Kakinanda Annadana Samajam, Etc. Etc.

Vs

Commissioner of Hindu Religious and Charitable Endowments, Hyderabad and Others

I. V. GOPAL RAO, Intervener

AND

The Yadalla Pitchaiah Chetty Charities Association, Etc.

Vs

Government Of Andhra Pradesh and Others, Respondents. (With C.M.P. Nos. 592 and 3857/70)

Civil Appeals Nos. 1249 - 1251, 1271, 1358, 1360, 1381, 1382, 1521, 1522, 1544, 1612, 1668, 1669, 1879, 1880, 1912, 1973, and 1974 of 1970

(A. N. Ray, S. M. Sikri, J. C. Shah, K. S. Hegde, A. N. Grover, G. K. Mitter JJ)

02.12.1970

JUDGMENT

GROVER, J. -

1. se appeals by certificate are from a common judgment of the Andhra Pradesh High Court and involve the question of the constitutionality of certain provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Act 17 of 1966), hereinafter called the 'Act'.

2. A number of petitions under Article 226 of the Constitution were filed before the High Court on behalf of the institutions of endowments some of which were public and some private in character. A few institutions were societies registered under the Societies Registration Act while others claimed to be religious endowments or public bodies like municipalities which were managing the institutions. We might, for the sake of convenience, state the facts in Civil Appeal No. 1360 of 1970. In the affidavit of Nalam Ramalingaiah it is stated that he is the hereditary trustee of the Nalam Choultry and Vyasya Seva Sadanam which are private trusts. They were founded by his ancestor in the years 1879 and 1920 respectively. He had been the managing trustee from 1943. The Choultry was endowed with immovable property comprising an area of 453 acres of land which by careful management was now fetching an income of Rs. 40,000/-. Besides feeding the poor and affording free lodging facilities to pilgrims scholarships were being given to deserving students. The Sevasadan was endowed with huge properties which were fetching Rs. 18,000/- as income. The object of this charity were : (1) to impart education and training in handicraft to women; (2) to feed poor girls; (3) provide free shelter to women students and (4) run Women's Sanskrit School. At no time there had been any complaint about mismanagement of the aforesaid trust. A number of other Choultries were also mentioned which were being managed by the hereditary and trustee or trustees. Some of them were providing food and shelter to students and travellers of all castes and creeds

including Muslims and Christians. Among the objects of some of the Choultries was included the performing of Pujas in temples. These Choultries were founded in the last century and ever since their inception the members of the family of the founder or founders had been managing them. At no time there had been any complaint of any complaint of any kind against the management. On the contrary the hereditary trustees had improved the endowment properties and added several charitable activities to the existing objects.

3. The validity of the main provisions of the Act was challenged on the grounds that the office of the hereditary trusteeship was property within the meaning of Article 19(1)(f) and that these provisions were ultra vires and void as violative of that article as also of Articles 14, 25, 26 and 31 of the Constitution. On behalf of the respondents the position taken up was that all the institutions in question were public and none of them was private in character; that they were religious and charitable institutions and endowments within the meaning of the Act. It was denied that the office of hereditary trustee was property within the meaning of Article 19(1)(f) or that there was infringement of any of the fundamental rights mentioned in the various petitions. It was maintained that the hereditary trustees, etc. had only a bare right to manage the affairs of the institution and the secular matters which could not be regarded as property within the meaning of the aforesaid article.

The High Court formulated five questions for decision but it is unnecessary to mention or go into all of them as the matters in controversy before us relate to two of these questions. These are : (1) whether on the facts and in the circumstances the office of hereditary trusteeship is or is not property within the meaning of Article 19(1)(f) and Article 31 and (2), whether all or any of the material provisions of the Act are hit by Articles 14, 19(1)(f), 25, 26 or 31. The High Court was of the view that the office of hereditary trustee was property within the meaning of Article 19(1)(f). It was, however, held that the impugned provisions only imposed reasonable restrictions on the exercise of the right of the trustees, in the interest of general public and good administration of the public institution. It was further found that none of the impugned provisions were violative of Articles 14, 19(1)(f), 25, 26 and 31 of the Constitution. According to the High Court the material provisions of the Act were only intended to regulate and ensure proper, efficient and better administration and management of the institution. All the writ petitions were dismissed.

4. The learned counsel for the appellants has invited our attention to the various sections of the Act but has confined his challenge mainly to the provisions contained in Section 15, read with Sections 17, 27, 97 and 36 of the Act. We may advert to the main provisions and the general scheme of the Act. According to the preamble the Act has been enacted to consolidate and amend the law relating to the administration and governance of charitable and Hindu religious charitable institutions and endowments in the State of Andhra Pradesh. It applies to all public charitable institutions and endowments other than Wakfs governed by the provisions of the Wakf Act, 1954. According to the Explanation to Section 1(3)(a) the expression "charitable institutions and endowments" shall include every charitable institution or endowment the administration of which is, for the time being, vested in any department of Government or civil court, Zila Parishad or other local authority or any company, society, organisation, institution or other person. The Act also applies to all Hindu public religious institutions and endowments. "Charitable endowment" has been defined by Section 2(3) to mean all property given or endowed for any charitable purpose. "Charitable institution" has been defined by Section 2(4) to mean any establishment, undertaking, organisation or association formed for a charitable purpose and includes a specific endowment. Various sub-clauses of Section 2 define "charitable purpose", "Commissioner", "Executive Officer", "hereditary office-holder", "hereditary trustee", "religious charity", "religious endowment", "specific endowment" etc. The definition of "hereditary trustee" contained in sub-clause (15) and a "trustee" in sub-clause (28) may be

reproduced :

> "'Hereditary trustee' means the trustee of a charitable or religious institution or endowment the succession to whose office devolves according to the rule of succession laid down by the founder or according to usage or custom applicable to the institution or endowment or according to the law of succession for the time being in force as the case may be."

'Trustee' means any person whether known as Mathadhipati, Mahant, Dharamakarta, Mutwalli, Muntazim, or by any other name, in whom either alone or in association with any other person, the administration and management of a charitable or religious institution or endowment are vested; and includes a Board of Trustees."

Chapter II deals with the appointment of Commissioner, Joint Commissioners, etc. and their powers and functions. Section 6 provides for preparation and publications of list of charitable and religious institutions and endowments on the basis of income. By Section 7 the Commissioner is to be a corporation sole having a perpetual succession and common seal. Section 8 provides that subject to other provisions of the Act the administration of all charitable and Hindu religious institutions and endowments shall be under the general superintendence and control of the Commissioner and such superintendence and control shall include the power to pass any order which might be deemed necessary to ensure that such institutions and endowments are property administered and their income in duly appropriated for the purpose for which they are founded or exist. Section 12 empowers the Commissioner to enter and inspect institutions and endowments. Chapter III relates to administration and management of charitable and Hindu religious institutions and endowments. Section 14 declares that all properties belonging to or given or endowed to a charitable or religious institution or endowment shall vest in the charitable or religious institution or endowment as the case may be. It is unnecessary to set out Section 15 in extenso : It provides for the constitution of a Board of Trustees, whose number has been specified, in respect of charitable or religious institution or endowments of the various categories mentioned in the section. The power to constitute the Board has been conferred on the Government, Commissioner, Deputy Commissioner or the Assistant Commissioner, as the case may be. It is discretionary where there is a hereditary trustee but a Board must be constituted in every other case. In making the appointment of trustees it has been enjoined that due regard should be given to the religious denomination or other section thereof to which the institution belongs or the endowment is made and wished of the founder. All properties belonging to the institution or endowment shall stand transferred to such Board of Trustees or trustee, as the case may be. Section 16 gives the disqualifications for trusteeship. Section 17 deals with the appointment of a Chairman of the Board of trustees. It has been provided, inter alia, that where there is only one heredity trustee he shall be the Chairman. Where there are more than one the Government, etc. may nominate by rotation one of them to be the Chairman. Section 22 gives the duties of the trustee. He is bound to produce books, accounts, returns ..... relating to the administration of the institution or endowment for inspection by the Commissioner and other functionaries whenever required to do so. Section 27 provides for the appointment of the Executive officer by the Government and the Commissioner respectively. It also lays down the duties of the Executive Officer. It is declared that the Executive Officer shall be the employee of the Government who shall determine the conditions of his service. Section 31 lays down how the vacancies amongst the office-holders or servants of charitable or religious institution or endowment have to be filled up by the trustees. Section 32 deals with the punishment of office-holders and servants. The general control vests in the trustee who can take disciplinary action in accordance with the prescribed procedure for the various matters mentioned in sub-section (1). In case of an institution or

endowment whose annual income exceeds two lakhs the power to impose any penalty has been conferred on the Executive Officer. Section 35 gives power to the Executive Officer not to implement orders or resolutions of the trustee or Board of Trustees in certain cases. Section 36 given overriding effect to the provisions of Chapter III over the existing corresponding provisions. Chapter IV deals with registration of charitable and religious institution and endowments; Chapter V with Maths and endowments attached thereto; Chapter VII with budget, accounts and audit; Chapter VIII with finance, Chapter X with alienation of immovable property and resumption of Inam lands; Chapter XII with inquiries and Chapter XIII with appeals, revisions and review etc. Section 95 empowers the Government to dissolve the Board to Trustees in certain cases and Section 97 enables in to appoint a specific authority where the Board of Trustees has ceased to function or has been dissolved. Section 102 is in the following terms :

> "Nothing in this Act shall -
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> (a) save as otherwise expressly provided in this Act or the rules made thereunder, affect any honour, emoluments or perquisite to which any person is entitled by custom or otherwise in any charitable or religious institution or endowment, or its established usage in regard to any other matter, or
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> (b) authorise any interference with the religious or spiritual functions of the head of a Math including hose relating to the imparting of religious instruction or the rendering of spiritual service."

Under Section 110, Section 92 and 93 of the Code of Civil Procedure, 1908, can no longer be applicable to charitable institutions and Hindu religious institutions and endowments to which the Act applies.

The main stress, on behalf of the appellants, has been laid on the effect of the provisions of the Act and in particular Section 15, read with the other sections mentioned before on the office of the hereditary trustee. It has been contended that a hereditary trustee has to manage the institution or the endowment in accordance with the directions of the founder. It was his duty and responsibility to appoint the staff and take disciplinary action whenever necessary and to rugulate the expenditure and carry out generally to objects of the charitable institution or endowment. By the appointment of a Board of Trustees the hereditary trustee can no longer manage and exercise control over the institution alone or in association with other hereditary trustees. He has to share the management and responsibility with other members of the Board who may be drawn from the section or faction which may be politically motivated and may be hostile to him. The appointment of the Board, it is pointed out, rests with Government, the Commissioner or the Deputy Commissioner, as the case may be and although hereditary trustee or trustees have to be included in the Board, the entire administrative power is vested in the Executive Officer. This officer is a permanent Government servant and the Board or the Trustee cannot either remove him or take any disciplinary action against him which means that the Board of the Trustee cannot exercise any effective control over him. The Executive Officer can in certain eventualities even refuse to implement orders of the Board. The hereditary trustee has thus been left only with what may be called the "husk of the title" and his right to hold property has been seriously interfered with.

5. The first and the main question is whether the office of the hereditary trustee is "property" within the meaning of Article 19(1)(f). For the reasons, which will be presently stated, we are unable to agree with the High Court that the office of hereditary trustee is "property" within that article.

6. The view that the office of hereditary trustee was itself "property" within Article 19(1)(f) even if no emoluments were attached to it found favour with many High Courts. We need refer only to the leading judgment of a Division Bench of the Madras High Court in Kidangazhi Manakkal Narayanan Nambudripad and Others v. The State of Madras and Another. (ILR (1955) Mad 356) The line of reasoning which prevailed was that the office of hereditary trusteeship descended like partible property on the heirs of a trustee and even females were entitled to the office if they happened to succeed as heirs. The rule in the Tagore's case ((1872) 9 BLR 377) has been applied to the devolution of the office of hereditary trustee as if it was property; (vide Ganesh Chunder Dhur v. Lal Behary Dhur ((1936) 71 MLJ 740 : 1936 PC 318 : 63 IA 448) and Bhaba Tarini Debi v. Asha Lata Debi (ILR (1943) 2 Cal 137), both decisions of the Privy Council). Support was also sought from the observations in Angurbala Mullick v. Deba Bratata Mullick ((1951) SCR 112) relating to the office of a Shebait which was held to be property. Another reason given was that "property" in Article 19(1)(f) was of wide import and was of sufficient amplitude to take in hereditary trusteeship.

7. The High Court in the judgment under appeal delved into the history and the background in which hereditary office had been equated to property in Hindu Law. Starting from Krishnabhat Hiragagne v. Kapabhat Mahalabhat et al ((1869) 6 Bom HCR 137 : 1943 PC 89) most of the later decisions of the Privy Council and the High Courts were discussed. We need refer only to Gnanasambanda Pandara Sannadhi v. Velu Pandaram (27 IA 69) in which Their Lordships pointed out that the rule in Tagore's case (supra), that all estates of inheritance created by gift or will so far as they were inconsistent with the general law of inheritance were void was applicable "to an hereditary office and endowment as well as the other immovable property".

8. In cases in which the office of hereditary trusteeship has been held to be property within the meaning of Article 19(1)(f) the true character and incidents of that office do not appear to have been fully kept in view. It was common ground before the High Court and has not been disputed before us that the hereditary trustees of the institutions with which we are concerned have only claimed a bare right to manage and administer the secular estate of the institution or the endowment and in no case any hereditary trustee has claimed proprietary or beneficiary interest either in the corpus or in the usufruct of the estate. The position of a hereditary trustee does not appear to be in any way different from that of a Bharamkartha or a mere manager or custodian of an institution or endowment. There is one exception only. The hereditary trustee succeeds to the office as of right and in accordance with the rules governing succession. But in all other respects his duties and obligations are the same as that of Dharamkartha. No one has ever suggested that a hereditary trustee can be equated to a Shebait of a religious institution or a Mathadhipati or the Mahant. The ingredients of both office and property, of duties and personal interest are blended together in the rights of a Mahant as also a Shebait and a Mathadhipati. The position of Dharmakartha, on the other hand, is not that of a Shebait of a religious institution or of the head of a Math. These functionaries have a much higher right with larger power of disposal and administration and they have a personal interest of beneficial character; (See Srinivasa Chariar v. Evalappa Mudaliar (49 IA 237 at 241). There would thus be no justification for holding that since the office of the aforesaid functionaries had been consistently held by this Court to be property the office of a hereditary trustee is also property within Article 19(1)(f).

9. In Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan and Others, ((1964) 1 SCR 561 : AIR 1963 SC 1638) the distinction between the office of Mahant and that of the Tilkayat of Nathdwara Temple was clearly enunciated. It was pointed out that the Mahant or Shebait was entitled to be maintained out of the property of the Math or the temple. The Tilkayat never used any income from the property of the temple for his personal needs or private purposes nor did he claim

any property interest therein. What he claimed was merely the right to manage the property, to create leases in respect of it in a reasonable manner and the right to alienate it for the purposes of the temple. These rights were exercised by him under the absolute and direct supervision of the Durbar of Udaipur. It was laid down by this court that the aforesaid right could not be equated with the totality of the powers generally possessed by the Mahant or the Shebait. In our judgment the hereditary trustee cannot in any way claim any higher rights of managing the properties of the institution or the endowment than the Tilkayat. His rights fall far short of those of the Mahant and the Shebait. It may be that in the case of the Tilkayat his rights were governed by the Farman issued by the Durbar which had the force of law but the ratio of decision essential is that a bare right to manage an institution or an endowment cannot be treated as property within Article 19(1) and Article 31. In Raja Birakishore v. The State of Orissa ((1964) 7 SCR 32 : AIR 1964 SC 1501 : (1964) 2 SCJ 682) the constitutionality of Shri Jagannath Temple Act, 1954 (Act 2 of 1955), was challenged. The attack was based mainly on the ground that that Act took away the perquisites of Raja of Puri which had been found to belong to him in the record of rights. The Raja had two-fold connection with the temple. In the first place he was the Adyasevak, i.e. the chief servant of the temple and in that capacity he had certain rights and privileges. He was also the sole superintendent of the temple and was in charge of the management of the secular affairs of the temple. After reviewing the provisions of Act 2 of 1955 this Court observed that it provided for the management of the secular affairs of the temple and did not interfere with the religious affairs thereof. The rights which the Raja possessed had been exercised by the predecessor also but because he had been deprived only of the rights of management which carried no beneficial interest in the property the attack based on the provisions of Articles 19(1)(f) and 31(2) could not be sustained. One of the features common to that case and the present one is that the management had been transferred from the sole control of the Raja to the control of a committee. This was regarded as a purely secular function which did not carry with it any right to property and could not be hit by Article 19(1)(f).

10. It is true that in the latest decision of this Court in Sambadamaurthi Mudaliar v. State of Madras and Another ((1970) 2 SCR 424 : 1970 (1) SCC 4), it was taken to be well-established that the office of a hereditary trustee is in the nature of "property" and this is so whether the trustee has beneficial interest of some sort or not. This observation, we apprehend, was not necessary for a decision of that case. There the question was whether the appellant was a hereditary trustee within the meaning of Section 6(9) of the Madras Act, 1951 and there was no discussion or determination of the point that the office of the hereditary trustee was property within Article 19(1)(f) or any other article. Nor do we consider that the various pronouncements of the Privy Council that the rule in the Tagore's case (supra), applies to succession of hereditary trustee can afford much assistance in deciding whether an office holder who has a bare right of management can claim to have any right or interest in the nature of property within the meaning of Article 19(1)(f). Following the principles laid down in the Tilkayat and Raja Birakishore cases (supra), we are unable to endorse the view that the office of hereditary trusteeship is property within Article 19(1)(f) or any other article of the Constitution.

11. We may add that even if it was held that the rights in question constituted "property" their regulation by the relevant provisions of the Act would undoubtedly be protected by Article 19(5). We have no hesitation in concurring with the decision of the High Court that restrictions which have been imposed by the provisions of the Act on the hereditary trustees are reasonable and are in the interest of the general public. The power to appoint non-hereditary trustees or Executive Officers were there is already a hereditary trustee or trustees notwithstanding there is no mismanagement is only for the purpose of ensuring better and efficient administration and management of the institution or endowment. Non-hereditary trustees have been associated with the hereditary trustee

who has not been removed from his office. As a matter of fact complete safeguards I have been provided for ensuring that he retains his office. He or one of the hereditary trustees has to be the Chairman of the Board. He has various powers under the provisions of the Act already noticed. All that can be said is that instead of managing the institution alone he has to administer it in collaboration with other trustees who are non-hereditary. In matters of religion such a Puja, Dittam, rituals etc. there can be no interference. It has been provided in categorical terms that the same must be continued to be performed according to Agansastras or usage or custom prevalent in the institution. It is only the secular aspect that has been touched that there can be no manner of doubt that the same has been done in interest of better and efficient administration. It must be remembered that the legislation relating to public and charitable institutions or endowments has taken place as a result or careful deliberation by high powered bodies.

12. In the report of the Hindu Religious Endowment Commission presided over by Dr. C. P. Ramaswami Iyer which was appointed in March 1960 it has been pointed out that legislation relating to endowments became necessary in the States as a result of the almost invariable mismanagement of the endowment properties of temples by the trustee, misappropriation of the funds of the endowment for purposes unconnected with the original aims and objects of such endowments, utilisation of funds of the endowment by the trustees or managers for their personal purposes etc. All this fully supports the decision of the High Court that the restrictions which have been placed on the hereditary trustees as also on others in whom the management of the institution in question vests are reasonable and in the public interest. Thus the appellants cannot succeed on the principal point which has been argued before us.

13. A faint attempt was made to sustain the attack under Articles 14 and 26(d) of the Constitution but finally hardly any arguments were addressed worth noticing on these points. It is unnecessary to deal with individual appeals some of which were filed by societies registered under the Societies Registration Act, i.e., Civil Appeals No. 1249 of 1970, C.A. No. 1271 of 1970 by the Municipal council, Visakhapatnam, related to the Turnew Choultry which, according to the Municipal Council, was its private property. So far as the validity of the impugned provisions is concerned the same must be sustained in these cases on the same reasoning as in the case relating to the hereditary trustee. The High Court has rightly left open the question whether the Turnew's Choultry is a private or a public charitable institution. This the Municipal Council is entitled to agitate before the Deputy Commissioner under Section 77 of the Act. Before the High Court some of the Writ Petitioners had claimed that their institutions were religious denominations within Article 26 and were therefore entitled to the protection guaranteed by that article. The High Court has, quite rightly, observed that these matters should be agitated in a proper forum and they have been left open for determination if and when so desired. This indisputably was the correct course to follow.

14. The appeals fail and are dismissed with costs. One set of hearing fee.

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