
(2007) 07 AP CK 0033
In the Andhra Pradesh High Court
Case No : LPA No. 393 of 1992

Vijendra Kumar and Others	Vs	APPELLANT
Commissioner, A.P. Charitable and Religious Institutions and Endowment Dept. and Another		RESPONDENT

Date of Decision : 10-07-2007

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 2
Evidence Act, 1872 — Section 114

Citation : (2007) 5 ALD 683

Hon'ble Judges : S. Ananda Reddy, J; Bilal Nazki, J

Bench : Division Bench

Advocate : V.L.N.G.K. Murthy, for the Appellant; Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

Bilal Nazki, J.—In this letters patent appeal, the question before this Court is whether the suit temple is a public temple or a private temple. The genesis of this case goes back to an entry made in the book of endowments on 11-11-1342 Fasli, registering the temple as public temple. The law at that time provided that such an entry could be challenged before the Deputy Commissioner, but the appellants herein did not choose to approach the Deputy Commissioner till 1975, when they filed OA No. 66 of 1975. The Deputy Commissioner, vide his order dated 28-2-1977, did not agree with the appellants and dismissed the O.A. The law provided for challenging such a finding of Deputy Commissioner by way of a suit. Thereafter, O.S. No. 58 of 1977 was filed which was decreed by the trial Court on 10th of March 1981.

2. The case of appellants all along had been that the temple was constructed over a piece of land which was purchased by their ancestors on 18-12-1302 Fasli by Ex.A-42 sale deed, and all along, they had been maintaining the temple as

their private temple. The plaintiffs maintained that a Hanuman idol was installed in the premises bearing No. 170, Residency bazaar, Hyderabad. The number of the premises was later-on changed to Municipal No. 4-2-123, Sultan Bazar, Hyderabad. The appellants/plaintiffs claimed that their grandfather, and after his death, their father Gorakhnath Tiwari, performed pooja and after his death, the plaintiffs were performing pooja since 1969 and were managing the temple. The plaintiffs re-modelled and re-shaped the structure and the tin roof was converted into RCC roof. Plaintiffs made these improvements with the permission of the Municipal Corporation of Hyderabad and they had been paying the property tax, water and electricity charges and no donations were ever collected and no offerings were accepted from the public. Suit temple was the private and exclusive property of plaintiffs and it was not dedicated to the public. In the year 1965, plaintiffs received a letter from the Endowments Department asking them to submit an account on the ground that the suit temple had been endowed by plaintiffs' father on 19th Mehar 1345 Fasli, but they maintained that plaintiffs' father never endowed the property.

3. The defendants claimed that the plaintiff and their ancestors were only the poojaris of the temple. They had no rights in the suit temple. Suit temple was an old one and large number of devotees daily visit the temple and worship the deity. Suit temple was not a residential place, but was a public temple within the meaning of Section 2 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act. They also stated that devotees were making offerings to the deity and the plaintiffs were receiving them and the income of the suit temple was Rs. 5,000/- per month. It was registered in the book of endowments in the year 1342 Fasli and pursuant to the registration of temple, a Muntaqab had been issued and duly published in the Hyderabad Gazette. The suit was not filed within time.

4. On the basis of these pleadings, the following issues were framed by the trial Court-

1. Whether the order of Deputy Commissioner, Endowments Department, Guntur dated 28-2-1977 passed in O.A. No. 66 of 1975 is fit to be set aside?

2. Whether the suit temple is a public temple or a private temple?

3. Whether the entry dated 11-11-1342 Fasli registering the suit temple in the Book of Endowments is liable to be declared as null and void?

5. The trial Court came to the conclusion that the Suit temple was a private temple and therefore, allowed the suit and passed a decree. In appeal, the learned Single Judge of this Court reversed the decree and dismissed the suit, holding that the temple was a public temple.

6. In these circumstances, this Court has to consider whether the temple was a public temple or a private temple.

7. Before going to the arguments of learned Counsel for the parties, some of the

findings recorded by the Courts below may be mentioned. The trial Court came to the conclusion that the book of endowments contained an entry, which was gazetted on 16th Aban 1345 Fasli. Ex.B-6 was its extract. In this document, Hanuman Temple adjacent to Police Station, Sultan Bazar, value of Rs. 200/- as per plan, was mentioned against Column No. 2 relating to "House with locality or village". Therefore, the trial Court came to the conclusion that the said property relates to the suit property. The trial Court also noted that under Column No. 9, the name of endower of Wakf was shown to be P. Goraknath Tiwari, Pujari. He was described as Mutawalli. The entry was made by an order of the Minister conveyed through letter of Secretariat dated 11th Mehar 1345 Fasli.

8. The Deputy Commissioner's finding was, "Looking into the other side of the picture the very fact that Sri Hanuman Temple is entered into the Book of endowments as long back as 1932 A.D. prove beyond doubt the existence of a public temple in Sultan Bazaar. This entry was neither questioned nor cancelled to this day either by the Endowments Department or in any civil Court. It becomes final till the contrary is proved." The Deputy Commissioner's order also mentioned that the temple was, as a matter of fact, on a footpath and nobody could dispute the fact that Sri Hanuman temple was situated on the footpath. His finding was that the location of the temple was undoubtedly on a public footpath and there was clear obstruction of public movement at that place. Both the civil Court as well as the Deputy Commissioner came to the conclusion that the temple was open to public and the entry to the temple was not restricted and offerings were made and even shops of sweets and coconut were outside the temple.

9. In the light of these findings of fact, the learned Counsel for appellants submits that even if the entry was not restricted, that would not be sufficient to come to the conclusion that the temple was not a private temple. In this connection, he refers to a judgment of Privy Council in AIR 1940 7 (Privy Council) . In this case, it was contended that for years together, Hindu members of the public had been visiting the temple for worship and darshan without let or hindrance. 46 years before the suit was filed, a mela or fair had been started by some musicians and dancers and it had become an annual function towards which public subscriptions were collected. There was evidence that part of the amount collected had been spent upon whitewashing and repairing the temple. In this factual position, the Privy Council said:

While it is true that the origin of the idol is not completely traced, the respondents' allegation that it was founded or set up by Kishore Gir, father of the grantee, not being established by evidence, the grant of 1781 discloses the existence of a fakir with an idol in a mud hut squatting upon waste land which did not belong to him and which was given to him for the first time by the grant. It would, in their Lordships' opinion, be an error in method if the subsequent history of the little temple was not looked at in the light of this grant. While it is certainly possible that in the course of years the temple should have been so

dealt with as to become dedicated for the benefit of the Hindu public as a public temple, such a dedication requires to be proved.

Therefore the appellants' case is that dedication to public has not been proved. But the learned Counsel for respondents submitted that the establishment of the temple by plaintiff or their ancestors was also not proved, on the other hand, there is no evidence to show that the idol was installed by the forefathers of appellants. He submits that there is a finding of the learned Single Judge that even the property which the plaintiffs claims to have been purchased by their father, was not identified through evidence, to be the property on which the temple was now in existence.

10. The learned Counsel for appellants refers to another judgment reported in Madras Hindu Religious Endowments Board Vs. V.N. Deivanai Ammal by Power of Attorney agent T.V. Mahalinga Aiyar, . In Para 2 of this judgment, it is held-

...It must be noted that there is no deed of dedication and as has been observed by the Privy Council it is essential that it should be clearly proved that the institution was dedicated to the public. In the case of an old temple, such dedication might be presumed from long user by the public as of right. But in this case the temple was built only in the year 1919, and in the absence of a deed of dedication it is difficult to hold that there has been dedication to the public. It is true that the facts that there is an utsava-idol and there are processions are generally indicative of the fact that it is a public temple. But then no property has been dedicated for the upkeep of the temple. The worship is maintained and the expenses are met from out of the private funds of the respondent. In the absence of any property being dedicated for the maintenance of worship in the temple, it is difficult to hold that the temple has been dedicated to the public.

11. The learned Counsel for respondents has referred to two judgments of the Madras High Court, one reported in Sri C.S. Ambigai Temple v. Commissioner of H.R. & C.E. 1966 (1) MLJ 109 and another in Nanjappa Chettiar v. Commissioner, H.R. & C.E. 1966 (1) MLJ 149. In the first judgment Sri C.S. Ambigai Temple v. Commissioner of H.R. & C.E (supra), the High Court held that there was a presumption that temples in South India were public and onus of proof was on the party asserting its private nature. Similarly, in the second judgment Nanjappa Chettiar v. Commissioner, H.R. & C.E., (supra), the High Court held that well-known tests to decide whether a temple was a private temple or a public temple, were to see whether the temple is located inside a private house or a public building, whether the idols are permanently installed on pedestals inside the temple, whether there are permanent archakas appointed for performing puja in the temple, whether the deity is taken out in public in procession periodically and public make offerings on that, occasion. It is submitted that there is sufficient evidence that every year, the deity is taken out in a procession in a car maintained by the temple. It has also come in evidence that offerings are made and are accepted. It has also come in evidence that the

deity is not in a private house but in a public building, which is accessible to everybody.

12. The matter, however, stands concluded by a judgment of the Supreme Court in *Radhakanta Deb v. Commissioner*, (1981) 2 SCR 826 . After considering all the judgments that were available when the judgment was pronounced by the Supreme Court, in Para 14 of the judgment, it stated-

14. Thus, on a conspectus of the authorities mentioned above, the following tests may be laid down as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature:

(1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;

(2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance when the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;

(3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;

(4) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the Private nature of the endowment.

13. Coming to the first test, there is sufficient evidence that people are visiting the temple as a matter of right and it has neither been restricted nor controlled at any point of time. No evidence has been produced by the appellants to know the origin of endowment. Therefore, the notification issued by the Government in the year 1932 declaring it to be an endowment property, should be taken to be a proof that it was a public endowment. The second test laid by Supreme Court is whether the control and management of the temple is vested either in a large body of persons or in the members of the public, and the founder does not retain any control over the management. For this, there is no evidence that the temple was ever managed by a large body of public, but the appellants have furnished the evidence that it was being managed all along by their family. The third test is crucial, which would prove as to whether the endowment was personal and any properties were created for its maintenance and upkeep. The Supreme Court laid down that the founder should have left extensive properties belonging to the founder himself, for the purpose of maintenance of the temple and it is held that

this would be the conclusive proof to show that the endowment is of a private nature. On the other hand, there is evidence in the present case that the temple is being run and maintained by public offerings. There is no evidence at all that the founder had left any properties or deducted any properties for the purpose of maintenance of the temple. The fourth test is related to the third test. There is nothing on record to show that there was any stipulation, as laid down by the founder, at any time, that public contributions or public offerings were not to be accepted.

14. In the light of these tests and the analysis, which we have made, we may reproduce some of the findings of the learned Single Judge as under-

....Basing on the above evidence the learned Chief Judge concluded that the suit property was originally purchased by the grandfather of the plaintiffs Ram Harak Tiwari; that he installed an idol in the premises; that the family members of Ram Harak Tiwari continued to perform pooja to the idol and that at no time the Endowments Department exercised their authority over the temple.

But in arriving on that finding the learned Chief Judge has overlooked the fact that the public are visiting the temple and are offering prayers to the deity and that they were even giving offerings by way of Dakshina and coconuts. Even the plaintiffs admit that the public were visiting the temple, but they contend that they were doing so with their permission. The learned Chief Judge in Paragraph 17 of his judgment did not disbelieve the contention of the defendants that the public were entering the temple in large numbers and were offering prayers and that they were also offering coconuts and Dakshina. The learned Judge held that assuming it to be so, it would not convert a private temple into a public temple because the owner of a private temple, for sentimental reasons, cannot object anybody entering into the premises and offering prayers to the Deity.

The learned Single Judge, then also remarked-

It is clearly established by the evidence of DWs.1 to 4 that the public enter the temple as a matter of right on every day and at all times; that especially on Saturdays there is heavy congregation at the temple numbering about a thousand devotees; that the devotees offer coconuts and Dakshina and that the plaintiffs collect charges for performing Asthothara and Sahasranama pujas.

15. The learned Single Judge also noted that the premises were declared to be endowment property in 1345 Fasli, as is evidenced by Ex.B-6. This entry was sought to be attacked on the ground that no notice had been given to the plaintiffs before such an entry was made. But the learned Single Judge relied on Section 114 of the Evidence Act to draw a presumption that the official act had been regularly performed. Applying the tests laid by the Supreme Court in the judgment in Radhakanta Deb's case (supra), we feel that the temple was not a private temple, but was a public temple.

16. The appeal is misconceived and it is accordingly dismissed.