
(2000) 11 MAD CK 0060
In the Madras High Court
Case No : C.R.P. No. 1679 of 2000

Vittal Vel Press

APPELLANT

Vs

Sri Rangaswamy Temple Mulla Sahib St George Town, Madras

RESPONDENT

Date of Decision : 15-11-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47, 92
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 29

Citation : (2001) 1 MLJ 709

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : Mr. T.N. Rajagopal, for the Appellant; Mr. K. Chandramouli, for Mr. G. Viswanathan and Mr. J.A. Selvakumar for HR and CE, for the Respondent

Judgement

1. The petitioner, who is a tenant under a temple having suffered a decree of eviction and fought all the way up to Supreme Court, is now before

this court making a last ditch to resist execution on the ground that the exemption from provisions of Tamil Nadu Buildings (Lease and Rent

Control) Act, 1960 under G.O.M.s No.2000, dated 16.8.1976 (herein after referred to as G.O) will not cover buildings owned by temples. The

executability of the decree for eviction obtained by the respondent in O.S.No.2504 of 1976 was challenged by an application u/s 47, Civil

Procedure Code, which was dismissed by the Court below. The civil revision petition is against this order.

2. Mr.T.N. Rajagopal, learned counsel for the petitioner vehemently argued that the building owned by temples are not exempted from the

provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and hence the decree passed by the Civil Court against the petitioner

is not executable. According to the learned counsel, if in the G.O. the word "public religious trusts" was intended to include temples then the same

would have been mentioned by way of Explanation in G.O. itself. The very fact that such explanation is absent would mean temples would still

have to go before the Rent Controller for evicting their tenants. According to him this question had not been considered hitherto but it was assumed

by everyone that buildings owned by temples were exempt from the Rent Control Act. If the G.O. is properly construed, it would be clear that it

only exempts religious public trusts and not temples. G.O.Ms.No.1998 dated 12.8.1974 exempted all buildings owned by Hindus, Christians and

Muslim religious trusts and charitable institutions from the provisions of the Tamil Nadu Act 18 of 1960. Subsequently, G.O.Ms.No.2000 was

passed in supersession of the above G.O. Though in the additional written statement the objection was taken regarding the validity of the above

two G.O.s, the question of the applicability of G.O.Ms.2000 was not specifically advanced. Since an issue of jurisdiction went to the root of the

matter, the petitioner was entitled to raise it at this stage though for the first time. The contention of the learned counsel for the petitioner is that

there is a difference between the religious trusts and religious institutions and that is, why G.O.Ms.1998 uses the words "religious trusts" and

"charitable institutions" and therefore religious trusts is not equivalent to religious institution which alone would include a temple. Therefore, the

respondent cannot avail of the G.O. and the decree for eviction was inexecutable.

3. Mr.K.Chandra Mouli, learned senior counsel for the respondent would submit that it was as if the various decisions on G.O.Ms.No.2000 were

arrived on a misconception that public religious trusts included temples but only upon the clear understanding by the Supreme Court and this court

that temples were included as public religious trusts. According to the learned senior counsel this petition is nothing but a ruse to evade eviction and

the Court below had rightly treated it with the respect that it deserved.

4. The Tamil Nadu Public Trusts Act, which was enacted to regulate tenancies in relation to public trusts includes "temples" within the definition of

public trusts. Under this act, cultivating tenants, of a public trust were treated as a special class just as this G.O. exempts certain classes of tenants.

The City Tenants Protection Act was amended by Act 2 of 1996. As per this

amendment, the provisions of the Act would not apply to "Religious Institutions" and "Religious charity" and "Temple" was clearly included under the definition "Religious Institution". The HR & CE. Act has its definition of "religious endowment", "religious institution" and "temple". We see therefrom a religious endowment means, inter alia, property belonging to or given to or endowed for the support of temples. "Religious Institution" means a "Temple" and a "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 of, to Hindu Community or any section thereof, as a place of public religious worship." The Tamil Nadu Land Reforms Act defines "Public Trust" as inter alia a trust for, a public purpose of religious nature and a "religious institution" to mean "temple" etc.

with these definitions in mind, the decisions relied on by the counsel may be looked into.

5. The decision reported- in N.S. Sivaprakasam Vs. M. Munuswamy Naicker, was referred to by the learned counsel for the petitioner to show that Courts have applied the G.O. automatically where the buildings were owned by temples. To quote "It is common ground that the property belongs to a temple under G.O.Ms.No.2000, which exempts such building from the purview of Act 18 of 1960.

6. In Pratapsinhji N. Desai Vs. Deputy Charity Commissioner, Gujarat and Others, the question was whether two temples were "temples" as defined in Section 2(17) of the Bombay Public Trusts Act and therefore, whether they were "public trusts" within the meaning of the Act. The two temples were constructed some time in the year 1872 and 1875 and they had been in the management of the successive rulers of Patodi. But there was consistent and reliable evidence that though these rulers had construed and managed the temples it was clear that they were meant for the use and the benefit of the public as of right. The Supreme Court while drawing the distinction between private and public endowment quoted from Mullah's Hindu Law,

Religious endowments are either public or private. In a public endowment the dedication is for the use or benefit of the public. The essential distinction between a public and a private endowment is that in the former the

beneficial interest is vested in an uncertain and a fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description; in a private endowment the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained.

7. On the ground that there was an unrestricted right of worship, the Supreme Court held in this case that the temple was a public temple. The

following passage from the above judgments is relevant for the present case.

As to the first, there is very strong and clear evidence to establish that there was dedication of the temples by the appellant's ancestor for the use

or benefit of the public. "Endowment" is dedication of property for purposes of religion or charity having both the subject and object certain and

capable of ascertainment. It is to be remembered that a trust in the sense in which the expression is used in English law is unknown in the Hindu

system, pure and simple.

For the above reason the Supreme Court held in that case that the two temples were "public temples" and therefore "public religious trusts" within

the meaning of the Bombay Public Trusts Act.

8. In *Ram Saroop Dasji Vs. S.P. Sahi*, Special Officer-in-charge of The Hindu Religious Trusts and Others, , the provisions of the Bihar Hindu

Religious Trusts Act came up for consideration. The Supreme Court traced the history of statutory enactments in respect of religious and charitable

endowments right from the 19th Century and referred to the Religious Endowments Act XX of 1863 which applied to public religious

endowments. But the Act did not provide adequate protection to public religious trusts. Thereafter, the Charitable Endowments Act of 1890 and

the Charitable and Religious Endowments Act of 1920 were enacted. Even while drawing the distinction between public religious endowment and

private ones, the supreme Court has used the word "Public Trust". Therefore, the Supreme Court has dealt with the properties belonging to public

temples, which are religious endowments as if they are public trusts for the purpose of construing the various acts.

9. The *Kannikaparameswari Amman Koil* has been a party to two important decisions in this regard. One is the decision reported in *Vanjiappa*

Goundar and others v. Sri Kannika Parameswari Amman Koil by its Administrative

Trustee, 1991 (1) MLJ 93, where the learned Judge relying on the decision reported in *Idol of Sri Kannika Parameswari Amman v. Educational Trust Co. Ltd.*, 1990 (1) L.W.291 held that the provisions of the Rent Control Act will not apply to the temple in view of G.O.Ms.No.2000 and the suits filed for recovery of possession was maintainable. To arrive at this decision, the learned Judge also considered the evidence in the case which proved that, the plaintiff-temple is under the administration of the Hindu Religious and Charitable Endowment Department and the managing trustee is appointed by the said Department. In view of the above position, it has to be held that the suit temple is a public religious institution belonging to Arya Vaisya Community and it is a religious trust....

10. In *Idol of Sri Kannika Parameswari Amman v. Educational Trust co. Ltd.*, 1990 (1) LW 291 relied on by the learned Judge in the above decision, the Division Bench of this Court specifically considered the application of G.O.Ms.2000 to the temple in question. They accepted the contention of the counsel appearing for the temple that since the management of the affairs of the properties, which were dedicated in favour of the temple was vested in the temple's trustees, the benefits of G.O.Ms.No.2000 was available. The Division Bench considered the definition of "temple" u/s 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act and came to the conclusion that since there was dedication of the properties to a community which constitutes a considerable section of the Hindu Public, it is a public trust.

11. We may usefully refer to Section 92, Civil Procedure Code, which relates to public charities and in particular to sub-section (3), which deals with trusts created for public purpose of a charitable or religious nature. While dealing with cases that arose under this section, Courts have considered matters relating to temples as public trusts of a religious nature. In several decisions, Privy Council has also held that to create a trust there must be a dedication for the purposes of that trust. When a temple by its very definition implies dedication for the benefit of the public and an endowment also presupposes dedication, there is hardly any room to question whether the exemption applicable to "public religious trust" will include "temples".

The Supreme Court upheld the validity of G.O.Ms.No.2000 in S. Kandaswamy Chettiar Vs. State of Tamil Nadu and Another, . The counter filed

by the State in that case runs as follows:

The prime object behind the grant of exemption to the buildings belonging to religious institutions is to enable the institutions to get enhanced

income by increasing their rents. The buildings were endowed to the public religious and charitable trusts for carrying out certain religious or

charitable purposes. With the escalation of prices, the religious and charitable trusts are not in a position to carry out the endowment, if the income

of the property is not increased suitably and this nullifies the specific purpose of the endowment.

In Para 13 the deponent has further stated :

As stated already, numerous representations were made to the Government about the plight of the temples and the public charities like poor

feeding, etc. and the ridiculous position which is prevailing, and the Government on a consideration of all the aspects of the matter was fully

satisfied that the tenants are fully exploiting the situation and the fixation of fair rent under the Rent Control Act is no criterion at all and that it would

cause immense injustice and would be highly oppressive so far as temples and religious endowments and public charities are concerned. It is only

in the context of such a serious predicament and critical situation and the Government intervened and issued the notification under S. 29 of the Act

to relieve the hardship and injustice.

13. From this, it is abundantly clear that the notification itself has been issued only to benefit temples. In fact, the learned counsel for the petitioner

attempted to draw the conclusion from this paragraph that "temples" and ""religious endowments" were different from each other and that would

fortify his case. On the contrary it could only mean that "temples" and "religious endowments" were included in the term "public religious trust".

14. The decision reported in Bala Shankar Maha Shankar Bhattjee and others Vs. Charity Commissioner, Gujarat State, , which also arose under

the Bombay Public Trusts Act, related to Kalika Mataji Temple in Gujarat. In this decision, the definition of public and private trust from

P.Ramanatha Aiyhar's ""The Law Lexicon"" is extracted;

.....at page 1298 "Public and Private Trust" has been defined as "in the case of a

temple an idol publicly constituted and publicly accessible in which the appearance may be what one may describe any ambiguous, one would expect and ought to insist upon clear evidence of permission given or licence given and; permission withheld because it is equally true that a private individual may construct, out of his private purse, a private temple and idol retaining the control and management in his own hands and that of his family or some other selected individuals and yet so conduct himself as to provide conclusive evidence of dedication by implication and by conduct,

15. Therefore though the Bombay Public Trusts defines "public trust" to include a "temple" there is hardly any room to question that in the absence of an explanation the G.O. cannot be considered to include a temple.

In fact, an extract from the same judgment is relevant.

A public place by whatever designation is a temple when it is used as a place of public religious worship it must be dedicated to or for the benefit

of or used as a of right by the Hindu Community or any section thereof, as a place of public religious worship.

Therefore, the argument of the learned counsel for the petitioner, that if the authorities wanted to exempt temple from the provisions of Act 18 of

1960 they would have made it clear, cannot be accepted. No doubt that G.O. might have been set out in unambiguous terms by specifying that

temples, mutts and other places of religious worship are included in the public religious trust. But when the Secretary who has sworn to the counter

affidavit in the case before the Supreme Court has clearly stated that the exemption itself was introduced, only because temples were suffering from

very low income, nothing further need be said. In fact, if we consider the exemption given to certain buildings in all these Acts referred to above

namely the City Tenants Protection Act, the Public Trusts Act, the Land Reforms Act and the G.O. on hand, it is clear that the legislature intended

to exempt temples from the rigour of various legislations.

17. In addition, in the written statement the petitioner states as follows:

..... The defendant submits that in or about 1967 the defendant approached the plaintiff then trustees for permission to put up the first floor in the

suit property in view of the permanent lease in its favour and after taking necessary permission from the trustees of the devasthanam.....

..... Therefore the entire ground floor and the first floor excepting the two shops in front side and occupied by the defendant was put up by the

defendant at a cost of more than Rs.35,000 to the knowledge of the plaintiff then trustees.

Therefore, even on facts, it has been admitted by the petitioner that the respondent temple constitutes a trust coming under the Tamil Nadu H.R. &

C.E. Act. It is a public temple and therefore, it can only be a public religious trust to which the exemption provided by the G.O. is available.

18. For all the aforesaid reasons, I am of the view that the contention of the petitioner that exemption under G.Os No.2000 is not available to

the respondent hardly merits acceptance. The civil revision petition is therefore dismissed with costs of Rs.3000 (Rupees three thousand only) to

the first respondent. Consequently, the connected C.M.P.No.9015 of 2000 is also dismissed.