(1984) 03 MAD CK 0001

In the Madras High Court

Case No : Civil Revision Petition No. 4248 of 1982

Mohamed Wather Trust APPELLANT

Vs

The Authorised Officer, (Land Reforms) Mannargudi, Thanjavur District RESPONDENT

Date of Decision : 08-03-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 2, 6, 6(2), 6(3), 83

Citation : (1985) ILR (Mad) 292

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : K. Chandramouli, for the Appellant; S. Krishnaswami, for the Respondent

Final Decision : Allowed

Judgement

Swamikkannu, J.—This is a civil revision petition filed by Mohammed Nather Trust represented by Trustee Nabeesa Azmal, Middle Street,

Kodikalpalayam u/s 83 of the Tamil Nadu Act LVII of 1961 read with Section 115 of the CPC against the judgment and order, dated 5th July,

1980 in L.T. C.M.A. No. 169/79 on the file of the Court of Land Tribunal (District Revenue officer Land Reforms) Thanjavur.

2. The Authorised Officer, Mannargudi declared on 2nd May, 1977 u/s 9(2)(b) of the Act LVII I of 1961 amended by Act XXXVII of 1972 that

the Petitioner Md. Nather Trust, Kodikalpalayam as a public trust of charitable nature and it was allowed to retain 5.00 standard acres of lands as

per the provision of the Act. Against the said order, the trustee of the Petitioner-trust filed an appeal before the Land Tribunal, Nagapattinam. The land Tribunal Nagapattinam in its judgment in Civil Miscellaneous Appeal No. 2 of 1978, dated 16tb March, 1979 had set aside the order of the

Authorised Officer, Mannargudi and remanded the matter for fresh enquiry on the ground that be reasons for arriving at the conclusion that the

Trust was of a charitable nature was not giver, in the sale order of the Authorised Officer, Mannargudi. Accordingly the remanded enquiry was

taken up by the Authorised Officer, Mannargudi, Exhibits P-1 to P-10 were filed before the Authorised Officer. It was argued on behalf of the

Petitioner-trust before the Authorised Officer that the object of the Trust is clearly mentioned Exhibit P-1 Trust Deed. Document No. 826 of 1955

and that discloses that the trust deed is of a religious nature and therefore, the trust has to be exempted from the purview of the Tamil Nadu Land

Reforms (Fixation of Ceiling on Land) Act, 1961 as amended by Act XXXVII of 1972 treating it as a trust of religious nature.

3. It is mentioned in paragraph 5(i) of the Order of the Authorised Officer, dated 13tb September, 1979 in MR1/19M Trust/A-13 as follows:

The trust deeds Exhibit P-1 were-verified. The object of the trust have been clearly mentioned in them. Their details as per the recitals in the deeds

are as follows:

The Authorised Officer, on a perusal of the above object of the Trust that the Petitioner Trust is only a Public Trust of charitable nature. Hence, the

request of the Trustee of the Petitioner-trust to treat the Trust as a Trust of religious nature was rejected by the Authorised Officer. In other words,

it was held by the Authorised Officer (Land Reforms), Mannargudi that the Petitioner-trust Mohamed Nather Trust, Kodikalplayam is a Public

Trust of Charitable nature and as such it can held 500 Standard acres only. Aggrieved by the above order of the learned Authorised Officer,

Mannargudi, the Petitioner-trust preferred L.T.O.M.A. No. 169 of 1979 before the Court of the Land Tribunal (District Revenue Officer),

Thanjavur. The Court of the Land Tribunal (District Revenue Officer) at Thajavur also confirmed the finding of the learned Authorised Officer

(Land Reforms) Mannargudi and held that all the object of the Trust are individual in natures and as such, the authorised Officer rightly held that it

is a trust of charitable nature.

4. Aggrieved by the above decision of the Court of the Land Tribunal (District

Revenue Officer) at Thanjavur, the Petitioner-trust has preferred

this civil revision petition u/s 83 of the Tamil Nadu Act LVIII of 1961.

5. Mr. K. Chandramonli, the learned Counsel appearing for the Petitioner, Mohamed Nather Trust, Kodikalpalayam contends that the authorities

below failed to see that object Nos. 1 and 3 mentioned in the Settlement Deed, dated 1st May, 1955 are clearly of a religious nature and not

charitable in character. It is further submitted on behalf of the revision Petitioner herein that the purpose of reciting Moulath Sheriff and recital of

Quoran in Mosque are dearly religious in character and hence, the trust is a religious trust of public nature as per the provisions of Section 2 of the

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. In other words, it is contended on behalf of the Petitioner trust that both the

authorities below went wrong in holding that the conduct of moulads (ceremonies) fathihas public feeding, reading Quoran in Mosque on a

particular day hearing the electric current charges of mosques are all of charitable nature and religious significance can be attached. The learned

Counsel for the revision Petitioner contends that the Land Tribunal failed to note that where the objects are for both religious and charitable

purposes, the trust must be deemed to be a public trust of a religious nature.

6. The point for consideration in this Civil revision petition is whether the Petitioner-trust is a religious trust of a public nature as per the provision of

Section 2 of the Tamil Nadu Land Reforms Act, 1961?

7. Section 2 of the Tamil Nadu Land Reforms Act, 1961 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 whatever any land after the date of the commencement of this Act.

3. Notwithstanding anything contained in this Act, for purposes of this section.

(a) 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 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.

In the instant case Mohammad Nather to Creator of the trust executed a settlement deed on 1st May, 1955 marked as exhibit P-1 in the record of

the authorised officer) for the purpose of certain charities in Jani-ul-Majeed Pallivasal at Kodikalpalayam. The object of the Trust are clearly

enumerated in exhibit P-1 settlement, deed as extracted from the order of the Authorised Officer.

8. It is contended on behalf of the Respondent, the Authorised Officsr, Mannargudi that the Petitioner-trust was purely for the personal benefit of

this testator in the trust deed 798/60 and so it is not a trust of public nature. In this regard, the observation of the lower appellate authority is relied

on behalf of the Respondent herein as follows:

The trust deed 976/60 the object of which is reproduced below will clearly show that it is purely for the personal benefit of the testator and not in

the public interest.

9. It is relevant in this connection to note that the objects of the Petitioner-trust are set out only in exhibit P-1, Trust deed, Document No. 826/55.

In the said document, out of the seven objects, object No. 1 clearly states that in the month of Rabi-ul-Avva'' and on the 14th Crescent day by

spending Rs. 150 Moulad Sheriff had to be recited. It is also enumerated in the third object of exhibit P-1 trust deed that in Manipuval Hasarath

Dharma-sabha in the month of Ramzan on the 20th crescent day by spending Rs. 7 Quoran Sherid had to be recited. The other objects in exhibit

P-1 trust deed are with respect to feeding the poor with gruel by spending Rs. 37 in the month of Ramzan on the 22nd crescent day in the

Pallivasal. In the object No. 4, in exhibit P-1 trust deed, it is provided that on the 25th crescent day in the month of Ramzan Misbahamal group

Rateep Sangam had to perform Rateep in the Ppllivasal by spending Rs. 20. By object No. 5 in the said trust deed exhibit P-1 it is provided that the electric current charges of the illumination of the Janai U1-Masjeed for every month will be paid. The 6th object provides in exhibit P-1 that the

trust will pay every month the electric current charges for illumination of Manipuval Hasarath Dharma Sabha. The object No. 7 in exhibit P-1 is

with respect to payment for electric current charges by the trust every month for the illumination of Pudupalli alias Pabatha Hayarajak Darga. Thus

we find that out of the seven objects mentioned in exhibit P-1 trust deed two of them namely Object Nos. 1 and 3 contemplate recital of Mouled

Sheriff and Quoran Sheriff at the expenses of the trust on specified dates.

10. The trustee of the Petitioner-trust produced before the Authorised Officer exhibit P-5, P-6 and P-7 moulads. Exhibit P-8 P-9 and P-10 were

unedited account note books. They were not relied on by the Authorised Officer because the accounts were not supported by bills or

authenticated vouchers. It is relevant to note that it is only the objects of the trust as enumerated in exhibit P-1 trust deed have to be scrutinised in

order to come to a conclusion whether the Petitioner-trust herein is a religious trust of public nature or not.

11. In exhibit P-1, trust deed, it is enumerated specifically as Objects 1 and 3 that on specified dates, Mould Sheriff and Quoran Sheriff have to be

recited. It cannot be sad fort he individual benefit of the author of the trust that these two objects have been incorporated in the trust deed. The

recital of Moulad Sheriff or Quoran Sheriff can be held only for the benefit of public and such a recital can be held to be only of religious nature.

12. In A.K. Vavallevvai Maricair Dharmam Vs. The State of Tamil Nadu, the object of the Trust which was a Muslim Trust was to run a school

where Muslim boys and girls were given lessons in Quoran 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 religious nature, it was held that 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'' In the instant case before us, the Trust is a muslim trust. It is provided in the trust deed that

there should be recital of Quoran on the 20th Crescent day of the Ramzan month by spending Rs. 7 in Manpavul Hazarath h Dharma Sabha. Thus

we find that one of the objects of the Trust is to recite Quoran. Reading of the Quoran in public and private places can only be regarded as

religious and pious and it seems to me that it must also be regarded as charitable for the benefit of mussalmans. Similarly the recital of Moulad

Sheriff on the I4th Crescent day of Rabi-ul-Avval month can be regarded as religious and pious. The fact that money may be expended on the

reading of the Quoran in private places as well as in public places, does not detract from the religious pious and charitable character of the object.

The following passage from Syed Ameer AH Mohammedan Law volume I (Tagore Law Lectures, 1884) at page 273 (fourth edition) can be

usefully referred to:

The words ''piety'' and ''charity'' have a much wider signification in Mussulman Law and religious than in any other system. Khair, Birr, ihsan and c,

include every purpose which is recognised as good or pious under the Mussulman religion and the Mussulman Law;

and the test of what is ''good'' or ''pious'' or ''charitable'' is the approval of the Almighty. Every ''good purpose'' (Wajah-ul-Khair) which God

approves, or by which approach (kurbat) is attained to the Deity, is a fitting purpose for a valid and lawful wakf or dedication. A provision for

one''s self, for one''s children, for one''s relatives is as good and pious an act as a dedication for the support of the general body of the poor. The

principle is founded on the religious of Islam, and derived from the teachings of the Prophet and therefore any variation of the rule is a direct

interference with the Mussulman religion.

Another point worthy of attention in the Mussulman law is that every trust for whatever purpose created is really and in fact for the benefit of

human beings. The religious and legal system of Islam is founded essentially on the service and well-being of humanity. A dedication may be made

for a mosque-but the mosque is intended for human beings to pray in it may be for a school, intended for the instruction of students; for khankahs,

where a particular class of people congregate for religious exercises, and so forth. Every object, therefore, is intended for the spiritual, religious,

moral or material good of human beings. This is the meaning of the terse and sententious rule pronounced by the Prophet tie up the property and

leave its usufruct free for mankind'' A wakf once made for whatever object, has the effect of ''detaining'' the property in the custody of the

almighty, its produce alone being applicable for the good of human beings. This is the meaning of the definition given by the law officers in the case

of Mohammed Sadik v. Mohammed Ali 1 Sef. Rep. 17 that wakf implies ''the relinquishment of the proprietary right in any article of property such

as lands, tenements, and c, and consecrating it in such manner to the service of God that it may be of benefit men''. This definition was not inverted

by them but borrowed from tip law-books, and must be read with the explanations given in them.

In the Islamic system here''s no such thing as a dedication ''solely to the work ship of God''. A dedication ''solely to the worship of God'' is an

unmeaning phrase in Islam. The service of man and the good of humanity constitute preeminently the service and worship of God. Everything which

is dedicated to God is in reality for the good of mankind; and everything which is dedicated for the good of human beings, individually or

collectively is for the service of God. Every pious act is ''ibadat (worship)'', the service of God'' to provide maintenance for one''s parents, for

one''s children for one''s poor relations are acts of ibadat. The essence of every wakf iskurbat approach to the Almighty prayers are one form of

dadat and kurbat''.

13. In Mukkaram Ali Khan v. Anjuman Unnissa Bibi ILR (1923) All 152 it has been held that a wakf created for reading of fateha and for

charitable purposes including 1he maintenance of the founder''s poor relations and dependants was valid according to the Muthammadan Law. In

that case the main purpose of the endowment was the remembrance of the anniversary of the Inam Hassain Sahe band the holding of annual

majlison that occasion to celebrate it. Since the said celebration involved the offering of prayers and reading of Holy Koran, the trust was held to

be a valid religious endowment.

14. In Abdul Sattar v. Abdul Hamid ILR 1945 Mad. 276 the founder of the wakf merely directed Koran to be read over his tomb. Reading of

Koran either in public or a private place was regarded as of religious and pious object and it was also taken to be a charitable object as reading of

the koran is her the benift of all Muslims.

15. In Bai Hirbai Rahim Aloo Paroo and Kesarbai Dharamsey Kakoo Charitable and Religious Trust Vs. Commissioner of Income Tax, Bombay

City II, the Bombay High Court has approved the principle laid down by the Madras High Court in Sattar Ismail (Supra) and has held hat the

reading of holy Koran is not only a religious and pious act, but it would constitute a valid purpose of Public religious endowment. No prayer among

Mohammedans is complete Without recital of the first seven Suras of the holy Quoran known is Fateha.

16. The learned Counsel for the Respondent would however point out that it has been held by a Division Bench of this Court in Muthuchamt v.

Muthiah Chettiar (1975) T.L.N.J. 321 that mere running of a Vedapatasala will not amount to a religious purpose and that in view of the reasoning

in that decision, the trust in this case cannot be held to be of religious nature. In that case, an endowment had been created for running a patasala

teaching Yajur Veda in the temple premises. It was claimed that the said trust will come under the definition of religious endowment. The Division

Bench took the view that teaching of Yajur Veda by itself will not be of a religious object so as to convert the endowment into a religious

endowment, that a religious institution is one in which worship is done to an idol or some service is done to an idol or in connection with a festival-

in a temple, and that the location of the Veda Patasala in the temple premises will make no difference any more than if an ordinary school imp rung

secular instruction were situate thereon. I do not see how the ''principle laid down in that case will apply to the facts of the case before us. In the

above case, the patasala was started only for teaching Yajur Veda and the Court held that teaching of Yajur Veda by itself cannot be said to be

religious object, since the teaching of Yajur Veda is not connected with any religious object. In this case, however, the object of providing for the

recital of Quoran in a public place as well as reading of Moulad Sheriff can only be held towards a religious object.

17. The learned Counsel for the Trust/revision Petitioner herein also relies on a decision reported in Vedapatasala Trust v. State of Tamil Nadu

(1980) 94 L.W. 137 for the proposition that a trust created for the running of a Vedapatasala is certainly religious trust and there can be no

contrivers about it. Therefore the trust will constitute religious trust of public nature. The learned Counsel for the revision Petitioner also relies on

the decision of this Court reported in Kamala Ganapathi Subramaniam v. Authorised Officer (1984) 1 M.L.T. 78 for the proposition that it is only

the intention of the author that has to be considered in order to decide whether a particular, trust is a religious trust of a public nature or a public

trust of a charitable nature. In the said decision, it was held that importing of the instruction in Vedas and Agama is certainly of a religious nature

and therefore whenever a trust which is of a public nature provides for imparting of instruction in Vedas and Agamas. certainly that will be a

religious trust of a public nature and the imparting of the instruction of Vedas and Agamma cannot be anything other than of a religious nature.

18. In the instant case before us also, a reading of all the objects clearly shows that the author had mainly intended to create a trust for religious

purpose, Inasmuch as the third object specified in exhibit P1 trust Deed deals about reading of Quoran and the first of which also deals with

reading of Moulad Sheriff, we can safely hold the main object of the trust was to give religious benefit of reading Quran to those who assemble at

the public places where the holy Quran and Moulad Sheriff had to be recited.

19. Under the circumstances I hold that the trust is only of a religious nature and it therefore comes under the exemption provided u/s 2 of the Act.

The Civil Revision Petition is therefore allowed. However, there will be no order as to Costs.

