

(1983) 03 MAD CK 0061
In the Madras High Court

Kamala Ganapathi Subramaniam

APPELLANT

Vs

The Authorised Officer, Land Reforms

RESPONDENT

Date of Decision : 07-03-1983

Acts Referred:

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 83

Citation : (1983) ILR (Mad) 278 : (1984) 1 MLJ 78

Hon'ble Judges : S. Swamikkannu, J; S. Swamikannu, J

Bench : Division Bench

Judgement

S. Swamikkannu, J.—This is a civil revision petition filed by the landlady, Kamala Ganapathi Subramaniam, u/s 83 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act (LVIII of 1961) as amended by the Act (XXXVII of 1972), hereinafter referred to as the Act, against the judgment, dated 25th February, 1980 in L.T.A. No. 149 of 1979 on the file of the Land Tribunal (Principal Subordinate Judge), Coimbatore. The Land Tribunal, while entertaining the appeal against the order of the Authorised Officer, Land Reforms, Coimbatore in file No. 6K|MRII|L, dated 23rd December, 1978, held on the point whether the order of the Authorised Officer, declaring surplus land in respect of the three charities is correct, that so far as Ayyarval Choultry, Palani is concerned, the Authorised Officer has committed an error in converting the actual extent into standard acres, that he has to arrive at the standard acres u/s 3(40) of the Act taking the basic assessment as the rate at which the land is assessed to land revenue and declare the surplus and so far as Arudra Rathotsavam is concerned, he held that it is a public trust of a charitable nature, concurring with the conclusion of the Authorised Officer. Under the head "Arudra Rathotsavam Charity", the Land Tribunal also held that since the land in this case is dry, the Authorised Officer has to allow one ordinarily acre besides the permissible limit of five standard acres in calculating the surplus land held by this trust. Since the actual extent is Ac. 10-65 he has to exclude one acre and convey the remaining acres 9-55 into standard acres and declare the surplus in excess of five standard acres. So far as the findings in respect of Ayyarval Choultry, Palani and Arudra

Rathotsavam charities are concerned, the conclusion arrived at by the Land Tribunal is not now questioned by the revision petitioner herein. On the other hand, the nature of the charity for the teaching of Sanskrit and Vedas in the National High School, Tiruchirappalli and for the free boarding of Brahmin students studying Vedas and Sanskrit in the National High School, Tiruchirappalli alone is the only question before us in this civil revision petition.

2. Mr. K. Srinivasan, learned Counsel for the revision petitioner contends that the conclusion arrived at by the Appellate Authority that the trust cannot be construed as a hostel entitled to an exemption limits of 25 standard acres is not correct, because, the trust squarely comes within the definition of Section 2 of the Tamil Nadu Land Reforms Act, 1961. This section was substituted by the Act XXXVII of 1972. The said Section 2 reads as follows:

Act not to apply to lands held by existing religious institution or religious trust of public nature:

(1) Subject to the provisions of Sub-sections (2) and (3) and of Section 6 nothing contained in this Act shall apply to lands held,--

(i) by any religious institution, or

(ii) by any religious trust of a public nature, which is in existence on the date of the commencement of this Act.

(2) Notwithstanding anything contained : in Sub-section (1), no such religious institution or religious trust of a public nature as is referred to in Sub-section (1) shall acquire by any means whatsoever any land after the date of the commencement of this this Act. . .

(3) Notwithstanding anything contained in this Act, for purposes of this section) where a public trust in existence on the date of the commencement of this Act, has been created both for a public purpose of a religious nature and for any other public purpose; or

(b) where the income from a public trust in existence on the date of the commencement of this Act is appropriated both for a public purpose of a religious nature and for any other public purpose, such public trust shall be deemed to be a religious trust of a public nature.

It is not in dispute that the trust is in existence on the date of the commencement of this Act. By virtue of the provision of Section 2 of the Act, Mr. K. Srinivasan, learned Counsel for the revision petitioner contends that the trust had been created for a religious purpose and the income from the public trust thus created and in existence today on the date of the commencement of this Act is appropriated for a public purpose of a religious nature and as such, the trust in question should be deemed to be a religious trust of a public nature as per the provision u/s 2(3) (6). In support of his contention the following passage in the will, dated 12th May, 1894 executed by Kaniyur Krishna Iyer is relied on.

The above lands mentioned for this trust relate to an extent of acre 50-62 in West Komaralingam village and Kaniyur village in Udumalpet taluk. The relevant portion of the will, dated 12th May, 1894 bequeathing 50 acres of land shows that the above land has been given in entirety for the benefit of Brahmin students studying Vedas and Sanskrit, viz., towards their education and maintenance.

Referring to the above passage in the will, Mr. K. Srinivasan, learned Counsel for the petitioner contends that the above said lands of about 50 acres were set apart for teaching Vedas and Sanskrit as well as for the maintenance of the Brahmin students studying Vedas and Sanskrit in the National High School, Tiruchirappalli and for their free boarding and as such, the entire land of about 50 acres mentioned above should be exempted from the purview of any of the provisions of the Act because Section 2 of the Act squarely provides that nothing contained in the Act shall apply to lands belonging to a religious trust of a public nature.

3. According to the learned Counsel for the revision petitioner, neither on the ground of only Rs. 1,200 being utilised for free boarding every year nor on the ground that the institution viz., the National High School, Tiruchirappalli was not either founded or run by the author of the trust or his descendants, the trust does not come under the definition of a religious trust of a public nature, which grounds were taken as the basis for both the Authorised Officer and the Appellate Authority rejecting the contention of the revision petitioner herein that the fifty acres of land in question come within the purview of the definition contemplated u/s 2 of the Act in that the land belonged to the religious trust of a public nature.

4. In this regard, Mr. K. Srinivasan, learned Counsel for the revision petitioner refers to the decision in A.K. Vavallevvai Maricair Dharmam Vs. The State of Tamil Nadu, , for the following proposition:

There is a definition of a "religious institution" in Section 3(36-B) of the Act and, therefore, for the purpose of Section 2(1) (i) it is that definition that will apply. As far as Section 2(1) (ii) is concerned, the Act itself has not defined what is a religious trust of a public nature. Consequently, we have to construe the provision according to its ordinary meaning and its natural tenor. The imparting of instructions in Vedas and Agamas is certainly of a religious nature. Therefore, whenever a trust which is of a public nature provides for the imparting of instructions in Vedas and Agamas, certainly that will be a religious trust of a public nature, and the imparting of instructions in Vedas and Agamas cannot be anything other than of religious nature.

With regard to some of these cases the trusts in addition to running of Veda Patasalas, also conduct other charities, like feeding four Desanthirees every day, teaching Sanskrit and feeding brahmin boys, or maintaining a thanneer pandal. Section 2(3) clearly points out that where a public trust has been created both

for a public purpose of a religious nature and for any other public purpose or the income from a public trust in existence on the date of the commencement of the Act is appropriated both for a public purpose of a religious nature and for any other public purpose, such public trust shall be deemed to be a religious trust of a public nature. Consequently with regard to all these trusts on the basis of Section 2(1) (ii) read with Section 2(3) of the Act, the provisions contained in the Act will not apply.

Mr. K. Srinivasan, learned Counsel for the revision petitioner further relies on the decision--Vavallevvai Maricair Dharmam v. State of Tamil Nadu (1981) 94 L.W. 137 in support of his contention. In that decision it is observed as followed:

In the instant case according to the trust deed, the object of the trust (which was a Muslim Trust) was to run a madarasa where Muslim girls and boys were given lessons in Koran and also given lectures in Islamic religion. The question was whether the trust was of a religious nature entitled to claim exemption u/s 2 of the Tamil Nadu Act (LVIII of 1961), the Authorised Officer held against the trust and an. appeal to the Tribunal also failed. On revision to the High Court by the trustee claiming that the trust was of a religious nature.

Held : The madarasa was intended to give only religious instructions to Muslim boys and girls and not general education. If it was merely a general education that, was imparted, then, it will be charitable. But the entire object of the trust being to give religious instructions to Muslim boys and girls, that is to spread religious tenets, the trust was only of a religious nature.

5. On the other hand, Mr. Chinnaswamy, learned Government Pleader, contends that the relevant portion of the will reads that it is only for the maintenance of the Brahmin students studying Vedas and Sanskrit that the author of the Will had created the trust and as such, the religious aspect contemplated by Section 2 of the Act is not available in the object incorporated in the relevant portion of the Will. He further points out that the Appellate Authority had also observed that the enquiry revealed that no income was used for running the National High School which was in existence even before the trust was created. He also points out that the number of students admitted in the boarding has not exceeded 10 at any time and that on an average only a sum of Rs. 1,200 per year appeared to have been utilised for free boarding. There is no hostel run by the trust and only a meagre amount appears to have been utilised for some inmates studying Vedas and Sanskrit. Therefore, it is submitted on behalf of the respondent, the Authorised Officer, by the learned Government Pleader that the trust cannot be construed as a religious trust of a public nature and totally exempt from the provisions of the Act.

6. The point for consideration in this civil revision petition is whether the fifty acres given by the testator for the maintenance and benefit of the Brahmin students studying Vedas and Sanskrit in the National High School, Tiruchirappalli belong to a religious trust of a public nature.

7. That the trust in question viz., the testator setting apart a portion of his lands about 50 acres in extent for the benefit and maintenance of the Brahmin students studying Vedas and Sanskrit, is a trust of a public nature is not questioned. The contention raised by Mr. Chinnaswamy, learned Government pleader is that the trust in question is not a religious trust of a public nature because u/s 3(36-A)--Explanation--the trust cannot be treated as a public trust. In this regard, the learned Government Pleader to the decision rendered by Mohan, J., in R. Lakshmana Pillai v. Authorised Officer C.R.P. No. 2643 of 1981 decided on 12th November, 1982. In that decision, the trustee was called upon to produce the accounts maintained by him and he was also permitted to let in evidence if he so desired. The trustee filed documents relating to the creation of trust and examined some witnesses including the clerk of the trust. The objection raised on behalf of the trust in that case was that the trust was a religious trust of public nature and that the provisions of the Act as amended by the Act XXXVII of 1972 would not apply. It was held by the Authorised Officer in that case that the trust was not a religious : trust of public nature. On the other hand, he held that the trust was a charitable trust of public nature and was entitled to hold only five standard acres. The Tribunal held that the liability to exemption is conditioned upon the application of Section 6 of the Act and therefore, he was of the view that the Authorised Officer could have granted total exemption for the land proportionate to the expenditure incurred for religious and charitable purposes, and ought to have separated the remaining proportionate extent and declared the same as not property of the trust. In this view, he set aside the order of the Authorised Officer and remitted the matter. The learned Advocate-General conceded that Section 6 of the Act will not apply to that case. However, it was urged by him that the trust cannot be called a public trust within the definition of Section 3(36-AAA), of a charitable nature. On the contrary, it falls squarely under the Explanation to Clause (36-A) because the factual finding of both the authorities is to the effect that a very small portion of the total average income alone has been spent for the purposes ordained in the Will. In C.R.P. No. 2643 of 1981, the correctness of the order of the Tribunal, which has held that Section 6 would apply, was not gone into, as it was agreed that Section 6 did not apply to the case. In order to decide the question that arose in that case viz., whether the trust could be called a public trust as defined u/s 3(36-AAA) of the Act or a private trust as defined u/s 3(36-A) of the Act; on actual investigation it had to be answered whether the revision petitioner therein belonged to any one of the categories mentioned therein. Therefore, the revision petition was allowed and remitted for a limited purpose mentioned above.

8. Mr. K. Srinivasan, learned Counsel for the revision petitioner herein would contend that the above decision is not applicable to the facts of the instant case before us. He submits that the entire matter relating to the case had been placed before the Authorised Officer as well as the Appellate Authority and both of them have found concurrently that the trust is a public trust. According to Mr. K. Srinivasan, this Court is only called upon to decide whether the said public trust

is of a religious nature or of a charitable nature. In this regard, he also points out that both the forums below have observed that on an average only a sum of Rs, 1,200 per year appears to be utilised for free boarding. It is not mentioned by both of them as to what remained after spending a sum of Rs. 1,200 per year towards the purpose of the trust. This would only mean that the income from the fifty acres is only meagre and that the maximum portion of the same had been utilised for the benefit and maintenance of the Brahmin students studying Vedas and Sanskrit in the National High School, Tiruchirappalli. Accordingly in C.R.P. No. 2643 of 1981 there was no finding of fact even relating to the persons who were actually managing the trust whether they were the heirs of the founder or whether they belonged to the family of the founder. In the instant case there is no dispute relating to the management of the trust. It is common ground that the heirs of the original founder viz., the testator of the will, Kaniyur Krishna Iyer are managing the trust. So far as the income from those fifty acres of land is concerned, Mr. K. Srinivasan submits that it is not the contention of the Authorised Officer that any portion of the income from those fifty acres of land was appropriated by the persons managing the trust. It is also relevant in this connection to note that in the counter-statement filed on behalf of the Authorised Officer, Land Reforms in L.T.A. No. 149 of 1979 it is stated that the number of students admitted in the institution has never exceeded 10 at any time and that on the average a sum of Rs. 1,000 to Rs. 1,200 appears to have been utilised for free boarding. Hence the land under trust has been considered to be a public trust of charitable nature and in that capacity entitled to retain only five standard acres, the rest being treated as surplus. When such an admission is available in the counter-statement filed on behalf of the Authorised Officer before the Land Tribunal it is contended by Mr. K. Srinivasan that no further investigation is necessary for deciding whether the trust is a private trust as contemplated by Section 3(36-A) or a public trust as contemplated by Section 3(36-AAA). According to the learned Counsel for the revision petitioner, inasmuch as the Authorised Officer has in fact found that the trust is a public trust of charitable nature, the question that remains to be considered! in this Court in this revision is only whether it is public trust of a religious nature or one of only a charitable nature as contemplated by Section 2 of the Act. It is also relevant to note that the Authorised Officer has not taken on revision the order of the Land Tribunal wherein it is specifically held by the Land Tribunal that the trust is a public trust. Therefore, the circumstances that existed in C.R.P. No. 2643 of 1981 are not similar to the circumstances that are in existence in this revision. In the instant case, it is not the case of the Authorised Officer or the Land Tribunal that the income from the lands is utilised for some other purposes. The only complaint is that the students studying Vedas and Sanskrit in the institution are only about 10 and that the average money spent on them is about Rs. 1,200 per year. Under the circumstances, the question arises for determination now, whether a remand is necessary to investigate the nature of the trust whether it is public or private trust. This question has necessarily to be answered that such a remand is not necessary because the facts are very clear that all the accounts were placed

before the Authorised Officer, who has only come to the conclusion that about a sum of Rs. 1,200 per year was being spent on ten students. Even in the counter-statement filed on behalf of the Authorised Officer in L.T.A. No. 149 of 1979 before the Land Tribunal it was pointed out on behalf of the Authorised Officer that the trust has been considered as a public trust of charitable nature. The question that confronts this Court at this stage is only to decide whether the public trust regarding the utilisation of the income from the fifty acres of land for the students studying Vedas and Sanskrit in the National High School, Tiruchirappalli is a religious trust of a public nature or not.

9. Mr. Chinnaswami, learned Government Pleader, contends that a reading of the relevant passage extracted above would clearly show that it was for the maintenance of the students studying Vedas and Sanskrit belonging to the Brahmin community who have to be given free boarding and maintenance and as such in construing that passage, the religious nature of the trust is not very much predominant, but, on the other hand, it is only the maintenance of the Brahmin students that is very much stressed therein. I am unable to uphold this contention raised on behalf of the Authorised Officer by the learned Government Pleader. Mr. Chinnaswami also contends that the National High School, Tiruchirappalli is not conducted by the charities but it was in existence even prior to the coming into existence of the charity by virtue of the provisions in the Will. In order to create a religious trust in a particular institution it is not necessary that the said institution should be run by the author of the trust. It is only the intention of the author of the trust that has to be taken into consideration in order to decide whether a particular trust is a religious trust of a public nature or a public trust of a charitable nature.

10. It was observed in *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, , as follows:

It is well-established, however, that where the donor's intention can be given effect to the Court has no authority to sanction any deviation from the intentions expressed by the settlor, on the grounds of expediency and the Court cannot exercise the power of applying the trust property or its income to other purpose simply because it considers them to be more expedient or more beneficial than what the settlor had directed To divert the trust property or funds for purposes which the Charity Commissioner or the Court considers expedient or proper, although the original objects of the founder can still be carried out, is an "unwarranted encroachment on the freedom of religious institutions in regard to the management of their religious affairs.

Bearing in mind the above observation this Court is of the opinion that the Will which creates the trust has to be fully read and the intention of the author of the Will should be ascertained before actually applying the provisions of law to the nature of the trust created by that Will--whether it is of a public nature or a public trust of charitable nature and in this view when the above portion of the will is read, it is clear that it is for the purpose of encouraging the students of the

Brahmin Community to read Vedas and Sanskrit that the author of the Will had created the trust,

11. The four Vedas have four Mahavakyas. The Vedas have been reported with a faithfulness which is unparalleled in the history of the literatures of the world.

Prajnanambrahma

The intelligence is Divine.

avamatma brahma

The soul is Divine.

atom brahmasmi

I am Divine.

tattvamasi

That art Thou.

12. These four statements, taken from four different Vedas, emphasize the one fundamental truth. And that truth is that man has the capacity to rise beyond the present position, to surpass himself, to fulfil himself. This fulfilment is not merely a vain dream. But it is something which, by effort, will be possible for us to realise.

13. Veda is apta vacana. That is the essence of the Puranas. Who are the aptas? They are those who realize God. Are they confined to our country alone? The answer is : This quality of God-realization is one possessed by the sages of this country. We wish to regard the teaching of the wise, whether they are of India or elsewhere, as equivalent of Vedas. Such people of God-realization are to be found all over the world, wherever religion is seriously practised, intensely believed in. The great Vedas affirm the dignity of the human soul. The Vedas may have been written in 3,000 B.C., but were composed much earlier,

14. Sanskrit is a great language. Some Sanskrit scriptures are reported to have been found on the great wall of China. Sanskrit texts are found also on the scrolls and scarves exchanged between the emperors of China and the dignitaries of other parts of Central Asia in the 16th, 17th and 18th centuries. In the different spheres of Sanskrit language and literature philosophy and religion, music and metaphysics, mathematics and astronomy, medicine and surgery, work is being done. Of the fourteen languages we have in our Schedule, ten are Sanskritic and four are Dravidian, but there is interaction between them. That has happened because there has been this correlation of our cultures, integration of different sides of our life.

15. Vedas are only connected with Hindu religion. Sanskrit, though a language of international character and is the main language that has given birth to many other civilised languages in the world cannot claim itself to belong to a particular

religion or community. It is a language which, Bharat has given birth to for the benefit of the entire human race. As a civilised language which "came into existence very early during the time of the human existence it contained Vedas and Shastras as well as Agarnas. The imparting of instruction in the Vedas and "Agamas is certainly of a religious nature. Therefore, whenever a trust which is of public nature, provides for the imparting of instructions in Vedas and Agamas, certainly that will be a religious trust of a public nature and the imparting of the instructions in Vedas and Agamas cannot be anything other than of a religious nature. Therefore, I hold that the public trust with fifty acres of land created as per the will executed by Kaniyur Krishna Iyer for the imparting of instructions in Vedas and study of Sanskrit in the National High School, Tiruchirappalli is a religious trust of a public nature and hold accordingly.

16. In the result, the civil revision petition is allowed. The lands, which are about 50.62 ordinary acres are excluded from the purview of the Act as amended. In other words, the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, LVIII of 1961, as amended by the Act XXXVII of 1972, is not applicable to the lands held by the religious trust of a public nature created under the will executed by Kaniyur Krishna Iyer. Under the circumstances, there is no order as to costs.