(1980) 11 MAD CK 0002

In the Madras High Court

Case No : S.A. No. 1713 of 1977

Sree Kannikaparameswari Devasthanam APPELLANT

Vs

The Salem Municipal Council RESPONDENT

Date of Decision : 10-11-1980

Acts Referred:
Tamil Nadu District Municipalities Act, 1920 — Section 354, 6(17), 7(2), 83, 83(1)(a)

Citation : (1980) 11 MAD CK 0002

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : V. Krishnan and P. Veeraraghavan, for the Appellant; K. Alagirisami and P. Ayyaswami, for the Respondent

Judgement

Nainar Sundaram, J.—The plaintiff in O.S. No. 589 of 1975 on the file of the Principal District Munsif, Salem, is the appellant in this second

appeal. The respondent is the defendant in the said suit. The plaintiff laid the suit to declare that the levy of property tax for the suit temple under

assessment No. 28262 is illegal and opposed to the provisions of S.83 of the Tamil Nadu District Municipalities Act 5 of 1920 (hereinafter

referred to as the Act) and for a permanent injunction restraining the defendant and its subordinates from collecting the property tax levied under

the aforesaid assessment. The Principal District Munsif, on an appraisal of the materials produced by the parties and the questions involved found a

justification for countenancing the case of the plaintiff and decreed the suit as prayed for. The defendant preferred A.S. No. 199 of 1979 which

was heard and disposed of by the II Additional Subordinate Judge, Salem and the lower appellate Court took different views from that of the first

Court and non-suited the plaintiff. The present second appeal is directed against the judgment and decree of the lower appellate Court. Two questions came up for consideration in this second appeal. One is, whether the suit temple will fall within the category contemplated under S.83 (1) (a) of the Act. Secondly, whether the suit is barred under S.354 of the Act. Though the second question has not been formulated for consideration at the time of admission of the second appeal, I am satisfied that the case involves such a question and without giving a decision on this question the rights of the parties as agitated by them in the Courts below will not stand comprehensively adjudicated. Hence I permitted the learned counsel for the appellant to make submissions on the second question also.

2. The Appellate Authority came to the conclusion that the suit property is used only as a temple and not as Bajanai Madam or Kalyana Mandapam at alleged by the defendant. However, it posed a question for consideration as to whether the suit temple is being used as a temple of public purpose or it is being used as a temple of Arya Vysyas community. On an assessment of the evidence in the case, the lower appellate Court came to the conclusion that the suit temple is a place set apart exclusively for the worship of a particular community, namely, Arya Vysyas of Ammapet only and, therefore, the provision of S.83 (1) (a) of the Act is not applicable. S.83 (1) (a) of the Act reads as follows:--

83 (1). The following buildings and lands shall be exempt from the property tax-- (a) places set apart for public worship and either actually so used or used for no other purpose.

Mr. V. Krishnan, learned counsel for the appellant, drew my attention to the evidence of P.W.1, that the Kalyana Mandapam attached to the back of the temple is being allowed to be used by other community people also. Even in Ex.A. 121, the notice, dt. 5th April, 1975 on behalf of the plaintiff, while claiming exemption under S.83 of the Act, it has been categorically stated that the suit temple is a place set apart for public worship and is used for no other purpose and no amount is collected. It is further stated therein that at the time of the festival of the temple, the deity is to be kept for the worship of the public since the temple premises is small and is not sufficient even for 50 persons to assemble and worship. This aspect apart, the learned counsel for the appellant would also submit that even assuming that the suit temple is being used by Arya Vysya community people alone, yet, it would not cease to be a place set apart for public worship within the meaning of S.83 (1) (a) of the Act, since the members of

the Arya Vysya community do constitute a section of the public and the user of the suit temple for their worship would still come within the purview

of S.83 (1) (a) of the Act. In support of this submission, the learned counsel relies on a judgment of a Bench of this Court consisting of

Ramakrishnan and Ramamurthi, JJ. in C.S. Ambigai Temple v. Commissioner of H.R.C.E. Madras 1966-I-M.L.J. 109 = 78 L.W. 404 . That was

a case which arose under the Madras Hindu Religious and Charitable Endowments Act 22 of 1959 and the Bench was considering the tests with

regard to public and private temples and it had recognised the proposition that even a temple dedicated for the purpose of a particular section of

the Hindu community could also be a public temple if the community constitutes a considerable section of the Hindu public, the members of which

worship in the temple as of right. Ramakrishnan, J. delivering the judgment for the Bench, after referring to the earlier such authorities, observed at

page 112 as follows:

Applying the above principles to the present case, it is clear that in regard to the temple in Nachandupattu, even if it was founded exclusively for

the benefit of the members of the Nattukottal Chettiar community belonging to five temple clans, the dedication of the temple to the community and

the worship by the members of that community as of right in the temple would still make it a public temple, as the members constitute a section of

the Hindu community as contemplated in the definition in S.6(17) of the Act.

I am in respectful agreement with the above ratio of the Bench of this Court. Arya Vysya community people of Ammapet in the instant case do

form part of the Hindu community at large. It is not disputed before me that they a constitute considerable section of the Hindu public. Merely

because the place set apart for worship is being used by a particular section of the public, it will not cease to be a place set apart for public

worship within the meaning of S.83(1) (a) of the Act. A temple being owned by a particular community, the conduct of the festivals by that

community, and the management of the temple by that community, may not by themselves be relevant factor to hold that the said temple is not a

place set apart for public worship within the meaning of S. 83 (1) (a) of the Act.

Mr. R. Subburaj, learned counsel for the respondent, would refer

to the dictum in Henning v. Church of Jesus Christ 1952-3 All E.R. 364. There, Mormon temple was held not to be exempt from the rates under

S.7 (2) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, because it was not a place of public religious worship which meant

public as distinct from private worship, but by reason of the restriction on entry was a sanctuary of a private nature for Mormons of good standing

for the sacred observances and rites that took place there. In the instant case, nothing has been brought out in evidence that apart from the

ownership claimed by the particular community, there is any restriction with reference to the worship at the said temple by the rest of the public. As

pointed out earlier, Ex.A21 categorically avers that during occasions of festival, the deity will be kept for the worship of the public. On the facts of

the case, it is unnecessary to consider the ratio of this English decision and express any opinion whether any restrictions imposed with reference to

worship by the rest of the public will take away the character of the suit temple from being a place set apart for public worship. Hence I have to

hold that the exemption claimed under S.83(1)(a) of the Act is tenable and will have to be up held.

Coming to the second question as to whether S.354 of the Act will form a bar to the present suit, I find that the lower appellate Court is mostly

influenced by its findings on the first point and has held that the bar under S.354 of the Act would come into play. Here, the very basis of the levy

itself was wrong and there is an omission to take note of the exemption under S.83(1)(a) of the Act and in that sense there is no substantial

compliance with the provisions of the Act. As pointed out by a Bench of this Court consisting of Ramaswami and Subrahmanyam, JJ. in Salem

Municipal Council v. Subramanian, that in such circumstances, it is open to the civil Court to declare the levy illegal and in fact it is its duty to do

so. In view of the above position, the bar under S.354 of the Act would not come into play at all, since I have held that the suit temple will fall

within the category contemplated under S.83 (1) (a) of the Act. As a result, the second appeal is allowed. The judgment and decree of the lower

appellate Court are a set a side and those of the first Court are restored. The parties are directed to bear their costs throughout.