

(1964) 03 MAD CK 0015

In the Madras High Court

Case No : Appeal No. 365 of 1961

Haji Sheikh Ibrahim Sahib's Private Trust Tanjore

APPELLANT

Vs

Madras State Wakf Board, Madras

RESPONDENT

Date of Decision : 05-03-1964

Acts Referred:

Waqf Act, 1954 — Section 5(2)

Citation : AIR 1965 Mad 121 : (1964) ILR (Mad) 618 : (1964) 77 LW 381

Hon'ble Judges : S. Ramachandra Iyer, C.J.;Venkatadri, J

Bench : Division Bench

Judgement

S. Ramachandra Iyer, C.J.—On 24-12-1958 the Wakf Board constituted for the Madras State notified that Bachamian Ismail Pakkiri

Taikkal, otherwise known as Arunagiri Appa Thaikkal, at Pasupathikoil in Tanjore Dt., was a wakf coming within the scope of the Wakf Act,

1954. This notification was challenged as invalid by the appellant who claimed to be the Managing trustee of the institution. The learned District

Judge has negated this contention and hence this appeal.

2. The only ground on which the notification has been challenged was that the wakf in question was a private one and therefore would not come

within the scope of the enactment. It will be useful before proceeding to consider that question to set out the history of the institution.

3. Haji Sheik Ibrahim Sahib, a pious Muslim, made two endowments of his properties. The first was by a settlement deed Ex. A. 1 dated 11-3-

1889 in favour of a mosque. As we are not concerned in this appeal with that endowment, no further reference need be made to it. On 14-7-1914

Haji Sheik Ibrahim Sahib executed a will by which he gave substantial properties for the benefit of the Thaikkal at Pasupathikoil. The will also

contained certain provisions for the benefit of his relations. The testator died shortly after the execution of the will and it has not now been disputed

that the will became operative to its full extent. In A. S. 417 of 1933 on the file of this court, it was held that, notwithstanding the loose expression

contained in the will, the intention of the testator was unmistakably to completely and absolutely dedicate the property for the wakf. Subsequent to

that decision, a scheme was framed in A. S. 35 of 1951. It is not disputed that the charity has been administered in accordance with this scheme.

But the contention of the appellant, both before the lower court and here, has been that the endowment amounted merely to a private trust and that

the mere existence of a scheme would not make it a public one, so as to vest a power in the Wakf Board to notify it under S. 5(2) of the Act.

4. The question whether the dedication contained in the will executed by Haji Shaik Ibrahim Sahib would amount to a wakf under the Act or not,

has got to be principally decided by a reference to the terms of the document. The document appoints certain persons as Mutavallis and enjoins on

them to conduct the charities specified therein. It then proceeds to say:

They shall pay Re. 1 per mensem as salary to Pesh-I-Imam and Rs. 2 per mensem as salary to Mouzan and shall present as in am two dhoties

worth Rs. 7 and two dhoties worth Rs. 3-8-0 to the said Pesh-I-Imam and said Mouza respectively during Ramzan Kuthuba and Jigaj Kuthuba

and shall also send Kanji vagaira daily to the said Pallivasal throughout in the said Ramzan month and distribute fruits etc. to Mukathis who would

visit during the said Kuthuba. If Mussafars go to the said Pallivasal they shall be fed at the rate of three Muslims in a week and if the pichana (mats)

etc, get damaged, they shall get them renewed, get the lamps burning throughout the day without fail and also effect repairs to the said Pallivasal

building.....Out of the income derived from the remaining lands in the said Thaikkal, Viz, one veli and four mahs of nanja and eight of mahs of

punja, out of the income derived from the house bearing door No. 1096 situate in East Street in the said fort, and from the house bearing door No.

50 situate in the East Alangan in the said fort, they (the trustees) shall perform the Mela to the said Thaikkal every year without fail and carry out

timely repairs to the Gori and buildings etc.

It will be seen that the purposes for which the income from the properties are to

be devoted are religious and charitable ones and there is no limit to the amount to be expended. That the endowment was only for the charity is made clear by the concluding portion of the document, where the testator provides that if there be any defect in the management, any Muslim can apply to remove the trustees and get others appointed with a view to have the charities performed in accordance with the terms of the will.

5. There are, however, some provisions in the document conferring certain benefits upon the relations of the testator. He provides for the performance of the marriage of his brother-in-law from out of the income. He also says that if the latter is unwilling to live with his wife, a house worth Rs. 300 should be purchased and made over to him for residence. In addition, the brother-in-law, who was one of the trustees, was to be paid three kalams of paddy per mensem. There is also a disposition in favour of a cousin of the testator, who was to be paid two kalams of paddy and Rs. 2 in cash per mensem. But the document does not provide that these payments were to extend beyond the lifetime of the two legatees.

The learned District Judge has construed the document as making a provision for the maintenance of the family of the brother-in-law. We are, however, unable to find anything, beyond a personal right in the persons designated to warrant such an inference. The document taken as a whole therefore substantially dedicates the properties to the charity with a charge in favour of two relations of the testator on a small extent of the income for the duration of their lives. There can be little doubt, from the provisions contained in the document, that the properties in substance had been given over to the charity.

6. A wakf has been defined under the Wakf Act 1954 as,
....the permanent dedication by a person professing Islam of any moveable or Immoveable property for any purpose recognised by the Muslim law as pious, religious or charitable and include-
(i)... (ii) (iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable.

7. The dedication now in question certainly satisfied this definition. Notwithstanding the dispositions in favour of the two relations specified in the

will, we are of opinion that the document substantially endows the properties for the charity specified therein permanently. The Wakf Board will,

therefore, have jurisdiction to treat this wakf as one coming under the Act. But the Board will be bound by the dispositions by the testator in favour

of his relations. It will be its duty to see that these relations, if they are existing, are paid as directed by the terms of the foundation.

8. Mr. Natesan, appearing for the appellant, contends that before the notification can be declared as valid, there should be an allocation of the

income from the properties between the charitable and secular purposes specified in the document and that the notification should relate only to the

former. The contention proceeds upon the definition of the term ""wakf"" in so far as it includes a family settlement or wakf-alal-aulad. But as we

stated earlier, the dedication in question is an absolute wakf and what the donees have is only a charge on the properties for the purposes specified

in the document. Further there is no specific provision in the Wakf Act for conferring any authority on the Wakf Board to allocate the income

between charitable and secular objects, where the deed of foundation partakes of both the characters. In such a case, the proper course will be to

frame a scheme regulating the expenses between the diverse objects of the Wakf. We are therefore, unable to accept the contention of the

appellant that before a notification can be made under S. 5(2) of the Act, there should be an allocation of the income from the wakf properties

between the charitable and secular objects.

9. The appeal therefore fails and is dismissed with costs.

Appeal dismissed.