

(1983) 08 AP CK 0009
In the Andhra Pradesh High Court
Case No : Appeal No. 239 of 1976

P. Kondaiah Chetty and Another	Vs	APPELLANT
Cheruva Venkata Subrahmanyam and Others		RESPONDENT

Date of Decision : 11-08-1983

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966
— Section 77, 77(1), 78

Citation : AIR 1984 AP 145 : (1984) 1 APLJ 70

Hon'ble Judges : Rama Rao, J;Raghuvir, J

Bench : Division Bench

Advocate : K.P. Narayana Rao and S.K. Khasim, for the Appellant; Sreeram Murthy, General and Munnava Venkata Rao, for the Respondent

Judgement

Raghuvir, J.—This appeal relates to a choultry in Ongole town run in the name of "Ayyanna Chetty Choultry". It is seen, in its name the founder's name is incorporated. The two grandsons of the founder, P. Kondaiah Chetty and P. Venkata Subbarayudu, obtained a declaration from the Deputy Commissioner of Endowments on Nov. 18, 1969 holding that the premises of the building is not governed by the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 17 of 1966 (the Act). Thereupon, a social worker, C. V. Subrahmanya Sastry, two persons, Shaik Abdul Manaf, Manthri Seetharamaneyulu, who described themselves as poor persons, two others, P. Ramaiah and Kadava Venkata Subbaiah, in all five, laid a suit to set aside the order of the Deputy Commissioner. In that suit, the two grandsons of the founder, were made parties. The case of the five persons is, the Choultry is a famous institution in Ongole and is governed by the provisions of the Act. The suit was resisted and in answer, it was averred, the building was owned by them and was never a Choultry, except that travellers were allowed to sleep in Verandahs; its rooms were let-out but rents were collected for the benefit of Ayyanna Chetty and his descendants. Accounts were maintained and the books show, rents were received by Ayyanna Chetty and his successors-in-interest. The

order of the Dy. Commissioner was not illegal or incorrect. At the trial, eighteen witnesses, all from Ongole town, were examined. Most of them are septuagenarians, who deposed, the building in question was declared a Choultry in December, 1919 by Ayyanna Chetty and ever since, is used as Choultry. On a consideration of the evidence, the impugned order was set aside. The suit was decreed. Hence appeal by the two grandsons of the founder. In the appeal, all their contentions in the suit, are reiterated.

2. Choultries in South India, were always regarded as charitable institutions. In the treatise, the Hindu Law of Religious and Charitable Trusts by B. K. Mukherjea, at paragraph 2.34 (4th Edition), it is recited, "Dharmasala" in North India and Choultries in South India are regarded as charitable institutions. In Vedic period similar institutions were called, "Propatha". They were referred, "Pratisrayagriha" in the post-vedic period. Like institutions in Bengal are known, "Sadabrats", but in South India, Choultries are to be distinguished from "Annasatras". In what particular manner, a Choultry is different from "Dharmashala", however, is unclear, in the book. That controversy is not called for, in the instant case.

3. In the instant case, a large number of residents of Ongole town were examined at trial. The preponderance of evidence on record shows, the building in question, was dedicated as Choultry by its owner in 1919. Having regard to the evidence, it is not necessary to consider the instant case from the standpoint of general tests. The evidence discloses, the site in question where the building is construed was purchased by Ayyanna Chetty on April 27, 1918, P. Kondaiah Chetty deposed, immediately after the purchase, his grandfather constructed a building. It contains five large family apartments, one part of the building is referred as "small portion" containing 18 rooms, and other is referred, a family room, two are referred as big family rooms, three are singlerooms. The building consisted of four tenements let-out to shops. In the first floor, there is a marriage hall with the capacity to accommodate 200 people.

4. The residents of Ongole town deposed in support of the suit. All of them, deposed, one day, in the month of December, 1919 at 4 p. m., the Governor of Madras inaugurated Clove Memorial Hospital maintained by a Mission Hospital, a cattle-show and, at the invitation of the founder, Ayyanna Chetty, in the presence of the Dist. Collector, Mr. Fazilullah Khan, the Sub-Collector, S. V. Rama Murthy and in the presence of large congregation of local citizens, the instant Choultry, was inaugurated. The founder, at that occasion, dedicated the building to be used as a Choultry and ever since, it is so used for the benefit of the general public and run in the name of Ayyanna Chetty Choultry.

5. Kale Yankojee Rao, a Municipal Councillor, was a tenant paying Rs. 5/- a month, in one of its portions. He said, a Clerk by name, Kotaiah, managed the Choultry. Travellers were allowed to stay in the premises, free of rent for three days. Thereafter, a nominal rent of 25 Ps., per day was collected. The witness performed the marriages of his son and daughter in the big hall of the Choultry.

During Zamabandi, Karanams, village Munsifs stayed in the hall. He states, the premises was a Choultry. There was, according to this witness, a marble slab entrenched on the face of the building, indicating the date with the name, Ayyanna Chetty. This witness is a businessman and runs a Railway Canteen. There was nothing suggested to doubt his veracity. The next is, P. Venkataraya Sarma who was a quondam Zamindar of Jammavaram estate in Nellore district. He stated, the Governor of Madras inaugurated the Choultry. A gold key was presented to him as a memento by Ayyanna Chetty on that occasion. Vermuri Subrahmanyam is a retired school Teacher of the town. He referred to the period, when K. Krishna Rao was the Chairman and said, during that period, Choultry was inaugurated. He speaks of the slab with the date inscribed, over it. E. Narasing Bhan Singh a retired, Sub-Treasury Officer, refers to an incident when the present premises were used, free of rent by the A. B. M. High School for two or three months when an Englishman, the Principal of the School, expelled students of the School. Next, B. L. Narasimha Rao, a coal dealer, President of Railway Passengers Association, a member of Railway Consultative Committee, deposed to the use of the building as a Choultry tamrapatra-holder, Kota Viswanadham, deposed to the incident of inauguration. A retired head-master of A. B. M. High School, Ongole, Galab; recounted the persons present at the inauguration. R. Lakshmana Rao, a retired Asst. District Health Officer, recounted the event of dedication of the building. To the same effect, is the evidence of a retired employee in Municipal service. The evidence of Inspector of Endowments, an ex. Sarpanch and a Municipal Councillor, reveals, payments made by the travellers, the rents collected by watchmen of the building.

6. The grandsons of the founder, however, examined, K. Kasi Nadan, a Clerk, who stated, the building is not a Choultry. Ch. Koteswararao who runs a (Military) hotel, near Railway Station, asserted, the building is not a Choultry. M. Narasimharao, examined by the grandsons, in cross-examination admits, he was married in the first floor of the premises but, stated the premises is not a Choultry. A retired Sub-Inspector of Police, N. Gopala Rao, examined in rebuttal, however, accepts in cross-examination the building is a Choultry. The lower Court, in this regard referred to a document, Ex. A-12, wherein, Subbaratham and Kondaiah Chetty are referred as trustees of this Choultry. On a consideration of this body of evidence, no other inference is possible except to hold that in December, 1919, Ayyanna Chetty declared the building premises as Choultry. The grandsons referred next to taxes paid to local authority, receipts, Exs. B-9 to B-48 obtained and argued that if the building is a Choultry, the local authority, under the extant provisions of the Statute, could not have collected taxes. The payment of tax, if it is juxtaposed with the assertions by the grandsons of the founder, before the local authority, it is seen, they objected, imposition of tax on a charitable institution, notwithstanding taxes were levied and are collected. Therefore, this circumstance, by itself, cannot lead to the conclusion that the premises is not a Choultry.

7. The grandsons, next argue, the suit was laid by persons who have no locus

standi to maintain the proceedings. This plea is sought to be supported under S. 78 of the Act to hold, the five persons who laid the suit, cannot be construed as aggrieved persons as it is argued their evidence does not show, they ever had used the Choultry. The fact that none of these persons used the instant premises, it is emphasised, should be scrutinised to hold otherwise. Their counsel placed reliance on a decision in *E. Rami Reddi v. N. Maha Baleswara Rao* (1979) 1 AnWR 254. In that case, the property consisted of land and a house in Pirangipuram village in Sattenapallitaluq. The question arose whether one Rami Reddi was an "aggrieved" party. He was one of the persons who filed the petition before, the Endowments Department to declare the property to be Choultry. He was examined as a witness in the Civil Court. He filed the appeal obtaining the leave of the Court. It was his case, the house was used as Choultry for the visitors and students of neighbouring villages who attended a high school. He stated that the income on the lands is being used for the maintenance for the Choultry, that there is no other Choultry for public use in the villages, and, therefore, he is interested in the trust. On these averments, his assertions that he was aggrieved, was considered by Gangadhara Rao, J. and held, Rami Reddi was not aggrieved person. This inference, if it was to rest only on facts, we would not have considered the case, any further, as we are not sitting in appeal against that case, added, that Rami Reddy did not use the house as Choultry, therefore, he was not aggrieved. We are unable to subscribe to this inference. Any person who can start a pro bono publico litigation, can assert and show, how he is aggrieved before the endowment authorities or agitate the question in civil courts. Therefore, the above case, no doubt, supports the appellants herein, but, we are of the view that it does not lay down the correct law. The case, therefore, is reversed. Another case cited is, *Kanyakaparameswari Varthaka Sangham Vs. Commissioner of Endowments, Andhra Pradesh, Hyderabad and Others*, wherein, the Commissioner, the Deputy Commissioner or Assistant Commissioner of Endowments, under the provisions of the Act, are to administer the charitable institutions, therefore, the Officials of the Endowment Department are "Combatants" and was held, Officials also fall within the sweep of the expression, "aggrieved person". In our view, Sec. 78 of the Act takes, all persons with reference to any subject specified in sub-cl. (a) to (j) of Cl. (1) of S. 77, if it is shown such persons are interested in any suit, with reference to the appropriate sub-clauses, such persons are aggrieved, under S. 78 of the Act.

8. It was faintly next argued that the words, "person aggrieved", wherever they occur in the Act, should be interpreted, having the same meaning. This contention was raised with reference to what is contained in Sec. 80 of the Act. We cannot subscribe to such a contention. As a general rule, words are construed in a Statute, throughout in the same sense, but, it is not unknown, some words are used in different senses in the same statute. The words "persons aggrieved" in Act 17 of 1966 are not used in one sense, throughout the Act. The Act contains provisions which give rise to different considerations. In the instant case, a decision u/s 77 is published in a gazette so that the general public may be

informed of the decision. The publication is resorted so that the general public is made aware of the decision and, further, if any one (from the general public) can show, he is interested, such a person may take appropriate steps under Sec. 78 of the Act. The consideration of publication of the decision enlarges the number of persons who can be aggrieved.

9. For all the aforesaid reasons, we confirm the decree of the lower court and dismiss this appeal. No costs.

10. Appeal dismissed.