SUPREME COURT OF INDIA

State of Madras

Vs.

Kunnakudi Melamatam

C.A.No.445 of 1963

(K. Subba Rao, J. C. Shah and R. S. Bachawat, JJ.)

17.02.1965

JUDGEMENT

BACHAWAT, J.:-

1. The institution popularly known as Kunnakudi Melamatam alias Annathana Mitam was founded more than 80 years ago by Sri La Sri Maunanandaswami, with the object of feeding and rendering relief to poor pilgrims visiting Kunnakudi. The institution was managed by Manuanandaswami during the life-time and thereafter by his successors, Annamalai, Nityanandaswami, Poorananda and Ganapathiswamigal. By his will dated December 12, 1935, Ganapathiswamigal named Muthuramalingam and Nityanandaswami (II) as his successors. Muthuramalingam now claims to be the sole de facto and de jure trustee of the institution. There are four Samadhis inside the Matam premises. A Lingam is said to be over the Samadhi of the founder, and there are idols of Vinayagar on either side of the Samadhi. There is an idol of a Nandi over another Samadhi.

2. The Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927) came into force on February 8, 1927. Section 9(7) of the Act defines 'Math' as follows:

"'Math' means an institution for the promotion of the Hindu religion presided over by a person whose duty is to engage himself in spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples and succession to whose office devolves in accordance with the directions of the founder of the institution or is regulated by usage; and includes places of religious worship other than a temple or places of religious instruction which are appurtenant to such institution. "

Section 84 of the Act read thus :

"84, (1) If any dispute arises as to whether an institution is a math or temple as defined in this Act or whether a temple is an excepted temple, such dispute shall be decided by the Board.

2. Any person affected by a decision under sub-s. (1) may, within one year, apply to the Court to modify or set aside such decision; but, subject to the result of such application, the order of the Board shall be final."

A question having arisen whether the institution is a Math or a temple as defined in the Act, Sri Ganapathiswamigal, the then head of the institution, preferred a petition dated October 6, 1981 to

the Board of Commissioners for Hindu Religious Endowments praying for a declaration that the institution was not a Math as defined in the Act, and was outside the purview of the Act. After enquiry, the Board by its order dated February 12, 1962 held that the institution was outside the purview of the Act. The Board held that Samadhis of this type could not come under the operation of the Act, and the feeding of the piligrims was not connected with service in any religious institution. Shortly thereafter, Sri Ganapathiswamigal executed a will dated December 12, 1935, whereby he appointed his successors. Under this will, he charged his successors to manage and look after the properties of the institution and directed that they shall "carry on, as is done at present, the Vedanta Adwaita Gnana Vicharana, shall read the gnana Sastras and shall also teach the disciples". He also directed his successors to perform certain Abishekams and Gurupoojas, to maintain the disciples and to offer food profusely, by way of alms to the good and respectable people and the Sahdus. .

3. On November 13, 1949, Muthuramalingam filed a petition before the Board asking the Board to take steps for safeguarding the properties of the institution. Subsequently, he filed other petitions requesting the Board to protect the properties of the institution and to remove Nityanandaswami (II) from its trusteeship. Thereafter, the Board appears to have proceeded on the footing that the institution is a Matam within the purview of the Act. The Board fixed the annual income of the institution at Rs. 11,800, and served the institution notices of assessment for faslis 1356, 1357, 1358 and 1359 levying contributions at Rs. 354 per fasli and audit fees at Rs. 177 per fasli. Muthuramalingam filed petitions before the Board challenging the assessment and also praying for time to make the payments.

4. On March 17, 1951, the institution represented by Muthuramalingam filed a suit impleading the Madras Hindu Religious Endowments Board and Nityanandaswami (II) as defendants and praying for an order of injunction, restraining the Board from levying any contribution under Ss.69 and 70 of the Act, on the allegation that the institution was outside the purview of the Act and the levy was otherwise illegal. During the pendency of the suit, on August 28, 1951, the Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act XIX of 1951) came into force. Section l03(j) of Act XIX of 1951 provided that all suits pending against the Board under the provisions of Act II of 1927 might be continued against the Commissioner of the Hindu Religious Endowments appointed under Act II of 1927. Accordingly, on or about November 30, 1951, the plaint win amended by impleading the Commissioner as the third defendant. The prayer portion of the plaint was also amended by inserting a claim of injunction restraining the third defendant from levying any contribution under Act XIX of 1951. On January30, 1954, the District Munsif, Manamadurai dismissed the suit mainly on the ground that the plaintiff by his own conduct having invited the third defendant to interfere with the administration of the institution was disentitled to the discretionary relief of injunction. The Subordinate Judge, Sivaganga reversed the judgment of the trial Court, and decreed the suit, holding that, as the order of the Board dated February 12, 1932 had become final, the Board under Act II of 1927 and the Commissioner under Act XIX of 1951 could not proceed against the institution under those Acts at all, and could not levy the contributions and the audit fees from the plaintiff. On further appeal, the Madras High Court by its order dated August 1, 1958 held that in view of changed circumstances the Board could go behind its previous decision dated February 12, 1932 and called for a finding from the Subordinate Judge of Sivaganga on the question whether the institution was a Math. By his order dated November 29, 1958, the Subordinate Judge, Sivaganga recorded the finding that the institution is not a Math as defined in Act II of 1927 or in S. 6(10) of Act XIX of 1951. On further hearing of the appeal on January 7, 1960, the High Court accepted the findings of fact recorded by the Subordinate Judge, and held that the institution was not a Math within the meaning of S. 6(10) of Act XIX of 1951 and on this

finding, dismissed the appeal, but at the same time, directed that a scheme should be framed under S. 92 of the Code of Civil Procedure for the proper administration of the trust, and a copy of the judgment be forwarded to the Advocate-General for necessary action. The State of Madras represented by the Commissioner now appeals to this Court by special leave.

5. In this appeal, it is conceded on behalf of all the appearing parties that the directions of the High Court with regard to the framing of a scheme are misconceived, and must be set aside. In the Courts below a contention that Ss. 76(1) and 76(2) of Act XIX of 1951 were ultra vires was raised, but that contention is no longer pressed.

6. In the judgment of the High Court dated January 7, 1960, the reasons for holding that the institution is not a Math within the meaning of 6(10) of the Act are given thus:

"First of all, there are no properties attached to this institution as such; secondly there is no college for propaganda of Hindu Religion. But sadhus meet there and are given facilities for the calm and peaceful performance of their religious practices and acts. Thirdly, the head of the institution is not engaging himself in imparting any religious instructions or rendering spiritual services. Fourthly, there is no initiation of sishyas as monks and no upadesam is given to lay disciples initiating them into the mysteries of the particular cult. Fifthly there is no continuity in the spiritual head in the sense that there is no automatic self regulating mechanism for the devolution of the office. Therefore , these five clinching circumstance show that is not a math within the meaning of S.6(10) of the Act."

Curiously, in recording this finding the High Court did not take into account the relevant recitals and statement in the will of Ganapathiswamigal dated December 1, 1935, which have a material bearing on the question whether the institution is a Math. Elaborate arguments were advanced before us on the question whether the institution is a Math within the meaning of Act II of 1927 and Act XIX of 1951. In view of our conclusions on other points, we think that it is not open to us to decide in this appeal whether the institution is a Math within the meaning of those Acts, and the point must be left open.

7. The suit, as it stands now, is a composite suit, claiming two different reliefs, namely, (1), an injunction restraining the levy of contributions and audit fees under Act II of 1927, and (2) an injunction restraining the levy of contributions and audit fees under Act XIX of 1951. The two reliefs must be considered separately.

8. We shall consider firstly, the claim of injunction restraining the levy of contributions and audit fees under Act XIX of 1951. Section 6(10) of this Act defined Math thus :

"math" means a Hindu religious institution with properties attached there to and presided over by a person whose duty it is to engage himself in imparting religious instruction or rendering spiritual service to a body of disciples or who exercises or claims to exercise spiritual headship over such a body; and includes places of religious worship or instruction which are appurtenant to the institution."

Section 6(15) of the Act defined "religious institution" as meaning a math, temple or specific endowment. Section 57 of the Act provided :

"Subject to the rights of suit or appeal hereinafter provided, the Deputy Commissioner shall have power to inquire into and decide the following disputes and matters :-

(a) whether an institution is a religious institution;"

Under S. 61 of the Act, an appeal lay to the Commissioner from the order of, the Deputy Commissioner, and under S. 62 of the Act, any party aggrieved by the order of the Commissioner might within ninety days of the order institute a suit in the Court against the order. Section 93 of the Act read :

"No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of law, except under, and in conformity with, the provisions of this Act."

9. Now, one of the disputes in this suit is whether the institution is a religious institution within the meaning of Act XIX of 1951. Specific provision is made in Ss. 57, 61 and 62 of the Act for determination of that dispute by the Deputy Commissioner, the Commissioner and eventually by a suit instituted in a Court under S. 62. The present suit is not brought under or in conformity with S.62 and consequently, in so far as the suit claims the relief of injunction restraining the levy of contribution and audit fees under Act XIX of 1951, it is barred by S. 93 of the Act: The decision of the Board dated February 12, 1932 was given under Act II of 1927 and was final for purposes of that Act, but it is not final for purposes of Act XIX of 1951.

10. We shall next consider the claim of injunction restraining the levy of contribution and audit fees under Act II of 1927, By its order dated February 12, 1932, the Board had decided that the institution was outside the purview of Act II of 1927. That decision was given under S. 84(1) of the Act. No application was made to the Court to modify or set aside the decision in accordance with S. 84(2). Consequently by the express words of S. 84(2), the decision of the Board became final, and for purposes of Act II of 1927, the correctness of the decision is not now open to challenge on the ground that it is erroneous. But Mr. Chetty argued that the decision, though binding on the institution, is not binding on the Board. We cannot accept this contention. The decision is final and binding on the Board also for purposes of Act II of 1927. Mr. Chetty argued secondly that in view of Ss. 13 and 15 of the Madras General Clauses Act (Madras Act I of 1891) the Board could decide the question whether the plaintiff is a religious institution as often as occasions arose, and its power was not exhausted by the decision given on February 12, 1932. This argument is misconceived. The Sections relied upon do not authorise revocation or annulment of a decision, which has become final. Mr. Chetty next contended that the character of the institution was changed by the will of Ganapathiswamigal, dated December 12, 1935, and consequently, the decision dated February 12, 1932 ceased to be binding under Act II of 1927. This contention must Also be rejected. Ganapathiswamigal had no power to change the character of the institution, and, as a matter of fact, he did not purport to do so by his will. Mr. Chetty next contended that by making the assessment of the contributions under S. 70 of the Act, the Board gave a decision under Section 84(1) that the institution was a Math as defined in the Act, and that decision has become final under S.84 (2). There is no substance in this contention. The order of assessment is not produced. It is not shown that any dispute then arose whether the institution was a Math as defined in the Act, or that the Board decided that dispute by its order of assessment.

11. Mr. Chetty argued that by reason of S. 103(i) of Act XIX of 1951, all contributions under Act II of 1927 are payable under Act XIX of 1951 and the assessment and demand in respect of those contributions are enforceable under the latter Act and consequently the suit challenging such assessment and demand is barred by S. 93 of Act XIX of 1951. There is no substance in this

contention. As the institution was not Math within the meaning of Act II of 1927 in view of the final decision of the Board dated February 12, 1932 the contributions demanded under Act II of 1927 were not legally payable to the Board under that Act. Consequently, those contributions were not payable under Act XIX of 1951, and the assessment and demand in respect thereof were not enforceable under the latter Act by reason of S. 103(i)thereof. Section 93 of Act XIX of 1951 did not bar a suit pending on the date of commencement of the Act claiming an injunction restraining the levy of contributions and audit fees under Act II of 1927 on the ground that the institution was outside the purview of Act II of 1927.

12. Mr. Chetty lastly contended that in view of the conduct of Muthuramalingam asking the Board to interfere with the management of the institution on the ground that it is a Math, the plaintiff is estopped from asserting that it is not a Math within the purview of Act II of 1927. This contention must be rejected. The Board could not levy contribution from an institution which was not a Math under Act II of 1927 having regard to the final decision of the Board dated February 12, 1932. Estoppel could not confer on the Board a power which it did not otherwise possess under the Act. Moreover, it is not shown that by reason of the acts of Muthuramalingam, the Board came to believe that the institution was a Math and to act upon such belief. The plaintiff is not estoppel by any act or conduct of Muthuramalingam from contending that it is not a Math within the meaning of Act II of 1927.

13. The result is that the appeal is partly allowed, the suit is decreed in so far as it claims injunction restraining the levy of contributions from the paintiff under Ss. 69 and 70 of Madras Act II of 1927 and from taking any coercive steps in pursuance of any demands against the plaintiff under Act II of 1927, and the suit is dismissed, in so far as it claims injunction restraining the levy of contributions and taking any coercive steps in respect of demands against the plaintiff under Madras Act XIX of 1951. The success being divided we direct that the parties will pay and bear their own costs throughout, in this Court and in the Courts below.

Appeal partly allowed.

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