SUPREME COURT OF INDIA

Sri Gedela Satchidananda Murthy (D) By Lrs

Vs.

Dy. Commnr., Endowments Deptt., A.P.

(S.B. Sinha and Markandey Katju JJ.)

15.05.2007

JUDGMENT

S.B. SINHA, J:

1. One Gedela Appala Swamy Naidu was owner of a piece of land measuring 81 x 70 sq. yards situated in a secluded locality on the hills situated at village Simhachalam. He died leaving behind him his wife Atchamamba and son G. Satchidananda Murthy (Plaintiff No. 1). He was buried in the same property. A Samadhi was constructed thereon by his son.

Plaintiff No. 1 shifted his residence at the said property. In or about 1976, he installed statutes of Appala Swamy Naidu and Shri Veera Bhoja Vasantha Rayalu who was the guru of his father. The Guru of Appala Swamy Naidu and Appala Swamy Naidu himself had a large number of disciples. The idol of Godess Gayatri Devi was also installed. It was named as "Sri Simha Saila Puri Virat Guru Mandiram" and "Sri Simha Saila Puri Gayatri Peetam".

2. Allegedly, after the death of Appala Swamy Naidu, the said property was being managed by his brother Suryanarayana Naidu. When Smt.

Atchamamba, wife of Appala Swamy Naidu died in the year 1979, her dead body was buried by the side of her husband in the same compound. A tomb was also constructed.

3. A notice was issued by Respondent No. 1 as to why the plaintiffs should not apply for registration of the temple/ institution as a public institution within the meaning of Sections 38 and 39 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966 (for short "the Act").

4. An application was filed before Respondent No. 1 for deletion of the said institution from the list of Charitable and Hindu Religious Institutions and Endowment. The said application was dismissed by an order dated 14.12.1982. In arriving at the said decision, a large number of documents as also a report of the Assistant Commissioner Endowments, Anakapalli and statements of some persons including one Satyanarayana, the first cousin of the original Plaintiff No. 1, were taken into consideration.

5. A suit was filed by the appellant in terms of the provisions of Section 78 of the Act. By a judgment and order dated 31.12.1984, the said suit was decreed. Respondents filed a first appeal before the High Court of Andhra Pradesh. The said appeal has been allowed by reason of the impugned judgment.

6. Mr. M.N. Rao, learned senior counsel appearing on behalf of the appellant, in support of the appeal raised the following contentions:

(i) The term "religious institution" as defined in Section 2(22) of the Act would not bring within its purview a place where burial had taken place and tombs were constructed.

(ii) The order of the Deputy Commissioner is a nullity being violative of the principles of natural justice.

(iii) In view of the fact that the District Judge had inspected the property personally and recorded his observations, the High Court should not have interfered therewith.

(iv) No member of the public having been examined by the respondents to prove public participation in the affairs of the trust nor the public character thereof having been proved, the High Court committed an error in arriving at its findings.

(v) Plaintiff No. 1 having not undertaken preaching of any religious tenets to disciples and the suit property being not a place of worship for the general public but one for the family, it should have been held to be a private institution.

(vi) The purported admission of G. Satyanarayana, at whose instance the litigation had started, could not have been relied upon by the High Court.

7. Mr. Manoj Saxena, learned counsel appearing on behalf of the State, however, would support the impugned judgment.

8. Before embarking upon the rival contentions of the parties as noticed hereinbefore, we may notice some of the relevant provisions of the Act.

9. The terms "religious institution" and "temple" as defined in Sections 2(22) and 2(26) of the Act read as under:

"(22) 'religious institution' means a math, temple or specific endowment and includes a Brindavan, Samadhi or any other institution established or maintained for a religious purpose;

(26) '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 place of public religious worship and includes sub-shrines, utsava mantapas, tanks and other necessary appurtenant structures and land;"

[Emphasis supplied]

10. Section 77 of the Act provides for the jurisdiction of the Deputy Commissioner to decide the dispute inter alia in regard to the nature of endowment, viz., whether it is private or public. The decision of the Deputy Commissioner is required to be published. A suit may be filed in a civil court by a person who is aggrieved by the decision of the Deputy Commissioner.

11. The dedication was made in the year 1976. Not only the plaintiffs, as would appear from the evidences brought on record but also the public had also made contributions for construction of the property in question. For the purpose of entering into the temple, tickets used to be sold. A Hundi

meant for public donation was also installed. A Medical Unit meant for the visiting public was found to have been set up there. A hall was constructed within the premises of the institution known as Gita Bhawan.

12. While applying for water connection, admittedly, the plaintiffs categorically declared that the same was necessary for the visiting public and not for any domestic purpose. An inspection was made and it was found that the temple used to be visited regularly and the average number of visitors per day was about 30 to 40. Regular pujas are also held in the said temple.

13. Before entering into the factual controversy, we may notice the legal position. Mr. Rao raised a contention that Hindu Law does not recognize dedication of any property for construction of Samadhi or tomb as charitable or religious purpose.

14. In Saraswathi Ammal and Another v. Rajagopal Ammal [1954 SCR 277] the question as to whether worship at the Samadhi of a person would be valid under Hindu Law came up for consideration. It was held that dedication must have a Shastraic basis. While, however, saying so, it was noticed that there are instances where Hindu Saints had been worshipped and entombed. The Court proceeded on the basis that "Their Lordships were aware about the dedication of property on such tombs amongst Hindus". It was, however, observed:

"Such cases, if they arise, may conceivably stand on a different footing from the case of an ordinary private individual who is entombed and worshipped thereat. The case reported as The Board of Commissioners for the Hindu Religious Endowments, Madras v. Pidugu Narasimham and others has also been referred to. It is a somewhat curious case furnishing an instance where images of as many as 66 heroes who were said to have been killed in a war between two neighbouring kingdoms in the 13th century were installed in a regular temple and systematically worshipped by the public for several centuries and inam grants therefor made during the Moghul period. With reference to the facts of that case, the learned Judges were inclined to hold that the worship was religious. This, however, is a case of a grant from a sovereign authority and in any case is not an endowment for worship of a tomb. In the three Madras cases in which it was held that the perpetual dedication of property by a Hindu for performance of worship at a tomb was not valid, there was no suggestion that there was any widely accepted practice of raising tombs and worshipping thereat and making endowments therefor in the belief as to the religious merit acquired thereby"

Therein a specific averment had been made in the plaint that institution of the Samadhi and ceremonies connected with it were not usual in the community to which the parties belonged.

15. In Malayammal and Others v. A. Malayalam Pillai and Others [1991 Supp (2) SCC 579], a three-Judge Bench of this Court opined:

"12. The perpetual dedication of property for construction of a samadhi or a tomb over the mortal remains of an ordinary person and the making of provisions for its maintenance and for performing ceremonies in connection thereto however, has not been recognised as charitable or religious purpose among the Hindus. But the samadhi of a saint stands on a different footing.

This was the consistent view taken by the Madras High Court in several cases, namely, C.

Kunhamutty v. T. Ahmad Musaliar A.

Draiviasundaram Pillai v. N. Subramania Pillai , Veluswami Goundan v. Dandapani 6 . This Court

in Saraswathi Ammal v. Rajagopal Ammal has approved those decisions of the Madras High Court. Jagannatha Das, J., who spoke for the court said (at p. 289) : "We see no reason to think that the Madras decisions are erroneous in holding that perpetual dedication of property for worship at a tomb is not valid amongst Hindus.""

[Emphasis supplied]

16. In Committee of Management of Institution known as Bodendraswami Mutt by its managing member N. Ganesa Iyer v. President of Board of Commrs. for Hindu Religious endowments [AIR 1954 Madras 1027], whereupon Mr. Rao relied upon, the High Court stated:

"5. Sri Ramachandran on behalf of the Commissioner for Religious Endowments supports the lower Court on the strength of -- 'Ratnavelu Mudaliar v. Commr. for Hindu Religious and Charitable Endowments', AIR 1954 Mad 398 (G).

That was indeed the case of an ancient institution which originated in a samadhi. Though it continued to retain traces of its origin and guru- pooja was performed in the precincts the same learned Bench Rajmannar C. J. and Venkatarama Aiyar J. confirming a judgment of Krishnaswami Naydu J. also on the original side of the High Court, held it to be a temple within the scope of Section 9(12). The facts of that case were however peculiar and different from those in the present case. So long ago as 7-8-1860 the Government made a grant in favour of Chidambaraswami, who founded that institution. He was described as the founder of the "Apparswami pagoda" and not of the "Apparswami Samadhi". Since then, it was treated admittedly in various proceedings as a temple. The facts of that case can easily be differentiated from the present one in which a claim is made for the first time that this admitted samadhi has now evolved into a temple. In that decision, the following observations of Varada- chariar J. in -- 'Board of Commrs. for the Hindu Religious Endowments v. P. Narasimham, AIR 1939 Mad 134 (H) were quoted with approval.

"That what the evidence in this case describes as taking place in connection with the institution is public worship can admit of no doubt. We think it is also religious. The test is not whether it conforms to any particular school of Agama Sastras; we think that the question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship, they are making themselves the object of the bounty of some superhuman power, it must be regarded as a religious worship."

Even if this very broad test were to be applied to the present case, I am not prepared to hold that the mere presence of some idols and the festivals, which have grown round the samadhi of Bodendra- swami, inevitable in the case of all tombs of saints and great men in this country, would bring it within the definition of a temple as defined in Section 9 (12). For these reasons, I would set aside the order of the District Judge and hold that this institution is not a public temple as defined in Section 9(12) of the Act."

17. Religious practices vary from State to State, region to region, place to place and sect to sect. When the legislature makes a legislation, the existing state of affairs and the basis on which such legislation has been made would be presumed to have been known to it. Whereas the property for construction of a Samadhi or tomb by itself may not amount to a permanent dedication involving public character of such institution, a distinction must be borne in mind about a tomb constructed on the Samadhi of an ordinary man and a saintly person. In a case falling within the latter category, the answer to the question, in our opinion, should be rendered in the affirmative.

18. Ordinarily, even the body of an ordinary Hindu would not be buried.

It would be cremated. The very fact that the brother of the appellant Suryanarayana Naidu was not buried there is itself a pointer to show that the same was not a family custom. Plaintiffs themselves while referring to burial of Smt. Acthamamba stated that she was an illiterate and had no religious inclination at all. No such statement had been made in respect of her husband and others who have been buried. Plaintiffs were, therefore, aware of the said distinction.

19. In Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan and Others [(1964) 1 SCR 561], Gajendragadkar, J. speaking for a Constitution Bench, in a matter relating to the famous Nathdwara Temple where the denomination in question did not recognize the existence of 'Sadhus' or 'Swamis' other than the descendants of 'Vallabha', and no other ritualistic practices were adopted and where the cult did not believe in celibacy as well as did not regard that giving up worldly pleasures and the ordinary mode of a house-holder's life were essential for spiritual progress, opined:

"The question as to whether a Hindu temple is private or public has often been considered by judicial decisions. A temple belonging to a family which is a private temple is not unknown to Hindu law. In the case of a private temple it is also not unlikely that the religious reputation of the founder may be of such a high order that the private temple founded by him may attract devotees in large numbers and the mere fact that a large number of devotees are allowed to worship in the temple would not necessarily make the private temple a public temple. On the other hand, a public temple can be built by subscriptions raised by the public and a deity installed to enable all the members of the public to offer worship. In such a case, the temple would clearly be a public temple. Where evidence in regard to the foundation of the temple is not clearly available, sometimes, judicial decisions rely on certain other facts which are treated as relevant. Is the temple built in such an imposing manner that it may prima facie appear to be a public temple? The appearance of the temple of course cannot be a decisive factor; at best it may be a relevant factor. Are the members of the public entitled to an entry in the temple? Are they entitled to take part in offering service and taking Darshan in the temple,? Are the members of the public entitled to the take part in the festivals and ceremonies arranged in the temple? Are their offerings accepted as a matter of right? The participation of the member of the public in the Darshan in the temple and in the daily acts of worship or in the celebrations of festival occasions.

may be a very important factor to consider in determining, the character of the temple. In the present proceedings, no such evidence has been led and it is, therefore, not shown that admission to the temple is controlled or regulated or that there are other factors present which indicate clearly that the temple is a private temple. Therefore, the case for the Tilkayat cannot rest on, any such considerations which, if proved, may have helped to establish either that the temple is private or is public."

20. It was, therefore, clearly not a case where Shastraic basis was held to be the sine qua non for the purpose of arriving at a decision that the institution in question would fall within the purview of the terms 'religious and charitable institution' or not.

21. In Dhaneshwarbuwa Guru Purshottambuwa, owner of Shri Vithal Rukhamai Sansthan v. The Charity Commissioner, State of Bombay [(1976) 2 SCC 417], this Court opined that while each case of endowment as to the character of temple would depend on the history, tradition and facts, the presence of the features enumerated therein may be held to be sufficient to hold that the same satisfies the tests which were required to be fulfilled in arriving at a decision that the temple in

question was a public trust.

22. We are not, however, oblivious of the fact that only because members of the public are freely admitted to the temple, that by itself would not be sufficient to come to the conclusion that the temple was a public institution.

23. In Hari Bhanu Maharaj of Baroda v. Charity Commissioner, Ahmedabad [(1986) 4 SCC 162], upon which again Mr. Rao relied upon, the question as to whether the members of the public had visited the Mandir as invitees and nothing more was held to be dependant upon the facts and circumstances of each case.

24. In view of the fact that members of the public could visit the temple only on payment of some amount is itself indicative of the fact that they could do so as of right. It has been found as of fact that there used to be regular visitors in the temple. They would not only pay their obeisance to the great men who had been buried there but also offer pujas at the temple.

It has also been found as of fact that various types of pujas were being performed by the public at the temple on payment. Pamphlets had been issued by the plaintiffs themselves for the aforementioned purpose. The said pamphlets were marked as Exs. B-7 and B-8.

25. We have noticed hereinbefore that the Act itself recognizes Samadhi.

A religious institution, thus, includes a Samadhi. When it is established or maintained for public purpose together with a temple, it would indisputably come within the purview of the said definition of the said terms.

26. The learned District Judge in his judgment had observed that no single member of public was examined as a witness. We fail to understand the said approach of the learned Judge as the plaintiffs in the suit were questioning a quasi - judicial order passed by a statutory authority, and, thus, nothing prevented them from doing so to prove the contrary. The learned District Judge has also found that the evidences clearly establish that the institution, to some extent, has appearance of a temple and in addition to the temple, there is Samadhi of the father of Plaintiff No. 1.

27. The conduct of the appellant cannot also be lost sight of. Shri Gedela Suryanarayana had written a letter dated 14.01.1972 (Ex. B-16) wherein, while asking for water connection, it was categorically stated:

"Moreover, this Mathalayam is purely being maintained as per the Hindu Religious mythology for the devotees of God but not for the use of any domestic purposes. Therefore, I earnestly request that free water supply through water tap may kindly be accorded and sanctioned without the question of any water reading meter to this Mathalayam"

28. He reiterated the aforementioned stand in his letter dated 22.05.1975.

29. Yet again by a letter dated 25.01.1978, Plaintiff No. 2 stated:

"The above named Matalayam was established long ago on the Up-hill, Simhachalam with the kind help extended by the disciples and devotees for preaching philosophical teachings according to Hindu Mythology.

Due to non-availability of drinking water in the above Mathalayam, the devotees attending there are undergoing lot of inconvenience."

30. These admissions on the part of the plaintiffs had rightly been held to be relevant by the High Court for determining the question. The temple, therefore, was not established as a private place of worship by the plaintiffs or their family members but it had been established with the help extended by the disciples and members of the public. The factum of issuance of pamphlets or entry tickets, as noticed by the High Court, had not been denied or disputed by Plaintiff No. 2 in his reply dated 26.12.1978 in response to the notice issued by the Deputy Commissioner. The conduct of the parties in not even denying the said letters containing certain vital admissions on their part would, thus, clearly go to show that the judgment of the High Court does not suffer from any infirmity. Rule of estoppel in a case of this nature would be clearly applicable.

31. In Hodgson & Ors v. Toray Textiles Europe Ltd & Ors [2006] EWHC 2612 (Ch), it was stated:

"The essential ingredients of estoppel by representation are that:

i) A has made a clear and unequivocal representation to B about his legal rights, intending it to be acted upon;

ii) B has acted in reliance on that representation and iii) It would be inequitable for A to resile from the representation he has made."

32. In Trustee Solutions Ltd & Ors v Dubery & Anor [2007 (1) All ER 308 : [2006] EWHC 1426 (Ch)], it was stated:

"Group estoppel binds all beneficiaries under the trust, as well as the trustees and the company.

The principle The principle on which Miss Rich relies is that formulated by Lord Denning MR in Amalgamated Investment & Property Co Ltd v Texas-Commerce International Bank Ltd [1982] 1 QB 84, 121:

"If parties to a contract, by their course of dealing, put a particular interpretation on the terms of it -- on the faith of which each of them -- to the knowledge of the other -- acts and conducts their mutual affairs -- they are bound by that interpretation just as much as if they had written it down as being a variation of the contract. There is no need to inquire whether their particular interpretation is correct or not -- or whether they were mistaken or not -- or whether they had in mind the original terms or not. Suffice it that they have, by their course of dealing, put their own interpretation on their contract, and cannot be allowed to go back on it.""

33. In Mukherjee on Indian Trust Act, page 177, it is stated:

"The essential conditions to attract the application of the cy pres doctrine are:

(i) the donor (rather the testator) must clearly evidence a general intention of charity when the particular charitable disposition cannot be carried into effect, the Court, in order that the general charitable intention may not be disappointed, makes a cy pres application of the fund and applies it to a purpose which coincides as nearly as possible with the object that has failed;

(ii) there must be a failure of the particular object of charity as specified by the testator, or there

must be a surplus left after satisfying the particular purpose;

(iii) the court should choose such objects as are akin to the object that had failed;

(iv) the gift or trust must be by Will and not by a deed inter vivos (by case law)."

34. In State of W.B. v. Sri Sri Lakshmi Janardan Thakur [(2006) 7 SCC 490], this Court opined:

"15. In order to ascertain whether a trust is private, the following factors are relevant:

(1) If the beneficiaries are ascertained individuals.

(2) If the grant has been made in favour of an individual and not in favour of a deity.

(3) The temple is situated within the campus of the residence of the donor.

(4) If the revenue records or entries suggest the land being in possession of an individual and not in the deity. On the other hand an inference can be drawn that the temple along with the properties attached to it is a public trust:

(1) If the public visit the temple as of right.

(2) If the endowment is in the name of the deity.

(3) The beneficiaries are the public.

(4) If the management is made through the agency of the public or the accounts of the temple are being scrutinised by the public."

35. Even otherwise, the principle of estoppel shall apply in this case.

36. The question, however, which remains is as to whether the idol having been installed in the residential premises should be held to be a part of the charitable and religious institution. Each case, as is well-known, will depend upon the factual matrix obtaining therein. We may in this behalf notice some decisions which are operating in the field.

37. In Deoki Nandan v. Murlidhar [1956 SCR 756], this Court opined:

"Firstly, there is the fact that the idol was installed not within the precincts of residential quarters but in a separate building constructed for that very purpose on a vacant site. And as pointed out in Delroos Banoo Begum v. Nawab Syud Ashgur Ally Khan it is a factor to be taken into account in deciding whether an endowment is private or public, whether the place of worship is located inside a private house or a public building.

Secondly, it is admitted that some of the idols are permanently installed on a pedestal within the temple precincts. That is more consistent with the endowment being public rather than private.

Thirdly, the puja in the temple is performed by an archaka appointed from time to time."

[See also Bihar State Board of Religious Trusts v. Bhubneshwar Prasad Choudhary (1974) 2 SCC 288]

38. In State of Bihar v. Charusila Dasi [1959 Supp (2) SCR 601], while referring to Deoki Nandan (supra), it was observed:

"In Deoki Nandan v. Murlidhar this Court considered the principles of law applicable to a determination of the question whether an endowment is public or private, and observed:

"The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the en dowment can only be regarded as public, intended to benefit the general body of worshippers."

One of the facts which was held in that case to indicate that the endowment was public was that the idol was installed not within the precincts of residential quarters but in a separate building constructed for that very purpose on a vacant site.

We do not suggest that such a fact is by itself decisive of the question. The fact that the temple is outside the dwelling house is only a circumstance in favour of it being regarded a public temple, particularly in Madras (except Malabar); there are, however, private temples in Bengal which are built outside the residential houses of donors (see the Hindu Law of Religious and Charitable Trust, Tagore Law Lectures by the late Dr B.K.

Mukherjea, 1952 Edn., p. 188). In the case before us, the two temples were constructed outside the residential quarters, but that is only one of the relevant circumstances. We must construe the deed of trust with reference to all its clauses and so construed, we have no doubt that the trusts imposed constitute a public endowment. There is one other point to be noticed in this connection.

The deed of trust in the present case is in the English form and the settlor has transferred the properties to trustees who are to hold them for certain specific purposes of religion and charity;

that in our opinion is not decisive but is nevertheless a significant departure from the mode a private religious endowment is commonly made."

39. In Goswami Shri Mahalaxmi Vahuji v. Ranchhoddas Kalidas [(1969) 2 SCC 853], this Court held:

"11. Yet another contention taken on behalf of the appellant is that the architecture of the building in which Gokulnathji is housed and the nature of that building is such as to show that it is not a public temple. It was urged that that building does not possess any of the characteristics of a Hindu temple. It has not even a dome. This contention again has lost much of its force in view of the decision of this Court referred to earlier. Evidence establishes that Vallabha's son and his immediate successor Vithaleshwar had laid down a plan for the construction of temples by the Vallabha Sampra-dayees. He did not approve the idea of constructing rich and costly buildings for temples.

Evidently he realised that religious temple buildings were not safe under the Mohammedan rule. For this reason he advised his followers to construct temples of extremely simple type. The external view of those temples gave the appearance of dwelling houses. It appears to be a common feature of

the temples belonging to the Vallabha Sampradayees that the ground-floor is used as the place of worship and the first floor as the residence of Goswami Maharaj. Therefore the fact that Gokulnathji temple at Nadiad had the appearance of a residential house does not in any manner militate against the contention that the temple in question is a public temple."

40. In Bihar State Board Religious Trust, Patna v. Mahant Sri Biseshwar Das [(1971) 1 SCC 574], it was stated:

"20. An attempt appears to have been made in the trial court to establish that certain ceremonies, such as Sankalpa, Pratistha and Utsarga, were performed at the time when idols were installed in the temple. In the case of temples Pratistha and not Utsarga, if established, would indicate dedication to the public. (See Kane's History of Dharmasastras, Vol. 2, Part II, 892 to 893 and Deoki Nandan v. Murlidhar). Unfortunately for the appellant Board, there was no clear evidence of the particular ceremonies performed at the time when Gaibi Ramdasji installed the idols except a general statement from the respondent that when idols are installed in temples Pran Pratistha is generally performed. Support for a dedication to the public was also sought from the fact that the idols were installed permanently on a pedestal (Sinhasan) and the temple was constructed on grounds separate from the residential quarters of the Mahant. In the first place, such factors are also found in private temples and Mutts, and therefore, are not conclusive. In the second place, there was the evidence that the Mahant's residential quarters are in fact not separate from the temple premises."

41. In the instant case, the dedication was made even according to the appellants long back. Constructions for residential purposes were made thereafter. It is not a case where the dedication of the property occurred subsequent to the constructions of the residential houses. It is also not a case where the idol was installed inside the residential premises.

42. We, therefore, in view of the decisions of this Court, are of the opinion that merely because the appellant has a residential house in the portion of the property which is the subject matter of the trust, the same is not outside the purview of the Act.

43. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly. In the facts and circumstances of this case, there shall be no order as to costs.