SUPREME COURT OF INDIA

C.R. Jayaraman

Vs.

M. Palaniappan

C.A.No.993 of 2002

(Tarun Chatterjee and Aftab Alam JJ.)

18.12.2008

JUDGMENT

Tarun Chatterjee, J.

1. This appeal is filed against the judgment and order dated 25th of September, 2001 of the High Court of Judicature at Madras whereby the High Court had dismissed the L.P.A. No. 196 of 1996 preferred by the appellants before it.

2. The relevant facts leading to the filing of this appeal as emerging from the case made out by the appellants are narrated in a nutshell for a better understanding and determination of the disputes between the parties:

> "It is the case of the appellants plaintiffs before the trial court that their ancestor Ellu Iyer, constructed and built three temples, namely, Pillaiyar Temple, Anjaneyaswami Temple and Gopalakrishna temple out of his own funds some time before 1890. The aforesaid temples were throughout treated as private temples of the appellants and were virtually in their management. The members of the public never had any right to offer worship in the temples and the deities were never dedicated to the public. On 18th of March, 1965, the mother of the first appellant had received a letter from three persons alleging that they had been appointed as non-hereditary trustees of the aforementioned temples by the Hindu Religious and Charitable Endowments Board (in short "the Board"), directing the mother of the first appellant to hand over the property and records of the temples. In the same year, the mother of the first appellant filed a Writ Petition being WP No. 1492 of 1965 before the High Court at Madras, praying for quashing the order of the appointment of non-hereditary trustees of the said temples. On 15th of March, 1967, the High Court allowed the Writ Petition directing the mother of the first appellant to file an appropriate application before the Deputy Commissioner of the Board for declaration of the aforesaid temples as the private temples of the family of the appellant. Thereafter, the mother of the appellant filed an application being O.A. No. 28 of 1970 before the Deputy Commissioner of the Board under section 63(a) of the Hindu Religious and Charitable Endowments

Act. The said application was dismissed on 1st of October, 1973, and on appeal, the Commissioner of the Board confirmed the said order on 19th of December, 1973. Thereafter, the appellant on 18th of March, 1974, filed a suit for setting aside the order of the Commissioner being O.S. No. 169 of 1974 before the Principal Subordinate Judge, Erode, Tamilnadu. The trial court held the aforesaid temples as public temples. Aggrieved by the judgment and order of the trial court, the appellants preferred first appeal before the Madras High Court being A.S. No. 665 of 1982 on 13th of August, 1982 which was dismissed by the High Court on 21st of June, 1996. Thereafter, the appellants preferred a Letters Patent Appeal being L.P.A. No. 196 of 1996 before the Division Bench of the High Court which dismissed the same. Thus, being aggrieved, the appellants preferred the present appeal, which on grant of leave was heard in the presence of the learned counsel for the parties."

3. We have heard the arguments of the learned counsel appearing on behalf of the parties and perused the materials on record. Having done so, we do not find any reason to interfere with the judgment of the High Court which was based practically on the question of fact arrived at not only by the High Court but also by the trial court. Reasons are as follows:

4. Learned counsel appearing on behalf of the appellants contended that the Board was not empowered under the Madras Hindu Religious and Charitable Endowments Act, 1959 to declare a private temple as a public temple. We are not in agreement with this argument of the learned counsel for the appellants. A perusal of the relevant provisions of the Act would clearly show that there is no bar for the Board to declare a particular temple as a public one. However, the suit that was filed by the appellants which gave rise to filing of this appeal in this Court was for a declaration that the aforesaid temples were private in nature and not public temples. Therefore, it was for the plaintiffs/appellants to prove on evidence that such temples were private in nature.

5. Before we proceed further, we may, at this juncture, refer to a decision of this Court in the case of *Hari Bhanu Maharaj of Baroda vs. Charity Commissioner, Ahmedabad*[1], in which this Court has categorically held that the onus of proving the temple as public or private vests with the Board. Drawing inspiration from the aforesaid decision of this Court, the learned counsel appearing on behalf of the appellants had drawn our attention to the order passed by the Board holding that the aforesaid temples were public in nature and submitted that the said order of the Board was not in accordance with law because the Board had failed to discharge its onus of proving the aforesaid temples as public. From a plain reading of the order of the Board, which is already on record, we are of the view that the Board had categorically held on materials sufficient to prove that the aforesaid temples were in fact public temples and not private temples as alleged by the appellants. In the aforesaid decision of this Court, it was observed as follows:-

"Even the provision of the collection boxes for cash and grains cannot by itself be a decisive factor to conclude that the Math is a public Math. The collection boxes had been installed in the Sabha Mandap as well as near the Samadhis. Since there is no evidence that Laxman Maharaj and Haribhat Maharaj for whom the Samadhis have

been built were religious leaders revered by the public, the provision of the collection boxes near their Samadhis would have been only for deposit of offerings by the members of the families on Guru Purnima day or in fulfilment of vows taken by them. More than this, the contents of the cash boxes themselves disprove the assumption that they have been kept there to enable the members of the public to make offerings in cash or grains during their visit to the Mandir. Of the two boxes kept in the Sabha Mandap one was found to contain 1/4 pound of wheat and the other Rs. 0-8- 9. Similarly the boxes kept near the Samadhis were found to contain 1/4 pound of rice and one paise respectively. If the members of the public had been visiting the Mandir even occasionally and depositing contributions of grains and cash in the collection boxes, the quantum of grains and the amount of cash would not have been so meagre and trivial as 1/4 pound of wheat and, Rs. 0-8-9. These revealing features have been lost sight of by the High Court and has led to fallacious conclusion."

In the present dispute as had been noted by the trial court and later affirmed by the High Court in its impugned judgment, it has been proved beyond doubt that public offerings were accepted during the normal days of worship by the Poojari, and that the members of the public visited the temple often as a matter of right without any hindrance or obstruction. The appellants contended that as per the Hindu customs, they could not stop the general public from coming inside the temple even though the temple is a private temple. Though this contention has some weight in the light of the circumstances, yet it cannot be the sole deciding factor to determine whether a temple is in fact a private one or dedicated to the public. In the decision reported in *Goswami Shri Mahalaxmi Vahuji vs. Shah Ranchhoddas Kalidas (dead) & Ors.*[2], this Court has held as follows:

"The true character of the particular temple is decided on the basis of various circumstances. In those cases, the courts have to address themselves to various questions such as:

i) Is the temple built in such imposing manner that it may prima facie appear to be a public temple?

ii) Are the members of the public entitled to worship in that temple as of right?

iii) Are the temple expenses met from the contributions made by the public?

iv) Whether the sevas and unsevas conducted in the temple are those usually conducted in public temples?

v) Has the management as well as the devotees been treating that temple as a public temple?"

Taking these above-mentioned points into consideration, the trial court as well as the High Court proceeded to determine the nature of the aforesaid temples as to whether

they were public or private in nature. In this connection, the trial court as well as the High Court, on consideration of fact and evidence, documentary and oral, came to the conclusion of fact that the appellants could not prove by production of cogent evidence that the temple was or is situated in a patta land of the appellants as they had claimed. The High Court in its judgment passed in the first appeal dated 21st of June, 1996, which was affirmed by the Division Bench of the High Court in the Letters Patent Appeal, observed as follows:

"Two choultries have been put up in Pillaiyar temple and the object of constructing those choultries is to enable the relatives of his predecessors and the lessons to stay there when they come to Erode and it would go to show that the object of constructing the choultry itself is to enable the persons other than the family members of Ellu Iyer to stay there. Therefore it cannot be stated that the temples have been constructed in their patta land and the object of constructing the temples is only to benefit their family".

6. The Poojari of the aforesaid temples deposed before the trial court and stated categorically in his deposition, which was accepted by the High Court also, that the Pooja articles were received from the public during the Pooja time and in turn, he used to give Prasadam to the public. It was also stated by him that utsavams were used to be conducted during "Skanda Sasmti", "Thai Pyosam", and "Panchuni Uthiram"; and on those occasions, the deities were taken out as a general custom in procession through the main roads of Erode town. It was also admitted by him that during festival days and also during the Pooja time, public used to come and offer their worship before the deities and there was no direction issued to him that he should not perform the pooja offered by the public. The Poojari had also admitted before the Assistant Commissioner of the Board that public used to come to the festival without any obstruction and that they used to offer donations and collect funds from the public to conduct festivals in the temples. The High Court, in its impugned Judgment, relied on its decision reported in *The Madras Hindu Religious Endowment Board vs. V.N. Deivanai Ammal By Power of Attorney Agent TV. Mahalingam Iyer*[3], which held that where there was an Utsava idol and processions were taken out, it would indicate the fact that the temple was a public temple. This principle was also reiterated in another decision of the Madras High Court in the case of *Commissioner, H.R. & C.E. Vs. Kalyanasundara Mudaliar*[4], wherein it was also held that the provisions of the settlement deed taken along with the other features such as the existence of Dwajasthambam, Balipeetham and Utsava Vigraham and carrying on deity in procession and accepting Deeparadhana from the members of the public on that occasion conclusively establish that the institution was a place of public religious worship conducted to or for the benefit of the Hindu community in the village as a place of religious worship and that it was the public and not a private temple and fell within the definition of Section 9(12) of the Madras Act II of 1927. We are in respectful agreement with the views expressed by the Madras High Court in the aforesaid two decisions regarding the principles to be applied to come to a finding whether the temple is private or public in nature. The evidence at our disposal also shows that the public at large used to offer worship to the Vinayaka Temple in the platform of Brough Road and also the Ajaneya temple in the bank of the river Cauvery and these temples were always accessible to the residents of Erode and the

public had always regarded these temples with great esteem and veneration. This Court in *Deoki Nandan vs. V. Murlidhar & Ors.*[5], held that where idols were installed not within the precincts of residential quarters, but in a private building constructed for that very purpose on a vacant site and where some of the idols were permanently installed on a pedestal within the temple precincts, that is more consistent with the endowment being public rather than private. Further, a Constitution Bench of this Court in *Tilkayat Shri Govindlalji Maharaj etc. vs. State of Rajasthan & Ors.*[6] held that where evidence in regard to the foundation of the temple is not clearly available, the answers to the questions namely, are the members of the public entitled to take part in offering service and taking darshan in the temple, are the members of the public entitled to take part in the festivals and ceremonies arranged in the temple and are their offerings accepted as a matter of right will establish the character of the temple.

> "Therefore, according to the above mentioned decision, the participation of members of the public in the darshan in the temple and in the daily acts of worship or in the celebrations of festive occasions are to be very important factors in determining the character of the temple. In the present case, even though the appellant has contended that it is not possible under the Hindu custom to refuse the entry of the public into the temple, but this contention cannot be supported in the light of the discussions and rationale of the cases mentioned above."

7. Apart from that, the appellants could not prove by adducing any evidence that the temples were built in their private patta land as was alleged by them and the temples were situated and constructed on their own land. Since the findings arrived at by all the Courts below that the temples were public in nature, are questions of fact and based on considerations of material evidence, documentary and oral, in our view, such findings of fact affirmed by the High Court in the first appeal and also affirmed by the Division Bench in the Letters Patent Appeal, until and unless, the appellant could show that the findings arrived at were perverse. In the present case, as we have already held that all the Courts below, on entire consideration of the materials on record, had held that the temples in question are public in nature, it is difficult for us to interfere with such finding of fact in the exercise of our power under Article 136 of the Constitution of India.

8. In view of our discussions made hereinabove, we do not find any infirmity in the findings of the High Court as well as of the trial court to hold that the aforesaid temples were public in nature and the appellants had failed to prove successfully that the same were private in nature.

9. For the reasons aforesaid, we do not find any infirmity in the impugned judgment and, accordingly, we dismiss the appeal. In the facts and circumstances of the case, there will be no order as to costs.

[1](1986) 4 SCC 162 *[2](AIR 1970 SC 2025)* *[3]1952 (II) MLJ 686* *[4]1957 (II) MLJ 463*
[5]AIR 1957 SC 133 *[6]AIR 1963 SC 1638*