(1978) 02 MAD CK 0046

In the Madras High Court

Mohamed Abdul Kader Mariciar alias M.M. Maricair, represented by Power of Attorney Agent, Idris Maricair — APPELLANT

Vs

The State of Pondicherry — RESPONDENT

Date of Decision : 22-02-1978

Acts Referred:

Citation : (1979) 1 MLJ 477

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—The petitioner is the founder of a private trust known as M.M. Maricair Trust. The said trust had been created by him on 15th December, 1970. In proceedings initiated under the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973, hereinafter referred to as the Act, the lands held by the said trust have been included in the holding of the petitioner and the petitioner''s holding was determined as 20-4028 standard hectares by the Authorised Officer. The said computation of the extent of the petitioner''s holding by the Authorised Officer was challenged before the Land Tribunal by the petitioner. The Land Tribunal also affirmed the view taken by the Authorised Officer. The petitioner has therefore come before this Court by way of this revision petition.

2. Before me, the learned Counsel for the petitioner contends that though the document is styled as a family trust it is in fact a public trust and therefore properties owned by the said trust will not be covered by the provisions of the Act. The learned Counsel has taken me through the trust deed, dated 15th December, 1970 under which an extent of 3 velies 8 mas and 68 kulies have been endowed for carrying out the objects set out in the trust deed. Under the trust deed the founder has appointed his eldest son Mohammed Idress Maricair, as the sole trustee. The trust is irrevocable for a period of 25 years. The objects set down in the trust deed is that from and out of the income from the trust properties two sums of Rs. 25,000 each are to be paid to the grandson and grand-daughter of the trustee and out of the balance of the income, 50% is to be

distributed to his sons and daughters and the other 50% to be accumulated for a period of 25 years and thereafter distributed to his sons and daughters. Both the Authorised Officer and the Land Tribunal have held that the trust in question is purely a private trust and therefore the lands covered by the trust deed should be taken to be within the holding of the-founder. After going through the objects of the trust as set out in the trust deed I am clearly of the view that the trust cannot be called in any sense a public trust as contended by the learned Counsel for the petitioner. Therefore, the trust cannot claim any exemption from the provisions of the Act as a public trust, Once the trust cannot claim exemption as a public trust the question is whether the lands held by it can be clubbed with the holding of the founder as has been done in this case. According to the learned Counsel for the petitioner even on the basis that the trust deed created by the petitioner under the document dated 15th December, 1970 is not a public trust but only a private trust, the private trust as coming within the meaning of a ''person'' as defined under the Act, is entitled to hold a ceiling extent of six standard hectares u/s 4(1) of the Act. In this case, the definition of a person in Section 2(26) takes in a company, family firms, society or association of individuals (whether incorporated or not) or by a private trust or a public trust. Therefore, a private trust will squarely come under the said definition of a person. Section 4(1) enables every person to hold six standard hectares as his ceiling area. Therefore a private trust which comes under the definition of a person can also hold the ceiling extent referred to in Section 4(1) of the Act.

3. However in this case, the lands held by the private trust has been included in the holding of the founder and such inclusion has been upheld by the Tribunal. The reason given by the Authorised Officer and the Tribunal for such inclusion is that as the private trust is not exempted from the provisions of the Act, the lands covered by the trust deed will have to be included in the holding of the founder. They have also given another reason for justifying that inclusion. They said u/s 4(v)(a) even the lands held by a public trust Have been deemed to be held by the founder of the trust or his heirs if a substantial portion of the income from the trust is appropriated for the benefit of the founder or his family members and therefore the lands held by a private trust exclusively for the benefit of the family members of the founder have also to be included in the holding of the founder. It is true Section 2(30) defining a public trust provides that if the income from the trust is substantially appropriated for the benefit of the founder of the trust or heirs or of his family members, such trust shall be deemed to be a private trust notwithstanding the terms of the trust, Section 5(1) deals with such deemed private trust which comes under the proviso to Section 2(30). That section says as follows:

Where under the terms of a public trust any interest either in the land in respect of which the public trust is created or in the income from such land is reserved in favour of the founder of such public trust, the authorised officer shall declare the extent of land which bears to the total extent of land held on the appointed day in respect of which the public trust is created, the same proportion as such interest bears to the total interest in such land or the income therefrom.

Under Section 4(v)(a), the land held by the public trust referred to in the proviso to Clause (30) of Section 2 shall be deemed to be held by the founder or his heirs. Sections 4(v)(a) and 5 deal with the public trust which is deemed to be a private trust under the proviso to Section 2(30). But, there is no such provision in cases of private trusts coming u/s 2(29). In this case, for determination of the ceiling area of a deemed private trust Section 4(5)(a) has been invoked for clubbing lands of the private trust with that of the founder. I do sot see how the provisions relating to a public trust can be invoked in the case of a private trust. Admittedly, there is no specific provision in the Act which treats the lands held by a private trust as the lands of the founder. There is a special provision in respect of the public trusts which are deemed to be private trust under the proviso to Section 2(30). I am of the view, in the absence of a specific provision stating that the lands held by the private trust shall be taken as lands held by the founder the authorities cannot invoke the provisions of the Act relating to the public trust to justify the inclusion of the lands held by the private trust with the holding of the founder. So long as the Act treats the private trust as a person, the private trust is entitled to hold the ceiling extent of six ''standard hectares u/s 4(1). In this case it has been treated as the holding of the founder and this is in my view without any justification under the provisions of the Act.

4. One other reason given by the Authorised Officer as well as the Tribunal is that the trust deed has been registered only after the appointed day and therefore it cannot be taken into account and the lands dealt with in the trust deed should be taken to be the lands of the founder. Though the trust deed came to be registered after the appointed day, the trust deed has been executed on 15th December, 1970 long before the appointed day. It is well-established that a document once registered will date back and be effective from the date of the execution. There is no finding by the authorities below that the document has been ante-dated though the execution was after the appointed day. So long as there is no finding that the document is ante-dated it has to be presumed that the document has been executed on 15th December, 1970 and that is long before the appointed day. From the mere fact that the document came to be registered after the appointed clay, it cannot be said to have come into existence after the appointed day. The transfer of title under the trust deed takes place from the date of the execution of the trust deed even though the document is registered later. In this view of the matter the order of the Authorised Officer and the Land Tribunal are set aside and the matter is remitted to the Authorised Officer for fresh disposal after excluding the lands belonging to the trust from the petitioner''s holding and determine the ceiling area of the private trust separately, No costs.

