

(1964) 08 MAD CK 0007
In the Madras High Court
Case No : Writ Petition No. 817 of 1962

Shanmugha Perayyar

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 25-08-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 3, 6(4)

Citation : AIR 1965 Mad 416 : (1965) ILR (Mad) 505 : (1965) 1 MLJ 311

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

(1) The State Government passed G. O. Ms. No. 2773 Home, dated 3-10-1958, extending the provisions of the Madras Hindu Religious and

Charitable Endowments Act, 1951 to Odacheri Chatram and water Pandal charity at Odacheri village in Tiruthuraipundi taluk. The notification to

that effect followed certain findings by the State Government on charges of improper administration of the endowment. The petitioner instituted O.

S. No. 250 of 1959 on the file of the court of the District Munsif, Tiruthuraipundi for a declaration that the notification was without jurisdiction. The

suit was dismissed in June 1960 and the appeal arising therefrom also failed on 21-8-1961. It appears, a second appeal, which was filed, was

dismissed by this court even at the admission stage. This petition was tiled in January 1962, apparently after disposal of the second appeal, to

quash the notification.

(2) The notification was mad by the State Government in exercise of powers vested in it by S. 3 of the Madras Hindu Religious and Charitable

Endowments Act 1951. That Act, by S. 6(4), defined "charitable endowment" to mean 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. Section 3 provided that where the Government had reason to believe that any Hindus or Jain public charitable endowment was being

mismanaged and was satisfied that in the interests of the administration of the endowment it was necessary to extend the provisions of the Act, it

could do so by notification in the official Gazette after following the procedure prescribed in the proviso to the section. The definition of "charitable

endowment" and S. 3 both manifestly relate to Hindu Public charitable endowments which are not exclusively Hindu in character. That was held by

this court in *The State of Madras and Another Vs. The Urumu Seshachalam Chettiar Charities and Others*, . *Rajagopalan and Srinivasan JJ.* In that

case were of the view:

The very definition of charitable endowment in S. 6(4) of the Madras Hindu Religious and Charitable Endowments Act XIX of 1951 postulates

the test of exclusiveness. Unless the benefit of the endowment is confined wholly to Hindus, it would not be charitable endowment as defined in

that section. The prefix "Hindu" to expression "Public Charitable endowment" in S. 3 emphasis this feature. Section 3 cannot be invoked unless the

endowment is exclusively Hindu in Character

That view of the statutory provisions was applied in *W. P. No. 662 of 1959* and *W. A. No. 75 of 1962 (Mad)*, *Thulasidas Naidu v. State of*

Madras, arising therefrom. Placing reliance on these decisions. Mr. Kumaraswami Pillai for the petitioner contends that the charity here in question

is not a Hindu charitable endowment and the notification would, therefore be void as without jurisdiction. It is not clear who the founder of the

charity was or what were the terms of the foundation. But in the affidavit in support of the petition as also in the impugned notification it is stated

that the Odacheri chatram and Water Pandal charity were intended to serve a two-fold object, namely, feeding all the chatram and conducting

water pandal wayfarers in charity. In fact, the charge levelled against the petitioner in the impugned notification is that these charities were not

properly performed and the endowment had been mismanaged. Nowhere does it

appear that the charity was confined exclusively to the Hindu community. Taking it for granted that the founder of the charity was an ancestor of the petitioner and he was a Hindu, it does not follow necessarily from that fact alone that his intention was to confine the charity to the Hindu wayfarers exclusively. The water pandal charity may be incidental to feeding all wayfarers. But inasmuch as feeding wayfarers does not appear to have been confined exclusively to the Hindus, the result follows that it will not be governed by the provisions of Madras Act XIX of 1951.

(3) But, in the circumstances, which will be adverted to presently, the petitioner will not be entitled to the benefit of the foregoing observations. The petitioner, as I said, in the suit asked for a declaration that the impugned notification was without jurisdiction on the ground that the properties in question did not constitute a trust and that if they did, the trust was a private one. No objection to the validity of the notification was raised in the suit on the ground that the charity was not exclusively confined to the Hindus. That suit was against the State Government and was devoted to an attack on the validity of the notification. That being the case, the petitioner should have raised the objection to the validity of the notification on the ground as well of the charity not being exclusively devoted to the Hindus. In my view, therefore, the petitioner cannot be allowed to take the point by means of this writ petition. In fact, it appears the petition under Art. 226 of the Constitution has been filed only after the termination of the civil litigation, after the termination of the civil litigation, after the disposal of the second appeal at the admission stage. In effect, this petition is to make up for the omission of the petitioner in the suit. On the ground that the point was open to the petitioner in the suit, but nevertheless was not taken, which ought to have been taken, I am unable to accept the contention for the petitioner that he can agitate the point by means of this petition.

(4) On behalf of the respondent, another objection also is pressed, namely, that though the impugned order was passed as early as 1958, the writ petition was filed in January 1962. It is said that this long delay would in itself be a justification for dismissing this petition. I should think so. But in justification, it may be said for the petitioner, that he had been agitating the matter in the suit. The petitioner, however, cannot have a double advantage, namely, to have the delay condoned and at the same time, have the

omission to take the point in the suit excused.

(5) The petition is dismissed, but with no costs.

(6) Petition dismissed.