

(1975) 02 MAD CK 0027
In the Madras High Court

Thanumalayaperumal Mudaliar and Others

APPELLANT

Vs

The Commissioner, The Hindu Religious and Charitable
Endowments (Administration) Department and Others

RESPONDENT

Date of Decision : 28-02-1975

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 70

Citation : (1975) 88 LW 649 : (1975) 2 MLJ 310

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, J.—The unsuccessful plaintiffs in O.S. No. 7 of 1966 on the file of the Subordinate Judge, Nagercoil appeal against the judgment and decree of the learned Judge, who did not agree that the suit temple was a private one, but in whose opinion it was a public temple. The relevant pleadings may be summarised. (2) Periaveettu Mudaliars about 1000 years ago founded two Siva temples one at Azhakiapandiapurarc and the other at Aloorr. The temple at Azhakiapandiapuram is known as Ambalathaduvar temple and the Aloor temple is popularly known as Chera Chola Pandia Mahadevar temple. They were built on the sites belonging to the ancestors of the plaintiffs and were constructed with their private funds. 1 here is no evidence expressly as to dedication but from time immemorial these temples were recognised as the private temples of the Periaveettu Mudaliar family. It is claimed that the inscription in the Aloor temple, which is the subject matter of this litigation, bears ample proof as to the private nature of the temple. Reliance is also placed on a printed book Exhibit A-22 written by Tamil Vidwan Chidambara Kuttalam Pillai under the caption of Contemporary records but which are ancient, are also relied upon to show that the suit temple was built with private funds and was treated as such by the rulers of Travancore. Exhibit A-4 of the year 1896 is an order issued in the name of the Dewan. The proceedings obviously were initiated when a complaint was received about its mismanagement by the then trustees. The point however is that on the undertaking given by the then trustees to maintain the accounts and

look after the temple affairs properly the complaint was dismissed ; but there is a recognition about the status of the temple as a private temple in this document. Long afterwards under Exhibit A-12 and in the year 1962 the Palace Officer of the Travancore Devaswom refers to the quondam grants given to this temple as a private temple but makes it clear that on and after the date of issue of Ex. A-12 such grants for all private temples including the suit Aloor temple were discontinued, Exhibit A-5 is a copy of the settlement register in Aloor Paku thy showing that many of the suit properties stood in the name of the then trustees but for the benefit of the deities installed in the temple. There is no dispute that the temple was built on private land. Exhibit A-6 is also incidentally pressed into service which shows that three strangers also provided properties to the temple, but incidentally recognised that it was a private temple. The temple was never dedicated to the public and the members of the public did not have access to the temple and ship ship the deity therein as a matter of right nor did they claim any such right in a legally conceivable manner. The plaintiffs themselves referred to a suit filed by the second plaintiff as OS-No. 22 of 1962 on the file of the same Court for a declaration that the temple was a private one. Without going into the merits, but on the question whether the suit was maintainable the Court held against the second plaintiff in that suit, as the enquiry relating to the nature of an institution has to be decided by the statutory tribunal under the provisions the Tamil Nadu Religious and Charitable Endowments Act, 1959. It is also claimed that an application was filed under the appropriate section before the appropriate authority contending that the suit temple in question was not a religious institution and that the plaintiffs held Office hereditarily.

The Deputy Commissioner Hindu Religious and Charitable Endowments Department Madurai, held the hereditary trusteeship right in favour of the plaintiffs, but held that the temple was a public religious institution. Thereafter, the further appeal by the plaintiffs to the Commissioner was dismissed and hence they had to file the present suit u/s 70 of Tamil Nadu Act XXII of 1959.

3. The Hindu Religious and Charitable Endowments Department represented by its Commissioner, who is the first defendant in the suit, contends that the temples mentioned in the plaint were not founded by the ancestors, that the members of the Hindu public have been freely offering worship on almost all the days, that they contributed towards the maintenance and sustenance of the institution and that it has all the characteristics of public temples. Reliance is placed upon the judgment in O. S. No. 22 of 1962 on the file of the same court wherein a casual finding to the effect that the institution was a public religious institution was given and that, therefore, it is not open to the plaintiffs to reagitate the issue once again- The donations given by the strangers as evidenced by Exhibit A-5 are very strongly pressed into service to show the public character of the suit temple, that at best the plaintiffs were only managing the temples and they were not proprietors thereof and that the public were visiting the temple as of right. According to the Department there were deities

inside the temple and the features of the temple such as availability of utsavavigrahams, existence of inner and outer prakarams, vimanams, outer madil, three entrances and balipeetam, are all indicia that go to prove that the institution is a public religious institution. It is to be noticed that the Endowments Department was the only defendant when the plaintiffs came to Court. Later defendants 2 to 8 got themselves impleaded and filed a written statement. They would say that the temple and its premises are in sarcar poramboke and that ever since its inception the suit temple has been a public temple where the Hindu public have been freely offering worship without let or hindrance. The temple has been consecrated for the benefit of the Hindu public and at no time the plaintiffs' ancestors, and for a greater reason the plaintiffs, did exercise any right of proprietorship over the temple. It is said that the Rulers of State and the members of the public mainly contributed the properties now annexed to the temple and that the mode of construction and the other features already referred to by the first defendant would negative the plea that the institution is a private temple. On these contentions the following issues and additional issues were framed:

- I. Whether the temple and its properties constitute a private family trust as alleged by the plaintiffs or a public trust as contended by the defendant
2. Whether the right of management of the temple and the trust rests solely with the plaintiffs ?
3. Whether Madras Hindu Religious and Charitable Endowment Act, 1959 will govern the administration of the trust ?
4. Whether the order of the Commissioner is liable to be set aside on the grounds stated in paragraph 7 of the plaint ?
5. Whether the temple is a private temple ?
6. Whether the plaintiffs are entitled to the declaration prayed for in the plaint ?
7. To what reliefs are the plaintiffs entitled ?
8. What is the order as to costs ?
9. Whether the plaintiffs are estopped from contending that the suit temple and its properties belong to the private family of the plaintiffs ?
10. Whether the suit is barred by res judicata in view of the findings in O.S. No. 22 of 1962 of the sub-Court, Nagercoil.

Mr. padmanabhan, learned Counsel for the plaintiffs reiterated the arguments and took us through the oral and documentary evidence let in this case to sustain his contention that the temple is a private temple. Mr. T.R. Ramaehazidran for the respondent contending contra would sustain the judgment of the Court below on the ground that the plaintiffs did not produce the account books maintained by them to show that at all material times the

ancestors of the plaintiffs and thereafter the plaintiffs, owned the temple. Reliance is placed upon the endowment by strangers and the features of the Aloor temple and it is said that the overall impression one gains from the evidence on record is to the effect that there was at no time a private temple at the site which belonged to the plaintiffs' ancestors. The learned Counsel would rely upon one singular feature in the case. A copper plate said to contain the history of the temple and referred to in one of the pamphlets produced by the plaintiffs themselves (Exhibit A-22) not having been produced, it is said, that there is a suppression of material and, therefore, the suit has to be dismissed.

4. The question whether an institution or a temple is a public religious institution or a public temple or a private one has been the subject-matter of many decisions of this Court and that of the Supreme Court and it is easy, therefore, at this stage to deduce from them the well-set norms, guidelines and principles on which a decision, one way or the other could "be rendered on the principal issue in question.

5. In the State of Travancore, there were a number of temples under private management and there were other temples in which the Sarcar had been exercising the right of Supervision in exercise of its sovereign power. It was always possible for the Sarcar or the Government under the then regulations in force which were to provide for the better administration of Hindu Religious Endowments in Travancore to assume management of the same in case of mismanagement.

6. A Bench of our High Court in Sri Chidambareswara Sivagami Ambigai Temple Vs. Commissioner, Hindu Religious and Charitable Endowments, Madras, , recognised the existence of private temples in Travancore and would not invoke the usual presumption that in the case of temples in South India, they are public unless the person, who asserts it is private, discharges the onus of proof which is on him to the satisfaction of the judicial authority. They observed:

It is now well-settled that unlike, the temples in Kerala, there is a presumption that temples in South India are public and the onus of proof is on the person asserting it to prove that it is a private temple.

We have referred to this judgment only to show that in Kerala under the regulations concerning religious endowments then in force, there were many private temples in the State of Travancore as it then was and that the State recognised such private ownership of religious institutions.

7. "The temple" as defined in Tamil Nadu Act XXII of 1959 in Section 6 Clause 20 means a place by whatever designation known, used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof as a place of public religious worship- The three guidelines which enable Courts to decide whether a particular religious institution comes within the scope of the meaning of the above definition are that it should be a place of public worship, there should be acceptable proof of

dedication for the benefit of the Hindu community or a section thereof and incidentally it should also be established that the worshippers have been using as of right the religious institution as a place of public religious worship. In so far as temples in Malabar are concerned, the presumption was that a temple was a private temple, AIR 1934 230 (Privy Council) , reiterated in AIR 1940 7 (Privy Council) .

8. The other inspiring norms to decide whether a temple is a private or public temple is dependent upon the features of the institution. They could be conveniently summarised with reference to decided cases:

(a) The existence of Moolasthanam, "Mahamandapam, Prakaram, idols of chief and other deities, utsavamurthis, daily poojas, special poojas and procession during festive occasions, worship by the local public belonging to different communities without any let or hindrance, are all factors which give the impression that the temple is a public one.

Vide Ramaswamy Naidu v. Commissioner H.R.& C.E., Madras (1974) 87 L.W. 575:

(b) If the temple is being used as a "place of public religious worship, if there is no dedication of the temple to and for the benefit of the Hindu community or any section thereof, if it is not used generally by the Hindu community as of right as a place of public religious worship, if there is no hundi and no collections are made from the public for the performance of any festival connected with the temple as for its maintenance and no member of the public has come forward to say that he "has contributed any amount for the maintenance or any of the related poojas to the deity therein, the temple will not be a public temple, but a private one.

Vide Commissioner, H.R. & G.E. v. Jaganatha Rao (1974) 87 L.W. 675 and Ramaswami Jadaiah Gounder Vs. Commissioner, Hindu Religious and Charitable Endowments Administration and Another,

(c) The origin of the temple, the "manner in which its affairs are managed, the nature and extent of the gifts received by it, rights exercised by devotees in regard to worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple, are factors that go to establish whether a temple is a public or a private one and in each case both the documentary and oral evidence have to be considered as a whole while keeping in view the above principles.

Vide Goswami Shri Mahalaxmi Vahuji Vs. Ranchhodas Kalidas and Others, and T.D. Gopalan Vs. The Commissioner of Hindu Religious and Charitable Endowments, Madras, .

(d) An inference whether a religious institution is a public one or a private one can be drawn from the usage and customs of the institution or from the mode in which the properties have been dealt with as also the other established circumstances.

The Bihar State Board Religious Trust, Patna Vs. Mahant Sri Biseshwar Das, :

(e) The essential sine qua non to make a temple a public temple appears to be that the public should claim the . right to worship the deity installed therein as of right. If the origion of the temple is very well-known as a. private temple, then the clearest possible evidence is necessary for converting that temple into a public temple. As worshippers, are naturally Welcome and as the sentiment of a Hindu would not prevent another from making offerings or to turn away a worshipper and as there is an innate desire in persons in charge of private temples not to discourage popularity of the deity, the mere circumstance that the people in the locality were visiting the temple and were" worshipping the deity may not take away the character of the temple from, a private temple to a public temple. In all such cases worship of outsiders is referable to the leave and licence granted by the owner and cannot be indicative of any dedication to the public.

Chennammal Vs. The Commissioner, for Hindu Religious and Charitable Endowments, :

(f) A temple will not be a public temple within the scope of the Act because in the absence of an express, dedication for the benefit of the public, user by the public as of right must be , established and such user as of right is far different from the trustees being; willing to welcome the public to come and worship in the temple. If a temple had no " garbagraham, mahamandapam and if there was no dwajasthambam, no prakaram, no hundi and if no kanikai or any collection was made by the temple and if the utsava idols were not taken in procession in the street then the temple is not a public; one.

Vide Kuppi Sanjeevi Reddi and Ors. v. Commissioner, H. R. & G. E., Madras A.S. No. 405 of 1969.

(g) If the public do not worship the idol as of right and simply because some poojas are performed in a temple and certain members of the public are allowed to participate in the pooja, the temple cannot be said to be a public : temple.

Vide A.S. No. 409 of 1971 and C.M.P. No. 822 of 1975.

9. In the light of the above principles, the oral and documentary evidence has to be considered in the instant case. No doubt, there is no evidence as to express dedication, but by long user and the custom prevailing in Malabar and by virtue of the regulations that governed such temples in Kerala, it cannot be lightly said that the suit temple is a public one. The inscription in Exhibit A-1 coupled with the treatment of the temple by the Sarcar or the Government or the State of 1 Tavancore or by the Rulers of Travancore as seen from Exhibit A-4 and Exhibit A-12 give also the same impression. That the properties of the temple were dedicated by Periaveettu Mudaliar family is clear from the pattas produced. Reliance, however, is placed on certain donations made by strangers which were annexed as properties of the temple. Such sporadic donations by strangers would

not militate against the original characteristic of the temple which sprung from private bounty and endowments made by private individuals. The one factor, which was very greatly pressed into service by Mr. Ramachandran, is that the copper plate referred to in Exhibit A-22 has not been produced. It is by now well established that dedication to a temple could be proved by direct evidence or by acceptable indirect evidence. There is ample indirect evidence in this case to show that for several centuries, this temple was the private property of the Periaveettu Mudaliar family. Exhibit A-8 is a partition deed between the family members. One branch of the members of the family, who decided to remain in Aloor, obtained the right to own, manage and administer the temple in Aloor (Chera Chola Pandia Mahadevar temple, Aloor) and they got the property as well as the temple allotted to them and to their share in the said partition deed. This is an ancient document. There is nothing said against it. The force of it should not be lightly ignored. We have again a very important , document in the nature of a Commissioner's report, which has been marked as Exhibit A-26 in this case. The inspection of the temple was made by the Commissioner in the presence of the Inspector of the Hindu Religious and Charitable Endowments Department. He noted the inscription evidenced by Exhibit A-1. He inferred from it that Ashtabandhana Prathish'a ceremony was made and the inscription also speaks, to the fact of the consecration of the image of Sivakami Amman adjacent to the Murthi of Lord Nataraja. There are only open varandabas on all four sides, and there are various idols like Lord Vigneswara, Lord Sastha, Nagaraja and Bhoothathan and Lord Krishna, To some idols no roofing is provided for. There is also the image of Lord Chandikeswarar. There is no gopuram for the temple. There is neither the permanent flag staff (dwajasthambham) nor is there even a structure for installing a temporary flag staff for celebrating peiiodical utsavams of the temple. There is nothing, to indicate that such a ceremony was-performed in that temple at all. No provision has been made for taking out the idols of the temple on procession to-any place outside the inner compound of the temple. There is no hundi for collection from the worshippers of the temple. There is no bell and when the Commissioner visited the temple, there was deepaaradhana and there were no outsiders excepting himself and the two Inspectors of the Department. The provision of the door and compound wall and the site of the temple is such that it is incapable of attracting members of the public to resort thereto as of right either for worship or for participating in any celebration therein. The cocoanut grove near the temple belongs to the temple.

10. The inspection report of the Commissioner, which is to the effect that there is no gopuram, no dwajasthambham, no procession of the utasava idols, no hundi, no vahaham and no bell, cumulatively taken, give the impression that the temple is a private one. The non-production of the copper plate may be for reasons beyond the control of the plaintiff. One could expect that if there was a copper plate at all, as mentioned in Exhibit A-22, it ought to have been there in 1786, which is the year which the inscription Exhibit A-1 bears. Due to-lapse of time, the copper plate might have been misplaced and none has given any specific

evidence about this. But on this slender accident which does not outweigh the abundant [documentary evidence already referred to, we are unable to accept the contention of Mr. T. R. Ramachandran, that the temple is a public one.

11. Before considering the oral evidences it is necessary to make a comment. D. Ws. 2 to 8 got themselves impleaded as parties to the action on their own request. The purpose of such an attempt to become parties to the litigation is obvious. The first witness examined on the side of the defendants is a resident of Azhkiapandiapuram and not Aloor. He is a relation of the plaintiffs and he is a veteran litigant. He has filed as many as : 10 suits and the trend of his examination shows that everything was not well with him in so far as the plaintiffs were concerned. He claimed the amount payable by the Government to the Aloor Temple and was unsuccessful. He has been, therefore, brought to Court by the defendants so as to conveniently speak against the plaintiffs. He refers to the fact that the members of the general public were not prevented by the plaintiffs or any of their ancestors in the matter of worshipping of the deity inside the temple. Excepting for his bare statement that the public were worshipping as a matter of right, there is nothing in his evidence to substantiate the same. D. W. 2 is a manager of Deputy Commissioner's office, Hindu Religious and Charitable Endowments Department. He admits that there is no gopuram in the temple, but there is only a vimanam. He says that many Hindus attended the temple" during poojas and were worshipping, that the worshippers were coming as of right and that they were given prasadam. He would say that there were no vahanams in the suit temple and that there was no procession of the deities in the street. There is no structure even for mounting dwajasthambam or the other idols according to the witness, as no utasavam is performed. He admits that there are no hundials. He would refer to Mr. Bhaskara Pillai and three villagers as having been present at the time when dheeparadanai was made on the date when the Commissioner went to inspect the temple. It is significant that neither this Bhaskara Pillai nor any other member of the public has been examined to show that the public ever visited the temple as of right. D. W. 2 is one of the defendants. He refers to the endowments by strangers and admits that after the plaintiffs became the managers the public are not allowed to take part in the functions of the temple. He would say hesitantly that there would be cheevili function daily and there would be beat of drums. He is a person, who is having definitely grievance against the plaintiffs. Exhibit A-4 is a complaint written by him and others against the mismanagement of the temple affairs. He is again a witness, who has been deliberately brought in by the defendants to sponsor their cause. We have already referred to the "fact that defendants 2, to 8 were impleaded as parties. Excepting for one defendant, who has chosen to go into the box and who was also inimically disposed towards the plaintiffs and their management, no other independent witness was examined on the side of the defendants. If really the public were interested in maintaining for themselves that they visited the temple as of right and worshipped the deity in exercise of such right, nothing prevented the defendants from examining

independent witnesses. We have no hesitation in rejecting the evidence of D. Ws. 1 and 3 as interested testimony and as persons who had an axe to grind and who were not favourably disposed towards the plaintiffs and their ancestors.

12. In *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, , the Supreme Court held that grants posterior to the initial grants would not affect the nature of the initial grants made to the temple. There is unimpeachable evidence in this case that all the properties standing in the name of the deities were provided with funds of the Periaveettu Mudaliar community. The fact that at one particular] point of time a small extent of two acres odd was additionally granted to the deity by some strangers cannot alter the nature of the initial grant or the character of the institution from a private one to a public one. The plaintiffs in paragraph 5 of the plaint state that all the properties mentioned in the schedule excepting an extent of two acres 57 cents are the properties purchased by the funds belonging to their family and endowed for the temple at different times by the ancestors of their family. The first defendant in the written statement would simply deny this allegation and would aver that contributions have been made by the members of the public and even the rulers of the State for the temple, its upkeep and performance of ceremonies. Besides stating this, nobody spoke to it or proved the allegation. In the written statement of defendants 2 to 8 again there is a bare allegation that the temple has not been constructed by the plaintiffs' ancestors nor was any property endowed in the name of the temple. D. W. 3 would only refer to the donation made by some strangers which bears a very small proportion to the totality of the properties owned by the suit temple. No sasanam has been produced no deed of dedication has been marked and we are yet to know the circumstances under which the strangers dedicated such properties. No nexus has been established between the so-called endowments and the properties of the temple. The answer to this specific allegation in the plaint is vague. We are unable therefore to accept the contention of the learned Counsel for the respondent that by reason of the supervening endowments made by strangers the temple ought not to be treated as a private temple.

13. In the beginning we have set out the principles which have to be borne in mind in deciding whether a temple is a private one or a public one. At the outset we have to mention that the indicia and the necessary features which ought to be present in a temple are absent in the instant case. Utsavamur this are not taken in procession. There is no gopuram. There is proof of Ashtabandhana Prathishta having been made by the ancestors. There is no external indicia which, is ordinarily present in public temples in South India. The compound wall is not to be equated to a prakaram. There were no worshippers at the time when the deeparadhana was-done. Excepting the representative of : the Commissioner and the two Inspectors,, there is no proof that any member of the public participated in it. D.Ws. 1 and 3,. who readily responded to the call of the defendants, were inimically disposed towards the plaintiffs. No independent witness or member of the public has come to say that he was visiting the temple

as of right and performing the poojas pursuant thereto. The mere presence of the worshippers on certain occasions by itself is not conclusive to show that the generality of the public were having ingress into the temple as of right. Though there is no express dedication the passage of time and the course of conduct of the members of the family have clearly established that it was the Periaveettu Mudaliar of Aloor with private funds who conscreated the idols and built the temple and its surroundings and endowed properties in the name of the deity. The defendants wanted to fish information by asking the plaintiffs to produce account books relating to the temple. If a person alleges that a particular religious institution is a public temple, it is for him to establish it. The plaintiffs allege that it is a private temple and that they have fairly established by reasonable oral and documentary evidence that it is such an institution. The defendants have failed to discharge the onus of proof. When they wanted the plaintiffs to produce the account books, they were fishing for information, as they were not armed with material to discharge the burden of proof, which is on them. Having regard to the essential principles which should govern, the facts while rendering a decision whether a religious institution or a temple is a public or a private one, we are not satisfied that in the instant case the defendants have produced such clinching and acceptable material which should prompt us to hold that the temple is a public one. The learned Subordinate Judge, who was not very clear in the treatment of the materials, came to a different conclusion. But after analysing the evidence both oral and documentary, we are unable to agree with the decision of the learned Subordinate Judge.

14. The appeal is, therefore, allowed with costs.