Gurpur Guni Venkataraya Narashima Prabhu and Others

Vs

B. G. Achia, Assistant Commissioner, Hindu Religious and Charitable Endowment, Mangalore and Another

Civil Appeal 2176 of 1968

(V.R. Krishna Iyer, A.C. Gupta JJ)

15.04.1977

JUDGMENT

GUPTA, J. -

1. The only question disputed in this appeal is whether a temple, known as Varadaraj Venkataramana Temple at Gurpur in Mangalore Taluk in Karnataka, is a public temple or a temple belonging to Goud Saraswat Brahmin community of Gurpur.

2. This is an ancient temple founded about 400 years ago. In a proceeding under Section 57 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (hereinafter referred to as the Act), the Deputy Commissioner by his order dated January 17, 1961, held that the temple was a public temple and the Commissioner on appeal affirmed the order of the Deputy Commissioner on June 12, 1961. Thereafter the appellants who are the trustees of the temple instituted a suit, Original Suit 106 of 1961, in the court of the Subordinate Judge South Kanara, for a declaration that the temple was a private temple and not a temple as defined in Section 6(17) of the Act or, in the alternative, for a declaration that it was a denominational or sectional temple belonging to the Goud Saraswat Brahmin community of Gurpur. There was also a prayer for cancellation or modification of the order of the Commissioner dated June 12, 1961 affirming that of the Deputy Commissioner that this was a public temple. The Subordinate Judge held on the evidence that this was a denomination or sectional temple belonging to the Goud Saraswat Brahmin community of Gurpur and not a private temple. He further held that there was no evidence before the Deputy Commissioner justifying his order which was affirmed by the Commissioner that it was a public temple. He observed that "it is incorrect to draw an inference of dedication to the public merely from the fact of user by the public". Accordingly, he allowed the alternative declaration asked for by the plaintiffs and modified the order of June 12, 1961 made by the Commissioner affirming the order of the Deputy Commissioner dated January 17, 1961. From the decision of the trial Court, the respondents preferred an appeal to the High Court. The appellants before us also filed a cross objection contending that the Subordinate Judge should have held that the temple was a private temple and not a denominational or sectional temple. The High Court found that this was a temple as defined in Section 6(17) of the Act. On the evidence also the High Court took a different view from the trial Court and held that the temple was a place of religious worship dedicated to and used as of right by the general Hindu community and was thus a public temple. On this view the High Court allowed the appeal and dismissed the cross-objection. The appeal before us is by the plaintiffs on certificate granted by the Karnataka High Court.

3. The Subordinate Judge held on the evidence that the temple was founded by 37 Goud Saraswat

Brahmin families of Gurpur, that the trustees managing the temple belonged always to the members of the said community, that the landed properties owned by the temple had all been endowed by members of this community, and that there was no reliable evidence of endowment of any immovable property by any person outside the community. The Subordinate Judge on considering the evidence of defendants' witnesses 2 to 4, on whom the defendants relied to prove that the temple was dedicated to the general Hindu community, found that none of them claimed a right of worship in the temple and the 'sevas' offered by them were voluntary and the income from such 'sevas' was also small. He further found that it was only the members of the Goud Saraswat Brahmin community who were allowed to participate in the more important ceremonies. It was observed that the fact that Hindus other than those belonging to the Goud Saraswat Brahmin community were not prevented from worshiping in the temple did not "deprive the temple of its sectional character", that it was "incorrect to draw an inference of dedication to the public merely from the fact of the user by the public". Thus the decision of the Subordinate Judge was that the temple was not a public temple because it was not dedicated to the general Hindu community but for the benefit of Goud Saraswat Brahmin community of Gurpur.

4. The High Court held that the definition of temple in Section 6(17) of the Act covers the temple in question. The definition is as follows :

> "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 by, the Hindu community or any section thereof, as a place of public religious worship;

Even on the findings recorded by the Subordinate Judge this would be a temple dedicated to or for the benefit of a section of the Hindu community and as such covered by the definition. The High Court reversed the decision of the Subordinate Judge and held that "facts of the present case lend support to the conclusion that the temple must have been dedicated for the benefit of and used by the Hindu community and is being used by them, as of right, as a place of public religious worship". The facts that weighed with the High Court were that Hindus generally came to worship in the temple and were not turned away and that when the deity is taken out in procession, members of the Hindu community other than Goud Saraswat Brahmins also offer "araties". The claim made by some of the witnesses for the defendants that they used to consult the oracle in the temple also seemed to the High Court a significant circumstance. But the High Court appears to have overlooked that these witnesses admitted that "before consulting the oracle, the manager must be told of it and it is he who could consult on their behalf". The High Court has recorded a finding that "numerous endowments" have been made by Hindus not belonging to Goud Saraswat Brahmin community. This is not however supported by the evidence in the case. Another circumstance which impressed the High Court was the recital in an award (Ex. A-13) which was made part of the decree (Ex. A-3) in a previous proceeding between the members of Goud Saraswat Brahmin community themselves, that the trustees of the temple should place the accounts of income and expenditure before the "general body". This "general body" according to the High Court implied the Hindu community generally. In the context of the award (Ex. A-13) it is however clear that the 'general body' mentioned therein, could only refer to the members of the Goud Saraswat Brahmin community because the proceedings concluded by the decree was confined to the members of the community. The law is now well settled that "the mere fact of the public having been freely admitted to the temple cannot mean that courts should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right". (See Bihar State Board Religious Trust, Patna v. Mahant Sri Biseshwar Das (1971) 3 SCR 680, 689 : (1971) 1 SCC 574). We find that the

circumstances disclosed in evidence in this case do not support the inference that Hindus generally used the temple as a place of worship as of right.

5. The appeal is accordingly allowed. The Judgment of the High Court is set aside and that of the trial Court restored. In the circumstances of the case we make no order as to costs.

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