(2017) 02 MAD CK 0138

In the Madras High Court

Case No : A.S. No. 196 of 2010

The Commissioner Hindu Religious and Charitable Endowments Administrative Department	APPELLANT
Vs	
Sri Sastha Sangam	RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 6(18)

Citation : (2017) 3 CTC 63

Hon'ble Judges : R. Subramanian, J.

Bench : Single Bench

Advocate : Mr. R.P. Pratap Singh Government Advocate(HR & CE), For Appellants in A.S.No.196 of 2010; Mr. W.C. Thiruvengadam (R1) Mr. N. Sathiamoorthy (R2), For Respondents in A.S.No.196 of 2010; Mr. N. Sathiamoorthy, Advocate, For Appellants in A.S.No.675 of 2009; Mr. W.C. Thiruvengadam (R1) R.P. Pratap Singh (R2) Government Advocate (HR & CE), For Respondents in A.S.No.675 of 2009

Final Decision : Dismissed

Judgement

R.Subramanian, J.—The defendants in O.S.No.501 of 2005 are the appellants. The suit was filed under Section 70 of the Hindu Religious and Charitable Endowments Act, 1959.

2. According to the plaintiff, it is a registered Society. The said Sangam has got 342 members. It purchased an extent of 8 grounds and 2265 Sq.ft. of land from the Tamil Nadu Housing Board and constructed a temple for Lord Iyyppa in the said land. The sale deed was executed on 17.11.1980 in favour of the Society. Idol of Lord Vinayaga and Iyyappa were installed in the premises on 11.05.1980. A day care centre for the aged, destitue women was also contructed in the said land. Free Medical camps are also conducted by the plaintiff''s Sangam. After construction of the temple, the Hindu Religious and Charitable Endowmnent department appointed a fit-person for the said temple. This led to filing of an application under Section 63(a) of the Hindu Religious and Charitable

Endowments Act, 1959 before the 2nd defendant in the suit namely the Joint Commissioner, Hindu Religioius and Charitable Endowment (Admn.,), Chennai. The said application was numbered as O.A.No.10/1999 and the Joint commissioner, The Hindu Religioius and Charitable Endowments Department allowed the same after enquiry and held that the Sangam is not a Religious institution as defined under section 6(18) of Hindu Religious and Charitable Endowments Act 22 of 1959 by an order dated 08.11.2000.

3. The Third defendant in the suit namely fit person appointed by the 1 st defendant namely the Commissioner HR & CE, filed an appeal before the First defendant in A.P.No.09/2001. The said appeal was allowed setting aside the order passed in O.A.No.10/1999 by an order of the first defenant dated 06.01.2005. Aggrevied by the said order of the first defendant dated 06.01.2005 the present suit has been filed under Section 70 of the Tamil Nadu Hindu Religioius and Charitable Endowments Act. The plaintiff contended that the Iyyappa Temple constructed by the sangam is neither a temple, nor a Religious Institution as defined Under section 6(20) or under section 6(18) of the Tamilnadu Hindu Religioius and Charitable Endowment Act. The plaintiff would contend that the land on which temple has been constructed is a private land belonging to the Sangam and the temple does not possess separte entity.

3-A. The further contention of the plaintiff is that the temple has not been constructed on the basis of ''"Agama Sasthras"''. The plaintiff would also claim that it is established for sole benefits of members of the Sastha Sangam which is a registered Society and will not attract the provisions of the TamilNadu Hindu Regligioius and Charitable Endowments Act 22 of 1959.The plaintiff had claimed that the temple in question is not a public temple and the public have no right of worship in the suit temple. The documents filed before the authorities in the proceedings under Section 63(a) would show that the institution is private in character and as such Tamil Nadu Hindu Religioius and Charitable Endowments Department has no right to appoint a fit person in the said temple.

4. The plaintiff prayed for the following relief in the suit.

i) to set aside the order and the annexure to the order passed by the first defendant herein in A.P.No.9 of 2001- D2(?) dated 06.01.2005.

ii) declare that the "" Sastha Sangam" situated in No.81, Ponnambala Street, West K.K.Nagar, Chennai 600 078 duly represented by its president will not come under the purview of the Tamil Nadu Hindu Regligious and Charitable Endowment Act (Act 22 of 1959) specifically under the definition of section 6(18) and 6(20) of the Hindu Regligious and Charitable Endowment Act

iii) and to pay the cost of this suit.

5. The suit was resisted by the defendants. The first defendant filed a written Statement contending that the Sastha Sangam has been allotted land measuring 8 grounds 2265 Sq.ft which was reserved for the purpose of construction of the

temple. Therefore the suit temple having been put up on the said land is a public temple. It is also contended that the manner in which the shrine was erected, installation of idol and conduct of poojas showed that the temple is a public temple and public has a right of worship. It is also claimed that the general public give offerings and they have right of unlimited and unconditional access to the temple. In substance, it was contended that the plaintiff institution though called the Sastha Sangam has acquired all characters of a Religious Institution and as such the Hindu Religioius and Charitable Endowments Department has a right to appoint a fit person and to exercise supervisory control over the affairs of the temple. On the above pleadings the Trial Court namely the Vth Assistant, City Civil Court, Chennai, framed the following issues:

i) Whether the plaintiff is entitled for decree to set aside the order and the annexure to the order passed by the 1 st defedant A.P.No.9/01-D2, date 06.01.2005?

ii) Whether the plaintiff is entitled for declaration that the Sastha Sangam will not come under purview of the Section 6(18) and 6(20) of HR & CE Act?

iii) To what relief?

6. On the side of the plaintiff one Mr. R.K. Baradan,President of the Plaintiff''s Sangam was examined as PW1 and Exhibits A1 to Exhibit A4 were marked. On the side of the defendants Dws 1 to 3 were examined and Exhibits B1 to B4 were marked. Ex. C1 to Ex. C11 were marked as Court documents.

7. The Learned Trial Judge upon a consideration of the evidence on record concluded the plaintiff''s temple is not a religious institution as defined under Section 6(18) of the Tamilnadu Hindu Religious and Charitable Endowments Act. The Learned Trial Court also took note of various ingredients and tests laid down by this Court as well as by the Hon''ble Supreme Court and concluded that there was no dedication of the temple to the public and the public has no right of worship in the temple. On the above findings, the Learned Trial Judge concluded that the temple is not a public temple as defined under Section 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act or it is a Religious Institution as defined under Section 6(18) of the said Act. On the above findings, the Learned Trial Judge decreed the suit as prayed for.

8. Aggrevied by the said Judgment, the defendants 1 and 2 namely the Commissioner, Hindu Religious and Charitable Endowment Department and the Joint Commissioner, Hindu Religious and Charitable Endowments Department, have filed A.S. No.196 of 2010 and the fit person appointed by the Department has filed A.S.No.675 of 2009.

9. I have heard Mr. R.P. Prathap Singh, the Learned Government Advocate (HR & CE) appearing for the appellants in A.S.No.196 /2010 and 2nd respondent in A.S. No.695/2009, Mr. N. Sathiyamoorthy, learned counsel appearing for the appellant in A.S.No.675 of 2009 and 2nd respondent in A.S.No.196 of 2010 and Mr. W.C.

Thiruvengadam learned counsel appearing for 1 st respondent in both appeals.

10. Mr. N. Sathiyamoorthy, learned counsel appearing for the appellant in A.S.No.675/2009 would contend that the temple itself was constructed with the funds collected from the members of the First respondent Society. The land on which the temple was constructed was actually reserved/ear-marked by the Tamil Nadu Housing Board for the purpose of construction of the temple. It is also pointed out that public have got a right to worship in the said temple. Taking me through the evidence of PW1, the learned counsel could contend that the installation of the idols of Lord Iyappa, Lord Vinayaga have been admitted. The fact that regular poojas are performed would according to the learned counsel,show that the temple is a public temple within the definition of Section 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act and therefore the Trial Court was not right in granting a decree in favour of the plaintiff.

11. Mr. Pratap Singh, learned Government Advocate (HR & CE) would adopt the submissions of the learned Counsel of the appellant in A.S.No.675 of 2009. He would add that the ingredients and tests laid down by this Court as well as by the Hon''ble Apex Court, for holding that the temple is not a public temple have not been satisfied in the case on hand.

12. Per contra, Mr. W.C. Thiruvengadam, learned counsel for the 1st respondent Sangam would contend that the Joint commissioner, Hindu Religious and Charitable Endowment Department intially concluded that the suit temple is not a public temple and allowed the application filed by the sangam under Section 63(a) of the Hindu Religious and Charitable Endowment Act. According to the learned Counsel for the 1st respondent various tests laid down by the decisions of this Court, as well as the Hon''ble Supreme Court are satisfied and in the absence of any dedication and worship by the public as of right, the temple cannot be construed to be a Religious Institution as defined Under Section 6(18) of the Tamil Nadu Hindu Religious and Charitable Endowment Act.

13. On the above arguments the following points arise for determination in this appeal.

(A) Whether the order of the Commissioner, Hindu Religious and Charitable Endowments Department dated 06.01.2005 made in A.P.No.9/2010 is liable to be set aside.

(B) Whether the suit temple could be termed as a Religious Institution under Section 6(18) or a temple under Section 6(20) so that the same could be brought within a purview of Tamil Nadu Hindu Religious and Charitable Endowments Act 1959?

14. In Radhakanta Deb v. The Commissioner of Hindu Religious Endowments, Orissa, AIR 1981 SC 798, the Hon''ble Supreme Court had laid down four tests and they are as follows:

i) Whether the user of the Temple by members of the public is as of right

ii) Whether the control and Management vests either in a large body of persons or within the Members of the public and the Founder does not retain any control over the Management;

iii) Whether the dedication of the properties is made by the Founder, who retain the control and management and whether control and management of the Temple is also retained by him.

iv) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by the Members of the public to the Temple, this would be an important intrinsic circumence to indicate the private nature of the endowment.

15. The same four tests were adopted by Hon''ble Supreme Court in Kuldip Chand and another v. Advocate General to Government of H.P. and others 2003 (5) SCC 46.

16. A Division Bench of this Court in The Commissioner, Hindu Religious and Charitable Endowments Board, Nungambakkam, Madras-34 and another v. T.S. Palanichamy and seven others (2003 (1) CTC 65) had held that character of the temple has to be decided based on the evidence adduced in each and every case and the crucial factor for determining the character of the temple is whether, there has been dedication to public and the right of public to offer worship at the temple as a matter of right.

17. Mr. C. Thiruvengadam, Learned Counsel for the first respondent would invite my attention to the Judgment of the Hon''ble supreme Court in The commissioner for Hindu Religious and Charitable Endowments, Mysore v. Sri Ratnavarma Heggade reported in Volume 1990 Law Weekly Page 97 (J.S.), which is also popularly known as the Manjunatha Swamy Temple case. The Learned Counsel would invite my attention to the observation of the Hon''ble Supreme Court and contend that when there is no proof of dedication the temple cannot be held to be a public temple.

18. I have considered the evidence on the record, in the light of the above guide lines prescribed by this Court and by the Hon''ble Supreme Court.

19. It is an admitted case that the temple has been constructed in the land belonging to the plaintiff sangam. It is also seen that there are other activities that are taking place at the behest of the plaintiff sangam in the premises of the temple.

20. The learned Counsel for the appellants in both the appeals had drawn attention of this Court to the fact that the land was reserved/ear-marked for the purpose of the temple by Tamil Nadu Housing Board, hence, it should be taken as a dedication of the temple. It is in evidence that the Housing Board has sold the land to the plaintiff society. Therefore in my considered opinion, the fact that

the Housing Board had ear-marked land for the purpose of construction of a temple by itself cannot be taken as a factor to conclude that the temple is a public temple.

21. The fact that the idols of the Lord Iyyappa and Lord Vinayaga were installed and poojas were being performed to the deities, by itself, cannot be taken to be indicators of the fact that the temple is a public temple. Though Tr.Sathiyamoorthy Learned counsel for appellants in A.S.No.675/2009 would contend that the evidence of PW1 would show that the regular poojas are being performed in the temple and contributions have been collected from the public by organising cultural programmes. This according to the learned counsel would show that the temple in question is a public temple. The question is whether the public have right of worship unless it is shown that the public have access to the temple as of right and the same cannot be denied to them by the plaintiff society, it cannot be concluded that the suit temple is a public temple. The temple does not have Hundial or a Dwajasthambam. These are very strong indication to the fact that the temple is not a public temple. P.W.1 has categorically denied that any contribution was received from the public for construction of the suit temple. The Joint Commissioner, HR & CE namely the original authority had concluded that the temple is not a public temple, based on the report filed by the Inspector, Hindu Religious and Charitable Endowment Department.

22. The Learned Commissioner had reversed the order of the Joint Commissioner soley on the basis that the temple has been constructed in the land reserved for construction of the temple by the Housing Board. The commissioner over looked the fact that the land was actually sold to the plaintiff society by Tamil Nadu Housing Board. The Learned Trial Judge had referred to the report of Inspector, Hindu Religious and Charitable Endowment Department in the proceedings in O.A.No.10/1999, before the Joint commissioner wherein it has been clearly stated that the Iyyappa Idol was installed and poojas are performed in the Tantric method and there is no regular poojas as per the Agamasastras. It is also stated in the said order that there is no kodimaran (Dwajasthambam) in the temple. It was also stated that no kumbabishegam (consecration) has been performed. It is also admitted fact that the secular activites like the day care centre for aged destitue women and free medical aid clinic are being conducted in the premises of the temple. Apart from all the above, there is no evidence of the actual dedication of the temple to the public.

23. Mr. W.C. Thiruvengadam learned counsel for the First respondent would invike my attention to my Judgment in the case of Sri Ayyappa Seva Sangam v.The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Nungampakkam reported in 2017 (1) CTC 212, wherein, it has been held that a similar Ayyappa temple situated in Anna Nagar, Chennai is not a public temple as defined under Section 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act nor a Religious Institution as

defined Under Section 6(18) of the said act. In the said decision of mine, I have also referred to another decision of this Court in Commissioner, Hindu Religious and Charitable Endowment Admn Department, Madras Sri.Ayyappa Baktha Sabha represented by its secretary K. v. Thangappan Nair reported in 2011 (1) MLJ 971. In the said Judgment also, this Court took the view that the shrine of lord Ayyappa situated within the premises of a registered society viz., Ayappa Banktha Sabha cannot be construed to be a public temple.

24. Mr. Sathiyamoorthy, learned counsel for the appellant in A.S.No.675 of 2009 would draw my attention to the Judgment of the Hon''ble Supreme Court in Marua Dei and others v. Muralidhar Nanda & others reported in 1999-2 L.W. 433 and would contend that even in the absence of the evidence relating to the dedication if there is a sufficient evidence to show that the public had right to worship as of right, the temple would be a public temple. In the said decision of the Hon''ble Supreme Court, the factual finding was that the public had a right to worship and offering '''' bhog as or right'''' and the Rent free character of the land is a circumstance in favour of holding that the land was '''' dedicated'''' for public benefit. In the case on hand, the land in question belongs to the plaintiff''s sangam. The construction were also put up by the plaintiff sangam from out of the contribution of the members. Therefore I do not think there is any evidence relating to dedication to the public in the case on hand.

25. Mr. Pratap singh, Learned Government Advocate appearing for the appellant in A.S.No.196 of 2016 has relied upon the Judgment of this Court in Hindu Religious and Charitable Endowment (A) Department, Madras v.N.Sivarawajan Nadar(2001 (2) CTC 513) and contended that all the temples in South India are presumed to be public temples. However the Division Bench of this Court in The Commissioner, Hindu Religious and Charitable Endowments Board, Nungambakkam, Chennai and another v. T.S.Palanichamy and seven others reported in 2003 (1) CTC 65 (DB) had held that there is no basis for such presumption and the Act also does not provide for any such presumption and therefore the decision of the learned single Judge reported in Hindu Religious and charitable endowment A Department. Madras v. N. Sivarawajan Nadar, 2001 (2) CTC 513 cannot be held to be good law anymore.

26. On consideration of the entire evidence and record, in my opinion, the temple in question cannot be said to be a public temple falling within the definition of Section 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, so as to make it a Religious Institution, within Section 6(18) of the said Act. In the absence of proof of dedication, I do not think the temple could be said to be a public temple. The Learned Trial Judge has considered the entire evidence on record and pointed out that the temple in question does not satisfy any of the requirements of the public temple so as to enable the Hindu Religious and Charitable Endowment Department to have a control over the same. Therefore I see no reason to interfere with the Judgment and Decree of the trial Court dated 21.08.2008 in O.S.No.501 of 2005.

27. In fine, these appeals are dismissed confirming the Judgement and Decree in the Trial Court dated 21.08.2008 in O.S.No.501 of 2005 on the file of the Vth Assistant Judge, City Civil Court, Chennai. Considering the facts and circumstances of the case there will be no order to costs.