

(1944) 12 MAD CK 0006
In the Madras High Court

Pathuri Venkata Narayana and Others	APPELLANT
Vs	
The Hindu Religious Endowments Board	RESPONDENT

Date of Decision : 06-12-1944

Acts Referred:

Madras Hindu Religious Endowments Act, 1923 — Section 69

Citation : (1945) 58 LW 434 : (1945) 2 MLJ 220

Hon'ble Judges : Somayya, J

Bench : Division Bench

Judgement

Somayya, J.—One common question arises in all these second appeals and that is whether certain lands which were granted to the holders

of two offices of swastivachakam and vedaparayanam are liable to contribution u/s 69 of the Madras Hindu Religious Endowments Act, Under

that section:

Every math or temple and every specific endowment attached to a math or temple shall pay annually for meeting the expenses of the Board such

contribution not exceeding one and a half per-centum of its income as the Board may determine.

And endowment is defined by Section 9(11) as meaning:

all property belonging to, or given or endowed for the support of, maths or temples or for the performance of any service or charity connected

therewith and includes the premises of maths or temples but does not include gifts of property made as personal gifts or offerings to the head of a

math or to the archaka or other employee of a temple.

2. There is an observation of Curgenvan, J., in Medarametla Kotayya Vs. Nidamanuru Yellamanda and Others, , to the effect that the definition of

an endowment in Section 9 is wide enough to include properties which were given to the temple servants burdened with the performance of

services connected with the temple. The learned Judge expressed his opinion on page 733 thus:

An endowment includes (I am going to quote only the relevant portion) "property given or endowed for the performance of any service connected with the temple". Ordinarily speaking the word "endowment," I think, is restricted to property the title to which vests in the institution endowed.

But this definition is very wide and I am not prepared to say that a service inam held by a temple servant would not fall within it.

3. That this is mere obiter is shown by the fact that notwithstanding this expression of opinion, the learned Judge held that as the case before him

arose u/s 44, which required a charge on the property and there was no charge in that case, no order could be passed u/s 44. Hence it is only an

expression of opinion, though it be a strong expression of opinion. In the Hindu Religious Endowments Board, Madras v. Ghavali Vallayya S.A.

No. 443 of 1943, the question arose directly for decision. That was a suit for contribution and the property involved was one which the learned

Judge held was an archaka service inam and not a grant to the temple itself. Nevertheless, the learned Judge, Horwill, J., held that u/s 69, the

property was liable to contribute. The learned Judge while referring to the definition of the expression "religious endowment" did not set out Section

9(11) in full but mentioned only this:

All property endowed for the support of maths or temples or for the performance of any service connected therewith." and then expressed a

strong view in favour of his conclusion and he relied upon the opinion of Curgenven, J., in the decision already referred to in Medarametla Kotayya

Vs. Nidamanuru Yellamanda and Others, . Neither Judge referred to the last portion of the definition in Section 9(11) where it says that the

endowment "does not include gifts of property made as personal gifts or offerings to the head of a math or to the archaka or other employee of a temple.

4. In a case where the grant is made not to the temple but to an archaka or other servant to the temple it is personal grant to the archaka or other

employee of the temple. It may be burdened with the obligation of performing

the services of the archaka or the other services for the performance of which it was given to the other employees of the temple. Thus, the grant in this case given for the vedaparayanam service was given as a personal grant to the ancestors of the plaintiffs in O.S. No. 286 of 1939 subject to performance of the service of vedaparayanam or reciting the vedas in the temple. In the other case, it was similarly a personal grant subject to the performance of swastivachakam service, i.e., reciting some prayer in the temple. These two cases seem, therefore, to come within the last portion of Section 9(11) under the heading as a personal gift to the employee of the temple, though it may be burdened with the obligation of performing certain services in the temple. There are other sections which seem to indicate the same view, but it is unnecessary to refer to them in view of a subsequent decision of Horwill, J., which was on this point not challenged in Letters Patent Appeal. This question arose again before Horwill, J., in *The Board of Commissioners of Hindu Religious Endowments, Madras v. Dim Seshacharyalu S.A. Nos. 802 and 803 of 1942*. There, the learned Judge went into the question at great length and came to the conclusion that the grant was to the archaka of all the 13 kuchelus of land included in those suits. He then said that all the 13 kuchelus were exempt from liability to contribute u/s 69. The learned Judge has not referred to his earlier judgment, though I am told that this learned Judge's attention was drawn to the earlier judgment. However that might be, the learned Judge in this later judgment pointed out that the expression "endowment" as ordinarily understood implies that it must be a gift to the temple. This is what the learned Judge said after setting out Section 9(11) and Section 69:

So that if this may be regarded as an endowment within the meaning of Section 9(11) then it is liable for contribution, even though the property vests in the archakas. The definition does not say that to constitute an endowment, the gift must be to the temple; but it is only by presuming that this was what the Legislature intended that the definition of an endowment can be brought into consonance with what is ordinarily understood by that word. Curgenven, J., considered this question in *Medarametla Kotayya Vs. Nidamanuru Yellamanda and Others*, , but he did not have to decide it; and so he naturally did not express a very emphatic opinion one way or

the other.

5. Then he set out the observations of Curgenven. J. which I have already set out. Then Horwill, J., proceeded thus :I am reluctant to interpret

Section 9(11) as giving a definition of "endowment" contrary to its accepted meaning or Section 69 of the Act as making liable to the contribution

persons, where a general reading of the Act seems to make liable only institutions; I am therefore of opinion that the land is not liable to the

contribution claimed by the Board.

6. In the case before him 13 kuchelus of land were involved. As regards 10 kuchelus, there was an argument that it was a grant to the temple itself.

But as regards the 3 kuchelus, it is admitted that it was a grant direct to the archaka burdened only with the performance of service. The two

second appeals went up in Letters Patent Appeals Nos. 1 and 2 of 1944, The Board of Commissioners of Hindu Religious Endowments v. Divi

Seshacharyalu and Ors. L.P.As. Nos. 1 and 2 of 1944. The Letters Patent Appeals were disposed of by the Chief Justice and Byers, J. The

Endowments Board was the appellant in the Letters Patent Appeals. The learned Judges dealt with 10 kuchelus of land which were urged by the

Board to have been an endowment to the temple itself. They referred to the inams register and statements and the other documents and came to

the conclusion that those 10 kuchelus of land formed an endowment to the temple itself and not to the archakas burdened with the performance of

archaka service. Then they said this:

It follows that, in our judgment, the Board is entitled to levy contribution in respect of ten-thirteenths of the income from the lands and that the

declaration granted by the trial Court to the plaintiffs must be limited to three-thirteenths.

7. It is difficult to say from this judgment whether the conclusion of Horwill, J., that as regards the three-thirteenths or the three kuchelus of land

which were admittedly a grant to the archaka burdened with the obligation of performing the archaka service in the temple was liable to contribute

or not was ever challenged before the judges who decided the Letters Patent Appeals. The first point that the advocate for the Board should have

taken was that even assuming that all the 13 kuchelus were the archaka service inams, still having regard to the earlier judgment of Horwill, J., and

the observations of Curgenvan, J., they were nevertheless liable to contribute. That position was negated by Horwill, J., in the appeals that went up in Letters Patent Appeals and from what I can see from the Letters Patent Appeal judgment, this position does not seem to have been challenged, or at any rate the Judges, who decided the Letters Patent Appeals, did not differ from the conclusion of Horwill, J., as regards the three kuchelus. Therefore, it must be taken that the view of Horwill, J., is that if certain properties are archaka service inams as contrasted with an endowment to the temple itself, no contribution can be claimed from those properties; and the view which I have expressed from a reading of the definition is that it is excluded from the expression "' religious endowment'". I assumed that this would be the position in *The Hindu Religious Endowments Board, Madras v. Vadepalli Jagannathacharyalu* (1944) 21 M.L.J. 260. There, the question was whether the endowment was entitled to levy contribution from certain properties. I held that the properties are not archaka service and that they were the endowments belonging to the deity and I considered that on that basis the Endowments Board was entitled to levy contribution. The question which arose directly for decision was that even in the absence of a temple committee, one and a half per cent contribution, which is provided for a Committee, can be levied. Following another judgment of a Bench, I held that the Endowments Board was entitled to that contribution as well. On page 261, I said this:

The question of declaration of the liability was also involved in the further stages of the suit, because the plaintiffs' claim that the properties were their own archaka service inams, if upheld, would have precluded the appellant Board from levying a contribution even for the future years.

8. There is no discussion and the decisions on the point were not brought to my notice." But that is the opinion that I expressed, viz., that if they were archaka inams, the Board would be precluded from levying contribution. The question, in my opinion, is wholly concluded by the later decision of Horwill, J., which on this point has not been dissented from by the Judges in the Letters Patent Appeals and confirmed to that extent, because the Letters Patent Appeals were dismissed to that extent.

9. The result is that in the first batch of cases--S.A. Nos. 1418 to 1420 of 1943--

the decrees of the lower appellate Court are reversed and decrees of the trial Court restored. In the next batch of cases--S.A. Nos. 389 to 391--the decrees of the two lower Courts are set aside and the decree granted in terms of prayers (a) and (b) of the plaints. The appellants are entitled to their costs in all the second appeals throughout. (Advocates' fee Rs. 25 in each case)."

10. No leave.