(1987) 03 MAD CK 0023

In the Madras High Court

The State of Madras and Another — APPELLANT

Vs

Mehadeva Iyer and Others — RESPONDENT

Date of Decision : 27-03-1987

Acts Referred:
Constitution of India, 1950 — Article 12

Citation : (1988) 1 MLJ 128

Hon'ble Judges : Sengottuvelan, J

Bench : Single Bench

Judgement

Sengottuvelan, J.—Defendants 1 and 2 in O.S. No. 24 of 1962 on the file of the District Munsif of Krishnagiri, namely, the State of Madras,

represented by the Collector, Salem and the Commissioner Hindu Religious and Charitable Endowments Department, Madras, have filed the

above second appeal challenging the legality and correctness of the judgment of the District Judge, Dharmapuri at Krishnagiri in A.S. No. 128 of

1973.

2. The facts of the case are briefly as follows-Respondents 1 and 2 herein and two others filed the suit Q.S. No. 24 of 1962, on the file of the

District Munsif at Krishnagiri, for a declaration that the suit properties do not constitute a public charitable endowment within the meaning of

Sections 3 and 6, Clause (5) of the Madras Hindu Religious and Charitable Endowments Act, Act 22 of 1959 and for a consequential injunction

restraining the second appellant from making an enquiry in respect of the suit properties and for other reliefs. The case of respondents 1 and 2 is

that the lands described in items 1 to 3 of the plaint schedule were granted by the British Government to Sri Arunachala Iyer, who is the great grand-father of the first respondent and the fifth respondent in or about 1844 for his having constructed a private charity with his own funds and on

his own site. There has been no dedication of the choultry to the public at any time either by Arunachala Iyer or his descendants. No member of

the public could claim to use of the choultry as of right. The said Arunachala Iyer and his descendants refused permission to undesirable persons

for proper reasons and such refusals have never been challenged. Arunachala Iyer died before 1862, leaving his only son Samayyar who is the

predecessor in title of respondents 1 and 2. Items 1 to 3 of the plaint schedule have been granted in inam to Arunachala Iyer absolutely and the

gifts were in recognition of his having a reward or gift for the meritorious act already done by the individual. The grant was not an endowment for

the choultry. The said lands, according to the entries in the B register, were enfranchised and as such, they ceased to have the character of inam. A

plea was also taken that in any event the grant is a personal grant burdened with service and that the inamdars are entitled to enjoy the same as

long as they maintain the choultry. The proposed enquiry by. the Hindu Religious and Charitable Endowments Department is in contravention of

Article 12 of the Constitution and affects the fundamental rights of respondents 1 and 2 and others.

3. The State represented by the Collector as well as the Hindu Religious and Charitable Endowments Department contended that the Court has no

jurisdiction to decide the question involved in the suit. The grant of the suit lands was not a personal grant to Arunachala Iyer, but only a grant to

the choultry and the choultry is not a private one. The land on which the choultry stands is classified as ""village natham"" in the Revenue records

Dedication of the choultry to the public can be inferred from the fact that all along from its inception the choultry is being used by the public for

public purposes such as marriages, religious functions, weekly worships and auspicious functions. The management and control of the choultry by

Arunachala Iyer, and his descendants was not in their own right, but only as managers or trustees. The claim of respondents 1 and 2 to the choultry

as their private property is untenable. That itself constitutes legal mismanagement and breach of trusts. The grant was an endowment for the

choultry and not for the individual. The classification of the suit lands as ''Dharmadhayam'' is clear proof that it was only an endowment for the choultry and not the absolute property of respondents 1 and 2. The term occurring on the Inam B register will not mean enfranchisement and

freedom from Government interference Since the trust was mismanaged, an enquiry was ordered under the provisions of the Hindu Religious and

Charitable Endowments Act and respondents 1 and 2 cannot question such proceedings.

4. The trial Court on a consideration of the oral and documentary evidence let in by both sides came to the conclusion that the suit choultry is not

the private property of respondents 1 and 2, but it is a public charitable endowment. The trial Court also found that the grant was only of the

maintenance of the choultry and not a personal grant to Arunachala Iyer or Samayyar. The trial Court also found that in view of the alleged

mismanagement of the institution, appellants 1 and 2 are entitled to enquire into the matter and dismissed the suit. As against the said judgment,

respondents 1 to 4 filed A.S. No. 128 of 1973 on the file of the District Judge, Dharmapuri at Krishnagiri. The District Judge on a reappraisal of

the evidence confirmed the findings of the trial Court that the grants, as evidenced by Exs. B1 to B5 certified extracts of Inam Fair Register, were

for the maintenance of the choultry and not personal grants to Sri Arunachala Iyer and Samayyar. The appellate Court also found that the suit

choultry as well as the properties are public endowments for the maintenance of which the suit lands were granted as inam by the British

Government. But, at the same time, the appellate Court on the evidence came to the conclusion that there is no proof that the choultry was

dedicated only to the members of the Hindu community and as such as suit choultry will not constitute a Hindu charitable endowment to which the

provision of Act 22 of 1959 will apply. In view of the conclusion arrived at by the appellate Court in regard to the nature of the endowment, the

appellate Court set aside the judgment of the trial Court, and allowed the appeal. This second appeal is filed challenging the legality and

correctness of the judgment of the District Court.

5. The Additional Government Pleader for the appellants raised the following contentions in support of his argument that the findings of the

appellate Court are not sustainable in law:

1. The appellate Court on the evidence ought to have found that the suit

endowment is a Hindu charitable endowment.

2. The appreciation of the evidence relating to the nature of the endowment by the appellate Court is perverse.

6. This case has a chequered history and the very same case came up in second appeal on a prior occasion. Ismail, J. (as he then was) remanded

the matter back to the trial Court directing the trial Court to consider the recitals in the Inam Fair Register Exs. B1 to B3 and come to a conclusion

regarding the nature of the grant. The main issue to be decided in this second appeal is whether the properties constitute a Hindu Public Charitable

Endowment to which the provisions of Act 22 of 1959 are applicable. The conclusion of both the Courts below that the suit choultry is a charitable

endowment dedicated to the use of the public and that the lands comprised in plaint schedule are Dharmadayam lands granted in support of the

choultry is not disputed in this second appeal. The only point that arises for consideration in this second appeal is whether on the materials on

record it can be concluded that the suit endowment is a Hindu charitable endowment. Exs. B1 to B3 are true extracts from the Inam Fair Register

in respect of the Dharmadhayam grants made in support of the choultry. The grants are classified Dharmadhayam and tax free indicating that the

grants are of both the warams. In column 10 of the Inam Fair Register it is mentioned as ''So long as the choultry is repaired'' and in column 21, it

is stated ''to be confirmed tax free for the support of choultry mistakenly mentioned as tank''. Identical entries are found in all the three Fair Inam

Registers. The entries clearly indicated that the Dharmadhayam grant is to the institution, viz., choultry and not to any individual. The said three

documents do not contain anything to show that the choultry is for the members of the Hindu community alone. Exs. B4 to B7 are the Inam B

registers maintained by the Taluk Office in respect of the above said inam lands and these registers also do not contain any indication that the

choultry is to be used by the members of the Hindu community. In the circumstance, the old records pertaining to the grants do not give any

indication that the choultry is intended only for the use of Hindu Community.

7. Coming to the oral evidence, P.W. 1 the first respondent stated ''The choultry is being used by members of Hindu community for public

purposes but only with their permission''. P.W. 3 has stated ''All Hindus are eligible for occupying the choultry''. The two admissions of the above

said witnesses only indicate the use of the choultry by Hindus. But, from that, it cannot be said the persons of other religions are excluded from the

use of the choultry. In the circumstances the conclusion of the appellate Court that the choultry is not a Hindu charitable endowment is correct.

However, it is made clear that the choultry and the properties endowed in support of the same are public charitable endowments and the law

relating to the public endowments will apply to the same. So far as the second appeal is concerned, the only question to be decided is whether the

provisions of the Hindu Religious and Charitable Endowments Act, Act 22 of 1959 are applicable to the above endowment. In view of the fact

that the choultry cannot be said to be a Hindu Charitable Endowment, the provisions of the Act will have no application. The conclusion arrived at

by the appellate Court is correct and there are no grounds to interfere with the same in the second appeal. In the result the second appeal is

dismissed. However, there will be no order as to costs.

18.12.1987 : The memorandum of cross-objections and aforesaid second appeal having been posted on this day before the Hon''ble Mr. Justice

David Annoussamy the Court delivered the following Judgment:

8. In view of the endorsement made by the learned Counsel for the cross objectors, the memorandum of objections is dismissed. No costs.