

(1982) 07 MAD CK 0010
In the Madras High Court

The Commissioner for the Hindu Religious and Charitable
Endowments and Another

APPELLANT

Vs

Swamikeela Arasalwar Dharmam and Others

RESPONDENT

Date of Decision : 09-07-1982

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 6(20),
63(a), 70

Citation : (1983) 96 LW 548 : (1983) 2 MLJ 274

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Single Bench

Judgement

S. Nainar Sundaram, J.—The defendants in O.S. No. 183 of 1975 on the file of the Second Additional Subordinate judge of Tirunelveli, are

the appellants in this appeal. The respondents are the plaintiffs in the suit. The plaintiffs laid the suit u/s 70 of the Tamil Nadu Hindu Religious and

Charitable Endowments Act, XXII of 1959, hereinafter referred to as the Act, for setting aside the order of the second defendant dated 31st

December, 1974, and for a declaration that the plaintiff trust and the properties belonging to it do not constitute a religious institution as defined in

the Act and for a consequential injunction restraining the defendants, their agents and subordinates from enforcing the provisions of the Act in

pursuance of the order of the second defendant, referred to above. The plaintiffs initially resorted to the process u/s 63 (a) of the Act before the

Deputy Commissioner for Hindu Religious and Charitable Endowments, Madras-34, in O.A. No. 41 of 1968 (Madurai) for a declaration) that the

plaintiff trust and its temple, Navaneetha krishnan Mandir would not constitute a religious institution as defined in the Act. The said Deputy

Commissioner, by order dated 29th April, 1972, marked in this case as Exhibit B-2, held that the plaintiff trust and the temple satisfy the definition

of the term "temple" as defined in Section 6(20) of the Act and in this view, dismissed the application of the plaintiffs. There was an appeal to the

defendant in A.P. No. 149 of 1973 and the second defendant, by order dated 31st December, 1974, as per Exhibits A-3 and A-4, dismissed the

appeal, confirming the order of the Deputy Commissioner. Hence the plaintiffs were obliged to file the suit for the above reliefs.

2. On an assessment of the materials in the shape of evidence, oral and documentary placed in the case the Court below came to the conclusion

that the plaintiff trust and its properties cannot fall within the category of "temple" as claimed by the defendants and hence, it is not a religious

institution and, in this view, the suit of the plaintiffs was decreed by the Court below with costs. Hence this appeal by the defendants.

The question that comes up for consideration in this appeal is as to whether the plaintiff trust with its temple, satisfies the definition of a "temple"

within the meaning of Section 6(20) of the Act, which is the stand specifically taken by the defendants, as expressed in the order passed by the

concerned Deputy Commissioner in Exhibit B-2 and confirmed¹ by the second defendant in his order as per Exhibits A-3 and A-4.

Section 6(20) of the Act reads as follows:

(20) "temple" 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;

To come within the above definition, the place or the institution must satisfy the following ingredients:

1. It must (be used as a place of public religious worship; and

2. (a) It must be dedicated to the Hindu community or any section thereof as a place of public religious worship; or

(b) It must be used as of right by the Hindu community or any section thereof as a place of public religious worship.

3. Unless the conditions contemplated above are satisfied, it cannot be held that the institution is a temple within the meaning of the Act. The

evidence placed on behalf of the plaintiff trust leaves no room for doubt that it

cannot fall within the above definition. P.W. 1, examined on behalf of the plaintiff trust, is one of its trustees. He deposed that the plaintiff trust is a private trust; it was; originally established by Udaya Marthanda Raja, a Kerala King, about 400 years back; he gave the trust to the Brahmins of Karkudi who were the faithful followers of the King; and they were called Alwars and the trust was called ""Swami Keela Arasalwar Dharmam"". According to P.W. 1, a Kerala King built the houses and gifted the present street to the Brahmins who took up residence there They are called "gramadars" and his evidence indicates that the "gramam" is nothing but the Athankarai Street" in Shencottah. His further evidence is to the following effect: The gramadars elect the trustees once in two years and the trustees manage the trust and no outsider could interfere with! their management. About 100 years back, a temple called "Navaneethaswami temple" was built by the Dharmam without donations from outsiders. There is a Kalyana Mandapam. The temple belongs only to the gramadars and outsiders have no right in it. The temple was built for the personal worship of the gramadars. Daily, five Brahmins of the aforesaid street are being fed. For the deities installed in the place, there was no performance of Ashtabandanam or Kumbabhishekam and the procession of the deity will be only in the street. Donations are obtained only from gramadars and not from outsiders. Other charities are also being given to the gramadars only. The temple has a Prakaram. It has no Dhvajasthambam or Undial. During the festivals, outsiders will also participate (but the feeding will be only to the gramadars; and outsiders will not be invited.

4. On the question of dedication, it is well-settled that it could be a matter, expressed in a deed or of inference from a course of conduct. The evidence of P.W. 1 clearly shows that there was a gift of the properties; by the Kerala King to a particular body of Brahmins, called Alwars and who settled in a particular street and the residents of the street also went by the name "gramadars", the "street" itself being synonymous with "gramam". At the time of the original gift of the properties and for a long time thereafter, there was no temple at all, and the temple was built only about 100 years back. Hence, initially there was no question of any place being used for religious worship, much less for public religious Worship. The temple subsequently built was out of income from the original trust and not

from outside donations. Then the question is as to whether the temple, which was built obviously as a private temple by the gramadars, has in course of time, become a public temple by express or implied dedication. As stated above, the beneficiaries under the gift from the Kerala King were specific individuals, a body of Brahmins, and their descendants; the present gramadars. They, as a class, stood ascertained and are capable of being ascertained. There is the well-settled distinction between a private and a public trust. In the former case, the beneficiaries are specific individuals and they are ascertained or capable of being ascertained. In the latter case, the beneficiaries are the general public or a class thereof and they constitute a body which is incapable of ascertainment. There is no evidence in the present case that the trust or for the matter, the temple specifically, was by course of conduct, got dedicated to an indeterminate multitude of the public. There is no proof of user of the temple by the public as of right. Proof of user by the public, of the temple without interference and as of right would be cogent evidence that there has been a dedication in favour of the public. Such a proof is wanting in this case. It is true that Utsavams are being conducted and the deity is being taken in procession and on such occasions, there will be participation of outsiders. But the mere fact that festivals are being conducted and the deity is being taken in procession and at that time members of the general public participate in the functions are not sufficient by themselves to draw an inference that the temple has been dedicated to the public. Equally so, the presence of physical features which are usually found in a public temple is not of much significance, so long as the test of public religious worship as of right is not satisfied. The evidence of P.W. 1, clearly indicates that it is not expected by the gramadars that outsiders may worship in the temple and perform kainkaryam as of right. On the other hand, there is a clear indication that the gramadars wanted to exclude the general public, other than themselves, from worshipping in the temple as of right. The mere fact that public is being allowed to participate in the festivals connected with the temple, or even allowed to worship in the temple could not persuade the Court to readily infer therefrom dedication to the public. The crucial test is that the Hindu public or any section thereof must be entitled to use the place as a place of public religious worship,

and they must be doing it as of right and not as gratis from the persons in management.

5. One other significant feature that cannot be omitted to be taken note of is that no property as such has been dedicated for the upkeep of the

temple. Exhibit A-1, the certified copy of the order, dated 31st March, 1969, passed by the Inam Abolition Tribunal, Tirunelveli, in R.A.T.A.T.

No. 294 of 1968, shows that the patta was issued in the name of the plaintiff trust and the condition imposed by the Settlement Tahsildar for

performance of pooja service was deleted and the condition regarding feeding of Brahmins alone was maintained. There is no evidence that the

plaintiff trust as such is attached to the temple for public worship. Exhibit A-2, dated 18th December, 1972, the copy of the order of the Assistant

Settlement Officer, Nagercoil, shows that ryotwari patta was issued in the name of the plaintiff trust alone. The cumulative effect of the evidence

placed on behalf of the plaintiff trust leaves no room for ambiguity in the mind of this Court that the plaintiff trust cannot come within the definition

of "temple" found in Section 6(20) of the Act.

6. The evidence placed on behalf of the defendants is of cursory nature. They were content to examine an Inspector of the Hindu Religious and

Charitable Endowments Department, as D.W. 1. It is true, in chief examination D.W. 1 spoke about the features of the temple such as the

existence of Vimanam, Kalasam, Karpagraham and Praharam, and the fact that poojas are being conducted daily and the public worship during

festival days. As is stated above, the presence of certain physical features in the temple, which are normally found in a public temple does not by

itself lead to any inference that the temple is a public temple. D.W. 1 has not stated that public worship in the temple is as of right. Significantly, no

member of the public who alone could speak about the right of the public to worship in the temple has been examined. D.W. 1 has seen the temple

only once. His visit was only casual and not a purposeful visit. He has not made any report of his visit. He has not even examined any member of

the public. His evidence does not in term controvert the evidence of P.W. 1. The plaintiff trust is purely a private one founded and carried on to

cater to the needs of a particular sect of Brahmins, owner-residents of a particular street. Their building a temple subsequently, carrying on

worshipping in the temple and the conduct of festivals, are entirely their exclusive affairs. There is no public element in them, Hence, it has got to be held that the plaintiff trust, its properties and the temple it built cannot come within the mischief of the Act, and as such the judgment and decree of the Court below have got to be confirmed. Accordingly, this appeal fails and the same is dismissed with costs.