
(2011) 03 MAD CK 0402

In the Madras High Court

Case No : Writ Petition No's. 2603 and 2591 of 2007 and 30059 of 2010 and M.P. No's. 2 and 2 of 2007 and 1 of 2010

S. Nagarajan and P.M. Govindan

APPELLANT

Vs

The Inspector, Hindu Religious and Charitable Endowments Board
Palani Vs The Inspector, Hindu Religious and Charitable Endowments Board and The Executive Engineer, Direction and Maintenance, Tamil Nadu Electricity Board

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 1(3), 6(17), 6(18), 63
Trusts Act, 1882 — Section 1, 34, 41

Citation : (2011) 03 MAD CK 0402

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Shanmugham, S.C. for R. Gopinath, in W.P. Nos. 2603 and 2591 of 2007 and S.V. Karthikeyan, in W.P. No. 30059 of 2010, for the Appellant; T. Chandrasekaran, Spl. G.P. for HR and CE, for R1 in W.P. Nos. 2591 and 2603 of 2007 and for R2 in W.P. No. 30059 of 2010 and P. Srinivas, for R1 in W.P. No. 30059 of 2010, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides. The first writ petition was filed by one S. Nagarajan, S/o. Sendarya Gounder, challenging an order dated 27.1.2007, wherein and by which the Respondent had notified the public auction for the land at Pasigam village in Survey No. 108/3 to an extent of 14.27.0 hectares (39 acres).

2. It was claimed that the land belonged to Arulmigu Soothrakaraga Temple at Pasigam village, Palacode Taluk. The contention of the Petitioner was that he is the Hereditary Trustee of the said temple along with one Govindan. The temple was managed by his forefathers for over 70 years. His father along with

Govindan were hereditary trustees. The temple was given grant of Inam lands. The said Inam was recognized by the British Government. The Inam title was entered in the Inam Register as T.D. Nos. 611 and 537. The Inam was granted in the name of Poojaris. The Poojaris of the temple were also holding the post of trustees. No pay or paditharam was paid to Poojaris. They enjoyed the Inam lands and had spent monies for Pooja expenses from out of the income of the Inam lands. Out of total extent, only 2 acres were wet lands and rest of them were dry lands. No public collections were made for the temple and no hundial was kept in the temple.

3. It was claimed that the Petitioner and one Munuswamy had filed an application in O.A. No. 59 of 1979 before the Deputy Commissioner, H.R.&C.E. Administration Department, Coimbatore u/s 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act for declaring that they were hereditary trustees of the temple. They were also declared as hereditary trustees. Curiously, it was also contended that the Petitioner was managing the lands and also having his livelihood only from the income derived from the lands. Since the lands were held on behalf of the temple, the question of public auction of the land will not arise. Similar was the contention in W.P. No. 2591 of 2007.

4. A perusal of the order passed by the Special Deputy Tahsildar, Revenue Court, Coimbatore showed that the lands were held as public trust. Similarly, proceedings in O.A. No. 59 of 1979, dated 28.11.1979 showed that they were Inam lands endowed for Pooja expenses of the temple and that out of the income derived from the lands, Poojas were performed. The temple owned around 35 acres. It is only because the family members were maintaining the temple, they were declared as hereditary trustees.

5. The Petitioner's contention in the second writ petition was contradictory. On the other hand, their contention was that the lands were endowed on behalf of temple and poojaris were directed to perform Poojas of the temple out of the income derived from the land. At the same time, they were also declared as hereditary trustees. On either account, they cannot touch the property of the temple. Since the land has been given only in the name of the temple with specific endowment, the temple is certainly covered by the provisions of the HR&CE Act. They cannot use the temple property for their own. On the other hand, they are bound to spend the money arising out of the temple property only for the temple.

6. In this context, it is necessary to refer to a judgment of the Supreme Court in Joint Commissioner, Hindu Religious and Charitable Endowments, Administration Department Vs. Jayaraman and Others, :. The following passages found in paragraphs 7 to 13 may be usefully extracted below:

7. It is seen that the claimants had got themselves appointed as hereditary trustees by applying u/s 63(b) of the HR&CE Act. They could not thereafter shed their character as trustees of the temples holding the lands belonging to the

temples at a subsequent stage at least without imp leading the HR&CE Department and the deities and without getting a valid adjudication of their right over the properties. It is clear that in spite of the necessity for imp leading the HR&CE Department being pointed out, the claimants made no attempt to impale the HR&CE Department either before the Settlement Tahsildar or before the District Judge and, consequently, the orders passed by the Settlement Tahsildar and by the District Court were clearly illegal and not binding on the deities or the HR&CE Department. The claimants had, in fact, acted totally without bona fides in an attempt to corner the properties for themselves or at least to make undue gains for themselves by selling the properties. Such action would certainly not bind the deities or the HR&CE Department. The High Court, representing the sovereign as *parens patriae* ought to have come down on the Respondents herein and ought to have issued directions for the protection of the properties.

8. The grant was of government land. The grant was, even going by the case of the claimants, in favor of persons who were acting as poojaris of the temple, for the purpose of utilizing its income for poojas and maintenance of the temple. Even in the extract of the fasli register, it is shown that the registered name of the inamdar is poojaris of Mariamman and Bhagavathiamman Temples and the enjoyers as Veerana Pandaram and Arunachalam Chetty. The relation between the inamdar and the enjoyer is shown as "devadayam" and in the column regarding details of inam, it is shown as for poojas to God (Sasvatham) and in the column relating to details of endowment, it is shown that the income of the land is used by the poojaris for pooja and maintenance of the temples. Prima facie, government land had been dedicated to the temples by way of grants by the Government. Even if the income there from had alone been dedicated to the temples, it would still be a religious trust or endowment and certainly not a private trust to which the Trusts Act, 1882 would apply. Section 1 of the Trusts Act, 1882 itself provides that nothing contained therein applies to public or private religious or charitable endowments. The endowment here was certainly not a private endowment since there is no case that the temples are private. The endowment was for a religious purpose, the conducting of poojas in the temples and the maintenance of the temples. Therefore, endowment was of public property for the benefit of public temples and the poojaris constituted the trustees. They were trustees imposed with the obligation of spending the income from the properties, for the poojas and maintenance of the temple. It was clearly a case of a public religious endowment and by virtue of Section 1 of the Act, the Trusts Act, 1882 would have no application. Learned Counsel for the Respondents tried to argue that the application u/s 34 of the Trusts Act, 1882 was maintainable but could not argue that these were private trusts by reference to any relevant material. The lands were government lands and the Government had dedicated the properties or the income there from for the upkeep of public temples. By no stretch of imagination, can it be held that it was a private trust coming within the purview of the Trusts Act, 1882. The District Judge has,

therefore, clearly acted without jurisdiction in entertaining the application u/s 34 of the Trusts Act, 1882. On this short ground, it has to be held that the order passed by the District Judge in the application filed u/s 34 of the Act granting permission to the claimants to sell the properties is one without jurisdiction. The High Court was completely in error in brushing aside this vital aspect while considering whether the District Judge had acted within jurisdiction in entertaining the application u/s 34 of the Trusts Act, 1882.

9. The HR&CE Act applies to all Hindu public religious institutions and endowments. This is clear from Section 1(3) of that Act. A religious endowment or endowment is defined in Section 6(17) of the Act. It reads:

6.(17) "religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof; but does not include gifts of property made as personal gifts to the archaka, service-holder or other employee of a religious institution;

Explanation.- (1) Any inam granted to an archaka, service-holder or other employee of a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the archaka, service-holder or employee but shall be deemed to be a religious endowment.

Explanation.- (2) All property which belonged to, or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a "religious endowment" or "endowment" within the meaning of this definition, notwithstanding that, before or after the date of the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed:

Provided this Explanation shall not be deemed to apply in respect of any property which vested in any person before 30-9-1951, by the operation of the law of limitation.

Section 6(18) defines a "religious institution" as meaning a math, temple or specific endowment. Going by the definition it is clear that the endowment in question is governed by the HR&CE Act. Even if one were to accept the case of the claimants that it was an inam granted to an archaka, the same would come within the definition of "religious endowment" or "endowment" under the Act in view of Explanation (1) thereto. Thus, it is clear that the endowment, gift or donation was governed by the HR&CE Act. It is in this context that we have to appreciate the effect of the conduct of the claimants in getting themselves appointed as trustees by moving u/s 63(b) of the Act. Any alienation would,

prima facie, be hit by Section 34 of the Act and even if the case of the claimants were to be taken at face value, the transaction would be hit by Section 41 of the Act. In either case, the permission contemplated by the respective sections was a must and the District Court lacked jurisdiction to give the permission for sale on an application u/s 34 of the Trusts Act, 1882, that too, without issuing notice to and hearing the authorities under the HR&CE Act.

10. The claimants had themselves applied u/s 63(b) of the HR&CE Act and had got themselves appointed as trustees. They had themselves held out and accepted that the HR&CE Act applies to the trust concerned. There is no case that the temples are not public temples and are not under the control of the HR&CE Department in terms of the HR&CE Act. At best, the contention is only that the lands were conveyed in trust not to the temples or to the deities, but to the poojaris of the temples but with an obligation to utilize the income from the properties for the poojas and the upkeep of the temples. This certainly brought in the HR&CE Act and the control of the authorities there under, even in respect of the administration of the trust by the claimants. The claimants were really stopped from raising a contention that the HR&CE Act had no application or that they did not need the permission of the Commissioner under the Act for alienation either u/s 34 or u/s 41 of the HR&CE Act. The claimants were disentitled to bypass the provisions of the HR&CE Act and to secure an order from the District Judge without notice to the HR&CE Department by moving an application u/s 34 of the Trusts Act, 1882. The order thus obtained cannot bind the trust or the properties, or the deities or the HR&CE Department. Similarly, no reliance can be placed on the so-called patta obtained by the claimants from the Settlement Tahsildar without notice to the HR&CE Department.

11. It was contended that the purchase price had been deposited in a fixed deposit and so long as there is no failure on the part of the claimants to perform the services which they are liable to perform, there is no necessity to interfere with the transaction of sale affected by them. It is seen that going by the prevalent valuation and the market value as reported, the lands were sold for a meager price or that the sale deeds indicated only a meager price as consideration for the same with all that it implies. Such a transaction is clearly seen to be not in good faith. That the District Court proceeded to accept the value for which the property was being sold even without making an enquiry into the market value that the properties would have fetched at the relevant time while giving the permission for the sale, is shocking. The jurisdiction u/s 34 is advisory. The court should have satisfied itself of the need for sale and the propriety of the sale proposed. The mere pleas that it was difficult to protect the property and that there was only meager income there from were by themselves not grounds to direct or permit the sale.

12. It is seen that there has been a clear attempt by the claimants to overreach the deities and the authorities under the HR&CE Act, while managing the properties dedicated for the purposes of the temple, properties granted and

managed by them in their capacities as poojaris, for the maintenance of the temples. The attempt has to be deprecated.

13. In the circumstances, we allow this appeal and setting aside the order of the High Court in Civil Revision Petition (NPD) No. 1684 of 2002 and that of the Principal District Judge, Dindigul in Trust Original Petition No. 44 of 2001, dismiss Trust Original Petition No. 44 of 2001 filed by the claimants. Consequently, the permission granted for the sale would also stand set aside and the sale effected by the claimants pursuant to such permission will be deemed void and would confer no right on the purchasers there under or on anyone claiming under or through them. It is also clarified that the revised order of the Settlement Tahsildar under Act 30 of 1963 and the revised patta granted are not binding on the deities or on the HR&CE Department. The Appellant would be entitled to its costs both here and in the High Court.

7. Therefore, the contentions of the Petitioners that they are entitled to have cultivation of the land for their own livelihood cannot be countenanced. Hence both W.P. Nos. 2603 and 2591 of 2007 are liable to be dismissed.

8. In W.P. No. 30059 of 2010, the Petitioner was the son of Munusamy, who was earlier Poojari and hereditary trustee of the temple. In that writ petition, he seeks for a direction to consider the grant of electricity service connection vide his application No. 725, dated 21.12.1995 without insisting on a fresh No Objection Certificate from the Inspector, HR&CE Board, second Respondent herein.

9. Once again, it was claimed that the temple belonged to the family and they are hereditary trustees. When service connection was sought in the name of the temple, the Electricity Board had unjustly demanded a No Objection Certificate from the second Respondent. Since this Court held in W.P. Nos. 2591 and 2603 of 2007 that the lands belonged to the temple and the lands will have to be cultivated only for the benefit of the temple, there is no impediment for the first Respondent in granting service connection and that it shall be only in the name of the temple. The Petitioner can only act as a trustee. At no point of time, the Petitioner can claim service connection as that of his personal connection or take usufruct of the temple property as his own. He should also produce appropriate account to the second Respondent from time to time, so that to ensure that the properties of the temple or the income derived out of the temple properties are not put to use for their personal use.

10. With the above conditions, the first Respondent is directed to consider the grant of service connection on the Petitioner's application No. 725, dated 21.12.1995 within a period of eight weeks from the date of receipt of the copy of the order without insisting on any no objection certificate from the second Respondent. But, while doing so, he must also incorporate the conditions laid down by this Court in his order.

11. In the light of the above, the first two writ petitions, i.e., W.P. Nos. 2603 and

2591 of 2007 will stand dismissed. W.P. No. 30059 of 2010 is disposed of with the above directions and to the extent indicated above. However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed.