(1978) 12 MAD CK 0011

In the Madras High Court

G.P. Govindarajulu APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 14-12-1978

Acts Referred:

Citation : (1979) ILR (Mad) 400 : (1979) 92 LW 233 : (1979) 2 MLJ 142

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—The petitioner herein held lands of an extent of 15.31 standard acres on the commencement of Tamil Nadu Act LVIII

of 1961 as amended by Act XXXVII of 1972. Another extent of 3.42 standard acres had been endowed by the petitioner to a trust called

''Krishna Bhagvan Trust'' under a document marked as Exhibit B-1, dated 24th January, 1970. The said land endowed by him for the above trust

was proposed to be included in his holding by the Authorised Officer. That was objected to by the petitioner. But, his objection was overruled and

the trust lands were included in the petitioner''s holding and his total holding was determined at 18.73 standard acres. The view of the Authorised

Officer was challenged by the petitioner before the Land Tribunal but without success. The petitioner has, therefore, approached this Court by way

of this revision petition.

2. According to the petitioner, the lands are admittedly held by the trust and that no part of the income from the said trust properties can be utilised

by the founder or members of the founder''s family under the document Exhibit P-1 and, therefore, the lands held by the trust should not have been

included in the holding of the petitioner. The Tribunal took the view that the trust does not satisfy the requirements of a religious trust of a public

nature and that finding in my view, cannot successfully be challenged. Admittedly, the idol of Lord Krishna has been installed inside the petitioner''s

house and the public have no access to or right of worship of the said deity. Therefore, the trust though of a religious nature can only be a private

trust. The Tribunal then proceeded to say that as the trust is of a private nature, the lands owned by the trust should be clubbed with the lands of

the petitioner as the word ''person'' in Section 3(34) included a private trust as well as a public trust. The question is whether this view is correct.

3. The finding of the Tribunal that the trust called ''Krishna Bhagvan Trust'' is a private trust has not been challenged before me by the petitioner.

Therefore we have to proceed on the basis that the lands are held by a private trust. There is also no dispute that a private trust as in this case

cannot get exemption u/s 2 of the Act.

4. ''Private trust'' has been defined in Section 3(36-A) of the Act and Section 5(3-A) deals with, the land held by a private trust. That section says

that for the purpose of this Act the land owned by a private trust shall be deemed to be the land owned by the beneficiaries under the private trust

and each such beneficiary shall be deemed to be the owner of the land to the extent of the share of his beneficial interest in the said trust. The

Explanation to that sub-section says that the trustees of a private trust shall be deemed to be a beneficiary if any income or part thereof from such

private trust is enjoyed by him or his heirs or by his family or by the family of his heirs. In law even a private trust has to be treated independently of

the founder of the trust or the beneficiaries. The definition of ''person'' in Section 3(34) includes a private trust, and, therefore, a private trust as a

person is entitled to hold lands upto the ceiling limit prescribed by Section 5. This is, however, subject to Section 5(3-A) read with Section 6. In

cases where the beneficiaries under a private trust can claim any specified share therein, then, that specified share can be included in the holding of

the beneficiary. Similarly, where the income of the properties belonging to the private trust is enjoyed by the founder or by his heirs, then the trust

or his heirs are treated to be the beneficiaries for purpose of Section 3(3-A) and therefore, to the extent of their benefit the lands belonging to the

trust have to be included in the holding of the trustee. But, here the trust deed

Exhibit B-1 clearly provides that the entire income has to be utilised

for the pooja and neivediam of the idol of Lord Krishna and that the trustees or his heirs are not entitled to utilise any portion of the income from

the trust properties for their benefit. Therefore, there is absolutely no possibility of the founder or the heirs of the founder enjoying any benefit from

the trust properties. Sections 5(3-A) and 6 cannot apply for the reason that the founder or his heirs are not beneficiaries of the trust and they are

not entitled to utilise any portion of the income from the trust properties for their benefit. If Section 5(3-A) is to be applied, then the only

beneficiary under the trust deed being the idol of Lord Krishna, the trust lands should be taken to belong to the idol. Even then the lands cannot be

clubbed with the lands held by the founder as has been done in this case. In this view of the matter the order of the Tribunal cannot be sustained in

law. The Civil Revision Petition is therefore allowed and the lands belonging to the trust of an extent of 3.42 standard acres will stand excluded

from the holding of the petitioner. There will be no order as to costs.