Government of Tamil Nadu

Vs

Ahobila Matam

Civil Appeal No. 446 of 1973

(Chinnappa Reddy, G. L. Gza JJ)

17.11.1986

JUDGMENT

CHINNAPPA REDDY, J. -

1. This appeal is by a certificate granted by the Madras High Court under Article 133(1)(c) of the Constitution. The appellant is the State of Tamil Nadu. The respondent is the Ahobila Matam, a well known religious institution. The question relates to the applicability of the Tamil Nadu Inams (Assessment) Act, 1956 in regard to some lands situated in Narasimhapuram, Papanasam Taluka, Thanjavur District belonging to the institution. The lands are covered by Inam Title Deed No. 2214 dated July 29, 1881 granted by the Inam Commissioner to the Manager for the time being of Sri Ahobila Matam. By the title deed, the Inam Commissioner, by order of the Governor-in-Council of Madras acting on behalf of the Secretary of State for India in Council, acknowledged the title of the Ahobila Matam to "a religious endowment or a Matam Inam consisting of the right to the Government Revenue on land claimed to be acres 28.11 cents of dry, 58.38 acres of wet and 6.83 acres of garden and situated in the whole village of Narasimhapuram besides Poramboke in the taluk of Kumbakonam District of Tanjore and held for the support of the Ahobila Matam" and confirmed the inam to the Manager for the time being of the Ahobila Matam and his successor "tax free to be held without interference so long as the conditions are duly fulfilled". The extract of the Inam Fair Register mentioned in column 8 that the grant was made by one of the Tanjore princes, but that the purpose of the grant was not known. It was presumed that the inam was conferred for the benefit of the Matam. Column 13 mentioned the original grantee as the Ahobilam Servatantra Sri Srinivasa Swami, apparently, the then jeer of the Matam. The recommendation of the Inam Commissioner in column 22 was that the title deed should be issued in the name of the priest for the time being of the Ahobila Matam. It was in pursuance of this recommendation that Inam Title Deed No. 2214 was issued. Consequent on the enactment of the Madras Inams (Assessment) Act, 1956, the Revenue Divisional Officer, Kumbakonam made an order on February 28, 1963 levying full assessment on the lands. The levy of the assessment was questioned by the Ahobila Matam by a writ petition in the Madras High Court. First, a learned Single Judge and then, a Division Bench of Madras High Court quashed the assessment on the ground that the proviso to Section 3(1) of the Act prevented the levy of full assessment of lands held on service tenure. The proviso to Section 3(1) of the Act is in the following terms :

> Provided that in the case of an inam granted on service tenure which is proved to consist of an assignment of land revenue only, no assessment under this sub-section shall be leviable, and the inamdar shall be liable to pay only the quit-rent, jodi, Kattubadi or other amount of a like nature, if any, which he has been paying before the commencement of this Act.

The question for consideration, therefore, is whether the inam was granted in 'service tenure'. The High Court took the view that the expression 'service tenure' was not to be restricted to a service inam and that it would include any grant for the support of religious of a religious or charitable institution. For that purpose reliance was placed on the classification of inams in the Standing Orders of the Board of Revenue. The Standing Orders divided inams into unenfranchised service inams and unenfranchised personal inams. Under the heading of unenfranchised service inams, religious and charitable inams were dealt with in paragraph 54. Paragraph 54 enjoined a duty on the Collector to see that the inams confirmed by the Inam Commissioner for the benefit of or for service to be rendered to any religious or charitable institution or for the maintenance of irrigation works or other works of public utility; were not enjoyed without the terms of the grant being fulfilled. Religious and charitable inams were further classified and in the first category we get inams granted for the support or maintenance of Hindu religious institutions, inams granted for the performance of a charity or service connected with Hindu religious institutions and inams granted for any other Hindu charitable trust. In the second category came the other inams. We do not think that the classification of grants for the benefit of a religious institution along with other service inams by paragraph 54 of the Board's Standing Orders throws light on the interpretation of the expression 'service tenure' in Madras Inams Assessment Act. The expression 'service' in connection with religious institutions has acquired a special and significant meaning and we do not think that we will be justified in ignoring the well understood meaning given to the expressions 'service inams' and 'service tenure' over decades of years. We must not also forget that the object of Madras Inams Assessment Act was to impose full assessment on Inam lands hitherto wholly or partly exempt from levy of land revenue. As far back as 1934, the Madras High Court in E. Subramania v. Kailasanatha (AIR 1934 Mad 258(2) : 1934 MWN 94 : 39 MLW 389) (Venkata Subba Rao, J.), pointed out that there were three possible views that might be taken of grants made in connection with religious institutions : "First, that the land was granted to the institution, secondly, that it was intended to be attached to a particular office, and thirdly, that it was granted to a named individual, burdened with service, the person so named, happening to be the office-holder, at the time of the grant. This distinction between grants to institutions as such and grants made for the performance of service either by attaching the service to a particular office or by naming the individual grantee and burdening the grant with service, the named individual being the holder of an office, for the time being. In Hindu Religious Endowments Board v. Thadikonda Koteswara Rao (AIR 1937 Mad 852 : (1937) 2 MLJ 413 : 1937 MWN 1032 : 46 MLW 587), a Division Bench of the Madras High Court considered a number of grants bearing these distinctions in mind. Where the grant was "for the worship of the idol in the pagoda" or "for the nithya naivedya deeparathana" or "for the offering of daily naivaidyam and deeparathana", the grants were construed as grants in favour of the institution and not as grants in favour of the office-holder or individual burdened with service. In other words, such grants were not treated as service inams but as grants in favour of institutions. The decision in Hindu Religious Endowments Board v. Koteswara Rao (AIR 1937 Mad 852 : (1937) 2 MLJ 413 : 1937 MWN 1032 : 46 MLW 587), is the leading case on the subject and has been followed consistently all these years by the Madras High Court. Lands granted to religious institutions (not either to the office-holder or to an individual burdened with service) for the performance of worship in a temple or math have never been considered as lands subject to 'service tenure'. The High Court referred to Section 44-B of Madras Act 2 of 1927. We find ourselves unable to derive any assistance from that provision. Section 44-B provided for resumption and regrant of inams granted for the support or maintenance of a math or for the performance of charity or service connected with a math or temple. We do not think that it would be proper for us to interpret the expression 'service tenure' by referring to Section 44-B of the Madras Act 2 of 1927 where that expression is in fact not used at all. We are therefore, of the view that the proviso to Section 3(1) is inapplicable to lands

held by religious institutions and therefore, the lands are liable to full assessment.

2. Shri Ram Kumar, learned counsel for the respondent argued that the imposition of full assessment on lands held by the religious institution in the present case would be hit by Article 26 of the Constitution which gives to every religious denomination the right to own and acquire movable and immovable property and to administer such property in accordance with law. We are unable to understand how the mere imposition of assessment on lands held by a religious denominational institution can possibly attract the right guaranteed by the Article 26 of the Constitution. The burden imposed is a burden to be shared in the same manner by all the owners of the lands in the State and not a special burden imposed on the denominational institution. Burden of that nature are outside the right guaranteed by Article 26 of the Constitution. The appeal is, therefore, allowed and the orders of the learned Single Judge and the Division Bench of the Madras High Court are set aside. The writ petition filed in the High Court is dismissed.

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