(1968) 10 MAD CK 0019

In the Madras High Court

Case No : S. A. No. 45 of 1964

R. R. Harinarayanachari and others — APPELLANT

Vs

The State of Madras — RESPONDENT

Date of Decision : 17-10-1968

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 — Section 3

Citation : (1968) 10 MAD CK 0019

Hon'ble Judges : Natesan, J

Bench : Single Bench

Advocate : V. Vedantachari and A. Venkatesan, for the Appellant;

Final Decision : Allowed

Judgement

Natesan, J.—The substantial question for determination in this case is, whether the dedication of the properties for public charity under Ex.

A 2, dated 4th July 1941, is a complete dedication of the properties or whether the dedication is only partial, a trust being created in favour of the

charities and the expenses of the charities only charged on the properties. It is seen that the expenses of the charities have been limited; an upper

limit of Rs. 370 is provided, the lower limit, being Rs. 260. For a proper disposal of the case, it is necessary to have a finding as to what the

income from the properties, the subject of the settlement under Ex A. 2 was about the time of the dedication after providing for taxes and other

public outgoings. The evidence in this regard is equivocal. D.W. 2 in his deposition has stated that a portion of item 1 has been let out for Rs 70

and items 3 and 4 will each fetch Rs. 50. The learned District Judge remarks that though D.W. 2 deposes in this regard in the past tense, there is no evidence as to the income received from the properties in 1941, the date of Ex. A. 2 before embarking upon the construction of the document,

it is material to have an idea of the income from the properties at the time of the dedication in 1941, The construction of the document is better

taken up after the receipt of the finding in this regard. The learned District Judge, Madurai, will submit a finding as to the probable income from the

properties, the subject matter of dedication under Ex. A. 2 dated 4th July, 1941 about the time of the dedication. Provision may be made in

assessing the income for payment of taxes, cesses and similar outgoings. The parties may be permitted to adduce evidence on this question. The

finding is to be submitted within ten weeks of the receipt of the records. Objections, if any, within ten days after the receipt of the finding here.

2. (After the receipt of the findings the court delivered the following Judgment):

3. The learned District Judge now finds that the probable income from the properties at the time when they were endowed in favour of the charities

under Ex. A-2 dated 4th July, 1941 was Rs. 255 p. m. that is, the net annual rental income from the properties, after payment of the outgoings, at

the time of dedication, was Rs. 3060. The upper limit of expenses on the charities provided under the deed of settlement Ex. A-2 is just Rs. 375

per annum. It is rather surprising that adequate attention has not been given to this vital feature of this case in the courts below in the first instance.

The finding has not been challenged. As pointed out by the learned District Judge, in his return of the finding, the four items of properties are

situated in important localities- important even in 1941 in Madurai. There is ample and substantial evidence for the District Judge to assess the

income from the properties in the year 1941, for giving the finding With this lacuna cleared up, I shall new proceed to discuss the questions

involved in the second appeal.

4. The appellants in the suit sought a declaration that the notification of the Government in G. O. 3905, published in part I of Fort St. George

Gazette dated 27th January, 1960 under S. 3 of the Madras Hindu Religious and Charitable Endowments Act 1965 (hereinafter referred to as the

Act) extending the provisions of the Act to the charities known as R. N. Ramachariar Dharmam, is ultra vires and illegal. They question the

jurisdiction of the Government to proceed under the Act, with reference to the charities in question. Both the courts below have dismissed the suit.

Hence the second appeal by the plaintiffs.

5. The substantial grounds of challenge of the notification, presented before me, may be formulated thus:

1. There has been no dedication of the suit properties themselves for the charities in question, to be treated as properties endowed for the charities.

The dedication if at all there is one, is partial. There was only a charge in respect of two charitable objects and a mere charge will not come under

the definition of ''charitable endowments'' in the Act.

2. Of the two objects for which provision has been made by the founder, the trust for distribution of drinking water and butter milk in the summer

months is not intended exclusively for the Hindus; the benefits could be availed of by any member of the public irrespective of his or her religions

denomination. The jurisdiction to take action under S. 3 of the Act is only in respect of Hindu or Jain public religious institutions and endowments

to which the provisions or the Act have been extended.

3. The other object for which provision has been made by the founder, the conduct of Harikatha Kalatchebam on Vaikunta Ekadasi day in item 1

of the properties, set out in the deed of settlement, and Samarathanai (feeding of relations and devotees) on the next day, that is, Dwadasi day,

every year, if there is a dedication would be a religious charity as defined in the Act, it being confined to Hindus and would be a religious

endowment or a specific endowment and so is directly covered by the provisions of the Act, without any necessity for extension of the Act to

cover the charity by a notification under S. 3 of the Act. The power to notify under S. 3 does not apply to endowments to which the Act is directly

applicable.

6. R. N. Ramachariar, the admitted founder of the charities in question was father of the plaintiffs, and kartha of their joint family. Though the

plaintiffs, at the trial, questioned the validity of the dedication of their father and even went to the extent of contending that the recitals in the deed

were fictitious, the extreme contentions were not pressed even in the lower appellate court. A point was taken that the charities were private. This

plea was overruled by the courts below and has not been pressed before me. The deed of endowment is a settlement deed, Ex. A. 2 dated 4th

July 1941. From the records, it is seen that the family was a fairly affluent family, and, the founder Ramachariar, in the deed of settlement, stated

that the two charities in question, besides others, were conducted by the family for a long time by grace of God, and that he bad to suspend the

same for a short period owing to unavoidable circumstances. He was making the settlement, which a view to continue the charities permanently.

He recorded that the properties would fetch a regular income without break for continued performance of the charities. Detailed provisions as to

who should constitute the trust board, the rotation of managing trusteeship among the trustees each year, the meetings to be held for the passing of

accounts, etc, etc have been meticulously drawn up. Four items of properties are set out in the schedule to the settlement deed. The sons of the

settlor, after him, were to constitute the trust board and they were to be referred as trustees, the eldest son being the managing trustee for the first

year. The managing trustee is the person to collect rents from the properties, carry out repairs, pay the Municipal taxes, etc and to disburse staff

expenses and other sundry expenses. From out of the balance, the managing trustee and the other trustees have to perform jointly the charities

regularly. CL 12 of the deed provides that the properties scheduled belong to the charities and that the settlor and his heirs have no power to

alienate the properties at any time. The sons of the settlor are given a right to occupy the houses, the subject of the settlement deed. The deed gives

particulars of the charities and specifies the expenses to be incurred therefore. The first charity is the performance of Harikathakalakshapam , that

is, group singing of devotional songs, on Vaikunta Ekadasi day, in the month of Margali every year in the premises, described as item 1 in the

schedule of properties, and the conduct of Samaradbanai for the relations and devotees (Baktha Ghoshti) on the next day, the Dwadasi day. The

deed specifies that expenditure on this item annually shall not be less than Rs. 200 and not more than Rs. 300. The next item of charity is the

provision, during, summer season in the months of Masi, Panguai and Chitrai annually, for distribution of water and butter milk at the entrance of

the first item of the properties scheduled. For this charity, inclusive of expenses for assistance, not less than Rs. 60 per year should be spent, and

the expenditure should not exceed Rs. 75. Thus, for both the charities, the total minimum annual expenditure is Rs 260 and the maximum Rs. 375.

The deed provides for the division of the surplus rental income from the properties, left after meeting all the expenses connected with the charities,

among the trustees. Clause 9 of the deed, freely translated, runs thus.

The rotation managing trustee for each year has to divide the balance amount obtained after meeting all the expenses connected with the charities

from the rental income of the properties, within fifteen days after the meeting, for the month of Ani, into five equal parts, the first part to go to the

rotation managing trustee and the other four equal parts to each trustee member and the rotation managing trustee has to obtain due receipt for

such payment.

7. The courts below have laid emphasis, for their coming to the conclusion that dedication of the properties is absolute and total, principally on the

reference in the deed to the Managers of the charities as trustees and the clauses in the deed stating that the properties belong to the charities and

that the settlor and his heirs have no right to alienate the properties at any time. It is contended for the appellants that the courts below have failed

to appreciate the principles which should govern the determination of the question whether the dedication is partial or absolute. It is submitted that

no regard has been had to certain important provisions of the deed of settlement. The senior has fixed the minimum as well as the maximum

expenses on the charities. He has provided for the balance of the income to be shared by his sons and their successors. It is pointed out that the

rental income from the properties, scheduled in the deed, has only to provide funds for the purpose of the charities. The document specifically

provides for the expenditure to be incurred on the charities out of the net rental income from the properties. That the sons of the settlor have some

specific rights in the properties is brought out in the deed itself. Clause 2 states that sons of the settlor will have, in the properties, limited specified

rights and they can only enjoy the limited extent permitted under the deed.

8. After the return of the finding from the District Judge, that the net annual income from the properties would have been about Rs. 3969 at the

time of the settlement deed, having regard to the well established principles in this regard counsel for the respondents has not contended that there

was an out and cut dedication of the properties for the charities. A dedication may be either absolute or partial, Property may be dedicated wholly out and out to a charitable object or it may be subjected to a charge in favour of the charity. As observed by the Judicial Committee in 63 Ind.

Cas. 34 (Privy Council) the question whether the idol itself shall be considered the true beneficiary, subject to a charge in favour of the heirs or

specified relatives of the testator for their upkeep, or that on the other hand, these heirs shall be considered the true beneficiaries of the property,

subject to a charge for the upkeep, worship and expenses of the idol, is a question which can only be settled by a conspectus of the entire

provisions of the will. In the case before the Judicial Committee, the will had provided that the property of the testator shall be considered to be

property of certain idol, But there was provision which showed that the residue, after defraying the expenses of the temple, shall be used by the

testator''s legal heirs to meet their own expenses and it appeared that only a small proportion of the total income could be utilised for the idol,

whereas a large balance was available to the heirs. On these facts, it was held by the Judicial Committee that the intention disclosed by the

document, was that the heirs should take the property subject it she charge for the performance of the religious purposes named in the will, in the

instant case, the settlor has prescribed the expenditure on the charities in limited terms. While noticing that he was providing a fund which would

never fail, he limited the expenditure to be incurred on the charities, fixing the minimum as the maximum to be spent thereon. With the finding how

before me, the net income from the properties may be taken at the round figure of Rs. 3,000. Providing very liberally for annual repairs of the

properties and expenses for collection of rental income, one may moderate the net income to Rs. 2,500, The expenses to be incurred on the

charities in the outer limit is just a fraction of this income. The income beyond what is required for performance of the charities in question is not

protected by any dedication. The deed clearly shows that the settlor must have contemplated a fair surplus, as he specifically provides for division

of the surplus among his five sens. In Ashoutosh Dutt v, Doorga Charn Chatterjee 5 Cal. 438, a Hindu lady left by will to her sons lands belonging

to her to support the daily worship of an idol and defray the expenses or certain other religious ceremonies, with a proviso, that in the event of

there being a surplus after these uses had been satisfied out of the revenue of the said lands, such surplus should be applied to the support of the family. The Judicial Committee held in the circumstances that this provision amounted to a bequest of the surplus to the members of the joint family

for their own use and benefit, and that each of the sons of the testatrix took a share in the property, which, after satisfying the religious and

ceremonial trusts, might be considerable, and could not be presumed to be valueless. With reference to the directions in the will that her heirs

should have no power of gift or sale over the property, and that it should not be attached or sold on account of their debts, being inconsistent with

the interest given, they were rejected as having no operation. In the present case, the surplus is manifestly not valueless but considerable and the

sons have an interest in the properties.

9. They may be trustees of the charities and have to conduct the charities in accordance with the terms of the deed. But they are trustees only to

the extent of providing the necessary funds for the conduct of the charities and for their conduct.

10. The Supreme court in Dasaratharami Reddi v. SubbaRao, A. I. R. 1957 S. C. 797, 800 has set out the considerations that should govern the

determination or the question whether there is an out and out dedication of properties for religious or charitable purpose or there is only a charge

over the properties. Gajendragadkar J. (As he then was) states:-

Now it is clear that dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete, a

trust in favour of public religious charity is created. If the dedication is partial, a trust in favour of the charity is net created but a charge in favour of

the charity is attached to, and follows, the property which retains its original private and secular character. Whether or not dedication is complete

would naturally be a question of fact, to be determined in each case in the light of the material terms used in the document.

In such cases it is always a matter of ascertaining the intention of the parties; it is obvious that such intention must be gathered on a fair and

reasonable construction of the document considered as a whole. The use of the word ''trust'' or ''trustee'' is no doubt of some help in determining

such intention; but the mere use of such words cannot be treated as decisive of the matter. If the income of the property is substantially intended to

be used for the purpose of the charity and only an insignificant and minor portion of it is allowed to be used for the maintenance of the worshipper

or the Manager, it may be possible to take the view that dedication is complete. If, on the other hand, for the maintenance of public charity a minor

portion of the income it expected or required to be used and a substantial surplus is left in the hands of the Manager or worshipper for his own

private purposes, it would be difficult to accept the theory of complete dedication

11. In the light of the above discussion, it is manifest that in the present case there is only a charge on the properties for the two charities provided

and there is no out and out dedication of the properties for the charities not-withstanding the fact that the deed would state that the properties

belong to the charities and are inalienable and the Managers are referred to as trustees.

12. It was not argued before me for the appellant that the trust for Harikathakalachebam and the Samarathanal on the Dwadasi day would not

constitute a religious charity or a specific endowment under the Madras Hindu Religious and Charitable Endowments Act. The charity in question

is statedly associated with Hindu observances of a religious character, though not connected with a Mutt or temple. Dedication under Hindu law

may be either absolute or partial, and while the dedication is partial, a trust is created for application of a portion of the income for the religious or

charitable purposes. In Godarao v. State of Madras A. I. R. 1966 S. C. 853 it has been held by the Supreme Court that a religious endowment or

a specific endowment as defined in the Madras Hindu Religious and Charitable Endowments Act, 1951, would include both absolute and partial

dedication of properties and a mere charge can be a specific endowment. In the present case, for the State it is not claimed that, for the authorities

under the Act to exercise their power of supervision with reference to the Harikathakalachebam and Samarathanai trust, the Act must be

specifically extended to the charity under S. 3 of the Act. The appellants are right in their contention that, even if the charity relating to

Harikathakalachebam and Samarathanai constitutes an endowment under the Act, S. 3 has no application.

13. To take up the water pandal and butter milk or Near Moru charity, the other object provided by the settlor, this charity is to be conducted in

the summer season for three months every year. There is absolutely no limitation on the persons who could benefit by it. The distribution is outside

item 1 of the properties scheduled. There has been no contention before me for the State that Near Moru should be distributed only among

Hindus. Distribution of drinking water or butter milk to wayfarers during summer is a well known object of charity and has not generally been

considered or regarded at an endowment for the benefit of Hindu only. The fact that the donor is a Hindu, is not enough to limit the charity to

Hindu. So far as the first item of charity in the deed is concerned, from its very nature there is clear indication that it is be limited to these who take

part in the worship and Bhajanai Ghoshti on the Vaikunta Ekadasi day. So far as the Near Moru charity is concerned, the summer thirst is

common to all and there are no indications in the deed that only the thirst of Hindu wayfarers way goers should be quested. Ex facie it would

benefit all.

14. The notification in question whose vires is challenged, is under S. 3 of the Madras Hindu Religious and Charitable Endowments Act (Madras

Act XXII of 1950). S. 1 (3) provides that the Act applies to all Hindu, public religious institutions and endowments, except the incorporated

devaswoms and unincorporated devaswoms. The Explanation states that Hindu public religious institutions and endowments do not include Jain

religious Institutions and endowments Sec. 3 provides for the extension or the Act to Hindu or Jain public charitable endowments. Sec. 6(5)

defines ''charitable endowment'' as meaning all property given or endowed for the benefit of, or used as of right by, the Hindu or the Jain

community or any section thereof, for the support or maintenance of objects of utility to the said community or section, such as rest houses

choultries, patasalas, schools and colleges, houses for feeding the poor and institutions for the advancement of education, medical relief and public

health or other objects of a like nature, and includes the institution concerned, From a reading of the definitions, it is clear that any religious or

charitable institution, and that would include a charitable endowment, which is not exclusively intended for Hindus would be outside the purview of

the Act, even if it otherwise be a charitable endowment. In The State of Madras and Another Vs. The Urumu Seshachalam Chettiar Charities and

Others, Division Bench of this court observed :

In our opinion, even apart from the prefix ''Hindu'' in relation to public charitable endowments in S. 3, the very definition of charitable endowments

in S. 6(4) postulates the test of exclusiveness. Unless for example, the benefit of the endowment is confined wholly to Hindus it would not be a

charitably endowment as defined by S. 6 (4) (Madras Act 19 of 1951).

15. Though the decision actually referred to the provisions of Madras Act, 19 of 1951, it points out that in the subsequent Act, Madras Act, 22 of

1959 which replaced the earlier Act, there has been no change in the relevant statutory provisions. Taking up for example, a water pandal charity

like the one under consideration here, the Division Bench observed :

Establishment of a water Pandal charity may be establishment of a public charitable endowment. But it is not every public charitable endowment

that is brought within the scope of Act. XIX of 1951. Every public charitable endowment founded by a Hindu does not become a Hindu charitable

endowment. The mere fact that the founder was a Hindu is not enough even to make a trust or endowment a charitable endowment as defined in

S. 6 (4) of the Act, Certainly it is not enough to make it a Hindu public charitable endowment. To bring a public charitable endowment within the

scope of S. 3, of the Act, it is necessary to establish first that it is a Hindu charitable endowment. It will not be a Hindu charitable endowment, if

the benefit of the endowment may be shared as of right by members of the public other then Hindus.

16. Reference may also be made to the decision of the Andhra Pradesh High Court in Narayanamurthi v. Mukteswara Choultry Endowment

(1964) I. A. W. R. 150 where it has been pointed cut that the words ''charity'' or ''annastram'' by themselves are not considered as endowment for

the benefit of a particular community or caste, or religion in the absence of any words to the contrary. The language of the settlement deed Ex. A. 2

in the present case does not limit the charity to Hindus. The need of the charity would not warrant any limitation. ""The man in whose tank, cows,

other quadrupeds, birds and human beings are relieved of thirst by drinking obtains the rewards of Aswamegha"" says Mahabaratha (see Hindu

Law of Religious and Charitable Trust by Mukherjee page 69).

17. It follows that the Near Moru charity, the second charitable object under the settlement deed, cannot be the suit of notification under S. 3 of

the Act. The plaintiffs are, therefore, entitled to the declaration prayed for that the notification of the Government in G. C. No. 3905 published in

part I of the Fort St. George Gazette, dated 27th January 1960 is ultra vires and illegal.

18. This declaration cannot stated in the way of the person or authorities interested from taking necessary and appropriate steps, if required, to see

that the charities are only carried on, as provided for by the founder R. N. Ramachariar. It is regrettable that the (sik) pious and solemn wish of

Ramachariar, father of the plaintiffs, duly declared and legally expressed, should have been given go by the sons who have, in these proceedings,

gone to the extent of denying the trust and bravely slating that the recitals in the document ware fictitious and that no charity was performed by the

family. This plea was overruled by the trial court, and, as stated at the outset it has not been pressed before the appellate court. It is submitted for

the State that the income from the properties must have gone up considerably since the charity was founded in 1941 to an extent that would not

have been contemplated by the settlor and that the plaintiffs may be directed to increase the expenditure for the trusts. This question does not arise

for consideration now. My attention is drawn to the decision of the Supreme Court in Godarao v. State of Madras A.I. R. 1966 S.C. 853 which

would go against the claim of the State for any aliquot increase in the allotment for charities. Here as in that case, there is only a charge in favour of

the charities for the expenditure, and an upper limit has been fixed. As discussed above, there is only a partial dedication of defined amounts in

favour of valid objects considered pious and charitable. However, one should object the plaintiffs, in the circumstances that have happened, and

their own inexcusable failings which they are bound to atone for, to exercise their honest discretion and conduct the charities properly and spend

liberally on the same. In the result, the second appeal is allowed. The decrees and judgments of the courts below are set aside and the suit is

decreed as prayed for. The plaintiffs have, by the defence they initially put forward and their own admissions, deprived themselves of any claim to

costs. There will be no order as to costs. No leave.

