not uncommon in this country for persons in management to take offering from the public as such offering might tend to augment the resources of the shrine and to infer a dedication from such a fact is certainly not within the competence of the court. There is more evidence on record in support of the statutory definition as being applicable to the present case than mere making of such offerings by the public at large and there is no evidence at all whatsoever of any permission asked for with reference to ordinary mode of worship associated with the shrines by anybody who was a member of the public and sought to visit the shrines for darshan or worship of the deities. In fact P. W. 1 has not spoken of any such permission as I have already stated.

8. Learned counsel for the respondent has also urged that P. W. 7 who was at the bottom of the mischief which has culminated in the present dispute has in his report submitted to the Board adverted to the reports taken by him from the residents of the locality which are in favour of the respondent P. W. 7's evidence is before the court and unless anybody from whom the statement was taken by him has gone into the witness box either for purposes of corroboration or for the purposes of contradiction of the material placed by the Inspector in his testimony before the Court I do not think that the argument that the report is based on the material furnished by the residents of the locality can be of any help to the respondent's counsel in the disposal of this appeal. Owing to all these circumstances I come to the irresistible conclusion that the shrines in question

were rightly declared by the Board to be within the scope of the definition of temple in the Act.

9. For these reasons this appeal must stand allowed with costs.