

(1982) 06 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No's. 20908 and 20909 of 1982

Papanna and etc.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 29-06-1982

Acts Referred:

Constitution of India, 1950 — Article 27, 282, 31
Land Acquisition Act, 1894 — Section 4 (1), 6

Citation : AIR 1983 Kar 94 : (1983) 1 KarLJ 332

Hon'ble Judges : S.G. Doddakalegowda, J

Bench : Single Bench

Advocate : M.N. Hedge, for the Appellant;

Judgement

1. The petitioners have challenged the notifications No.LAQ.I.CR 127/81-82 dated 25-1-1982 and notification No.RD.63 AQH 82 dated 18-5-1982 issued under sub-section (1) of S.4 and Section 6 respectively of the Karnataka Land Acquisition Act, 1894 (hereinafter referred to as the "Act") declaring that the lands belonging to them are needed for a public purpose to wit, construction of a temple, on the ground such an action is impermissible in a secular State.

2. After deletion of clause (f) of Art. 19 and Art. 31 the petitioners can neither complain of infringement of their fundamental right to hold property nor contend that it is not for public purpose. But relying on the insertion of the word "secular" in the preamble by 42nd Amendment and Art. 27 of the Constitution it is contended that acquisition for the construction of temple is opposed to the concept of "secular State", the State cannot propagate or promote any religion and public revenue cannot be utilised for acquisition of land for the said purpose. An attempt to define the expression "secular" by 45th Amendment was not successful. Except challenging the notifications, the provisions providing for acquisition are not challenging in this writ petition. Though it is not disputed that the acquisition is for a public purpose it is necessary to refer to the scope and ambit of "Public Purpose" as defined in the Act for a proper appreciation of the

ground of attack. "Public Purpose" includes making provision for any charitable trust, as defined in Section 3(f) (ix) of the Act. Explanation to this clause reads as follows :

"Charitable trust" includes a trust established or to be established for the relief of poor, education, medical relief or advancement of any other object of general public utility."

3. "Charity" in its legal sense comprises four principal divisions; trust for the relief of poverty, trust for the advancement of education, trust for the advancement of religion and trust for other purposes beneficial to the community not falling under any of the preceding heads, "as per the dictum of Lord Macnaughten in 1891 AC 531.

4. In Tudor on "Charities" it is stated "preposition that religious purposes or religious societies or institutions are objects of charity would seem established by authority".

There is no novelty in attacking the validity of the acquisition of this type.

5. In Varkey Devassy v. State of Kerala (1966 Ker LT 805) Justice P. Govindan Nair while upholding the validity of acquisition for the construction of a temple stated thus :-

"If a section of the general public is benefited by the acquisition the purpose must be a public purpose. Public temples are meant to serve the general public. So the acquisition for establishment of a temple or a church or a mosque must normally be for a public purpose. Counsel for the petitioner has not referred me to any decision where it has been ruled that acquisition for the temple cannot be an acquisition for a public purpose. I, therefore, negative this contention."

So also in Amulya Chandra Banerjee v. Corporation of Calcutta (AIR 1922 PC 333) the Privy Council held that the acquisition of certain properties by the Corporation of Calcutta for building a Dharamashala for accommodating pilgrims resorting to a Hindu temple was for a public purpose. Reconstruction of damaged work shipping places during disturbance at the cost of the Government has been held to be valid vide K. Reghunath Vs. State of Kerala and Another, If damaged places of worship could be reconstructed at the cost of the Government proprio vigore, there is no bar for construction of a temple. A charitable institution dedicated to the public, serves "public purpose". In schemes formulated by the Bangalore Development Authority for acquisition, certain space is reserved for cultural activities, playground etc. If a certain space is reserved for the construction of a temple, will the scheme including acquisition would become invalid? So also in acquisition made for the purpose of village extension space is reserved for construction of Ramamandira etc. On account of such reservation, can the acquisition be invalidated?

6. The contention that though the Constitution has not expressly forbidden the establishment of a religion, it has impliedly forbidden, is inconsistent with the

several express provisions of our Constitution. India is "secular" but not Anti-God or Anti-Religion State for it guarantees right freely to profess, practice and propagate religion. It treats all religions with equal respect.

7. The first limb of his submission is that the constitution prohibits a "secular State" from lending any aid, directly or indirectly, to propagate any religion, hence acquisition of land for construction of a temple is bad. In support of his contention reliance is placed on a decision of the United States of America reported in (1947) 333 US 203 : 92 Law Ed. 649, in which the Supreme court of America based on the first Amendment of its constitution held imparting of religious instructions to school-going students under a release time arrangement" was held to be ultra vires. Since the Division Bench of the Madras High Court consisting of Rajamannar C.J. and Venkatarama Aiyar, J., in Kidangazhi Manakkal Narayanan Nambudiripad and Others Vs. State of Madras and Another, has vividly explained the distinguishing features that exists between our Constitution and the American Constitution as well as the meaning of religion, I need hardly dwell too much upon this aspect except extracting relevant portion for the purpose.

"It must be noted that while Arts. 25 and 26 reproduce the law as enacted in the Second Clause of the First Amendment, there is nothing in our Constitution which corresponds to the first clause therein. The inference is obvious that the framers of our Constitution were not willing to adopt in its entirety the theory that there should be a wall of separation between Church and State which the first clause of the First Amendment was interpreted to embody. What in fact they did was to adopt that principle in its application to particular questions. Thus Art. 27 embodies the principle that no tax should be imposed on any person for the maintenance or promotion of any religion. Art. 28(1) prohibits the imparting of religious instruction in State-maintained educational institution. Apart from making provisions in respect of particular subjects, the Constitution does not enact a general prohibition against legislation in respect of "establishment of religion". In this respect our Constitution makes a substantial departure from the American Constitution. There, there are no specific provisions relating to the imparting of religious instruction in schools or to the imposition of a tax for the maintenance of religious institutions; they are regarded as consequential on the more general prohibition against legislation in respect of "establishment of religion" in the First Amendment.

The position under our Constitution is different. There are some specific prohibitions enacted in Arts. 27 and 28. But apart from them, there is no general prohibition against legislation in respect of "establishment of religion". On the other hand, there are provisions in our Constitution which are inconsistent with the theory that there should be a wall of separation between Church and State. Art. 16(5) recognises the validity of laws relating to management of religious and denominational institutions. Article 28(2) contemplates the State itself managing educational institutions wherein religious instructions are to be imparted. And

among the subjects over which both the Union and the States have legislative competence and set out in List No.III of the 7th Sch. to the Constitution Entry No.28 is as follows : "Charities and Charitable institutions, charitable and religious endowments and religious institutions."

It is difficult in the face of these provisions to accede to the contention that our Constitution has adopted the American view that the State should have nothing to do with religious institutions and endowments. It would, therefore, not be safe to build any argument based on the "Establishment of religion" clause in the first Amendment and the decisions interpreting the same." But, as already mentioned, while the Indian Constitution has adopted in Art. 27 and Art. 28(1) Some of the results consequential on the application of establishment of religion clause in the First Amendment, it has studiously refrained from accepting that clause itself as a fundamental principle for all purposes. And in view of the fact that the reasoning on which the American decisions hold that the establishment of religion is not a public purpose, namely, that it is linked up in the First Amendment with free exercise of religion which is not a public purpose, is not applicable under the Indian Constitution, it follows that the conclusion based on the reasoning is equally inapplicable.

But there is another aspect which is not touched by Art. 25 and Art 26. It has been recognized in all societies and at all times that religion has the effect of civilising man and making him live an ordered and disciplined life and that it thus contributes to public welfare. It is for this reason that advancement of religion has been recognised in English law to be a charitable purpose.

Religion has always occupied an important place in the public life of this country as it is believed to be a potent factor in raising humanity to a higher level of thought and life. It is in this view that temples, mosques and churches were founded by Kings and by men of piety with the object of enabling the public or sections thereof to carry on worship and properties were endowed for the upkeep and maintenance of those institutions so that the services might be carried on in perpetuity. This is the origin of public temples in this country as distinguished from private temples. Unlike private temples which are intended as a place of worship by members of the family, public temples are dedicated to the public for worship by members of the family, public temples are dedicated to the public for worship as a matter of right. This classification of temples into public and private itself brings out the distinction that though religious worship is a personal matter, there can be institutions of a public character in relation thereto. It is on this footing that the Hindu Sovereigns of this country exercised control over temples (vide Hindu and Mohamedan Endowments by Mr. P.R. Ganapathi Iyer 2nd Edn. pages 23 to 25)."

8. In Deoki Nandan Vs. Murlidhar, it is held by Venkatarama Ayyar, J., thus :-

"Then the question is, who are the beneficiaries when a temple is built, idol installed therein and properties endowed

therefor?

.....
..... As explained in the case, that purpose of making gift to a temple is not to confer a benefit on God but to confer a benefit on those who worship in that temple, by making it possible for them to have the worship conducted in a proper and impressive manner. This is the sense in which a temple and its endowments are regarded as a public trust."

9. The acquisition being in consonance with the provisions of the Act enabling acquisition for a public purpose I find no reason to invalidate the same.

10. The second limb or argument is that the public revenue cannot be utilised for the purpose of acquisition of property for construction of a temple. Sustenance is derived from the observation of Justice B.K. Mukherjee in the *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, . Particular emphasis was laid on the first half of second para of para 50 which states : "ours being a "secular State" and there being freedom of religion guaranteed by the Constitution both to individuals and to groups, it is against the policy of the Constitution to pay out of public funds any money for the promotion or maintenance of any particular religion or religious denomination." Dealing with the scope of S.76 of the Madras Act, His Lordship stated that the purpose is to see that religious trusts and institutions, wherever they exist, are properly administered. In the latter half of the same paragraph it is stated "there is no question of favouring any particular religion or religious denomination in such cases. In our opinion, Art. 27 of the Constitution is not attracted to the facts of the present case." So also in *K. Reghunath Vs. State of Kerala and Another*, referred to above, it is held, "even otherwise, we mean, even if places of worship belonging to one religious denomination alone were damaged and they alone ought to be reconstructed, even then there is no question of promotion or maintenance of that particular religion or religious denomination."

11. The user of the temple intended to be constructed is not confined to a particular section and on the other hand it is meant for public. It is not possible to accept the contention that by construction of a temple only particular religion or group of persons are favoured.

12. Under proviso to S.6 of the Mysore Land Acquisition Act, 1894 (Act 1 of 1894) no declaration could have been made unless the compensation to be awarded for such property is wholly or partly paid out of public revenues or some other fund controlled or managed by a local authority. There is no such provision in Act 17 of 1961, the Land Acquisition (Karnataka Extension and Maintenance) Act, 1961. By cl.(1) of Art. 266 of the Constitution all revenues, taxes, duties formed one consolidated fund to be entitled "consolidated fund of the State" and by cl (2) of Art 266 of the Constitution all other public monies received shall be credited to public accounts of the Union or the State as the case may be. In the absence of a provision similar to proviso to Section 6 of the old Act in new Act,

there is no obligation either to pay whole or part of the compensation from the consolidated fund. As the income of the State is credited to different accounts it is not possible to accept the contention that the proceeds of the tax has been specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. Under Article 282 of the Constitution the Union or the State may make grant for any public purpose notwithstanding the purpose is not one with respect to which the Parliament or the Legislature of a State, as the case may be, may make laws.

13. Under the Karnataka Religious and Charitable Institutions Act, 1927, Muzrai Institutions such as matha, temple, mosque or other places of worship or religious services or other institution of a religious or a charitable nature solely in charge of a Government are being paid monthly or annual grant in perpetuity from public revenues. Can such a benevolence be challenged as violative of Art. 27 of the Constitution? So long as the provisions which enabled the Government to acquire the land for the said purpose remain unchallenged, the notifications issued in pursuance of these provisions cannot be challenged as ultra vires. No other contentions are urged.

14. Since the points raised are no longer res integra and no other infirmity is pointed out this writ petition is rejected.

15. Petition dismissed.