

SUPREME COURT OF INDIA

W.N.Allal Sundaram

Vs.

Commissioner H.R. & C.E.Admn.Department

C.A.No. 8349 of 2017

(Dr.D.Y.Chandrachud and Ajay Rastogi, JJ.,)

22.11.2019

JUDGMENT

Dr.D.Y.Chandrachud,J.,

1. This appeal arises from a judgment dated 27 October 2006 of a learned Single Judge of the High Court of Judicature at Madras. The original plaintiff is in appeal, aggrieved by the judgment of the High Court reversing the judgment and decree of the First Assistant Judge of the City Civil Court at Madras.

2. The appellant instituted OS no 5916 of 1990 before the City Civil Court at Madras seeking two reliefs:

(i) The setting aside of an order passed by the Commissioner, Hindu Religious and Charitable Endowments Administration Department on 21 March 1990; and

(ii) A declaration that the Bagyammal Trust is not a 'specific endowment' falling under the purview of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 .

3. The case of the appellant is that the trust in respect of Sri Swamiya Dhamodara Perumal Temple is not a public trust. The Deputy Commissioner, HR and CE Administration Department issued a notice stating that the Bagyammal Trust is a public trust. The appellant claimed that the plaint schedule property had been settled in favour of Bagyammal by her predecessors under a Deed of Settlement in pursuance of which she was in possession and enjoyment of the property between 1928 and 1959. Bagyammal is alleged to have executed a Deed of Settlement in favour of Raju Chettiar. On his death in 1954, it was alleged that his wife Jagathambal succeeded to the property as his sole heir. Jagathambal is alleged to have settled the property in favour of her son-in-law W S Natarajan Chettiar. He is stated to have taken over possession of the property and to have been in control until his death in 1968. The appellant, as his son, claims to have succeeded to the property.

4. The case of the appellant is that the trust which was created by Bagyammal is a private family trust which would not attract the provisions of the Act of 1959. A proceeding was instituted under Section 63(a) before the Deputy Commissioner, HR and CE Administration Department seeking a declaration to that effect. On 3 October 1986, the Deputy Commissioner dismissed the proceeding. On 21 March 1990, an appeal against the order of the Deputy Commissioner was dismissed by the first respondent. This led to the institution of a suit by the appellant under Section 70(1). On 27 October 1995, the Trial Judge decreed the suit.

5. In appeal, the learned Single Judge of the High Court reversed the judgment of the Trial Court on 27 October 2006. A Letters Patent Appeal was dismissed on the ground that it was not maintainable under Section 100(A) of the Code of Civil Procedure 1908.

6. A Special Leave Petition was instituted before this Court under Article 136 of the Constitution in order to challenge the judgment of the learned Single Judge. Leave was granted on 4 May 2017.

7. Chapter V of which Section 63 is a part, contains provisions relating to enquiries. Section 63 is in the following terms:

“63. [Joint Commissioner or Deputy Commissioner] to decide certain disputes and matters Subject to the rights of suit or appeal hereinafter provided, [the Joint Commissioner or the Deputy Commissioner, as the case may be], shall have power to inquire into and decide the following disputes and matters:—

- (a) whether an institution is religious institution;
- (b) whether a trustee holds or held office as a hereditary trustee;
- (c) whether any property or money is a religious endowment;
- (d) whether any property or money is a specific endowment;
- (e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what the established usage of a religious institution is in regard to any other matter;
- (f) whether any institution or endowment is wholly or partly of a religious or secular character; and whether any property or money has been given wholly or partly for religious or secular uses; and
- (g) where any property or money has been given for the support of an institution which is partly of a religious and partly of a secular character, or the performance of any service or charity connected with such an institution or the performance of a charity which is partly of a religious and partly of a secular character or where any

property or money given is appropriated partly to religious and partly to secular uses, as to what portion of such property or money shall be allocated to religious uses.”

(Emphasis supplied)

8. Section 63 provides that the Joint Commissioner or the Deputy Commissioner shall have power to inquire into and decide disputes of the nature specified in clauses (a) to (g). Among them, in clause (d) is whether any property is a specific endowment. Section 69 provides for an appeal to the Commissioner against the order of the Joint or Deputy Commissioner. Section 70 provides for the institution of a suit by a party aggrieved by an order passed by the Commissioner in appeal, and relating inter alia to any of the matters specified in Section 63.

9. In the present case, the controversy turns on whether the original Deed of Settlement dated 4 June 1926 was in the nature of a ‘specific endowment’ within the meaning of Section 63(d). The term ‘specific endowment’ is defined by Section 6(19) in the following terms:

“(19) ‘specific endowment’ means any property or money endowed for the performance of any specific service or charity in a math or temple, or for the performance of any other religious charity, but does not include an inam of the nature described in Explanation (1) to clause (17).

Explanation (1). — Two or more endowments of the nature specified in this clause, the administration of which is vested in a common trustee, or which are managed under a common scheme settled or deemed to have been settled under this Act, shall be construed as a single specific endowment for the purposes of this Act.

Explanation (2). — Where a specific endowment attached to a math or temple is situated partly within the State and partly outside the State, control shall be exercised in accordance with the provisions of this Act over the part of the specific endowment situated within the State.”

The expressions ‘religious charity’ and ‘religious endowment’ are defined in clauses (16) and (17) of Section 6 in the following terms:

“(16) ‘religious charity’ means a public charity associated with a Hindu festival or observance of a religious character, whether it be connected with a math or temple or not;

(17) ‘religious endowment’ or ‘endowment’ means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the

archaka, service-holder or other employee of a religious institution;

Explanation (1).— Any inam granted to an archaka, service- holder or other employee of a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the archaka, service-holder or employee, but shall be deemed to be a religious endowment.

Explanation (2).— All property which belonged to, or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a “religious endowment” or endowment” within the meaning of this definition, notwithstanding that, before or after the date of the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed:

Provided that this Explanation shall not be deemed to apply in respect of any property which vested in any person before the 30th September 1951, by the operation of the law of limitation.”

10. The dispute in the present case involves an interpretation of the Deed of Settlement dated 4 June 1926. The document was marked as Exhibit-A1. It was executed in favour of Bagyammal by the trustees of the Sree Agastheeswara Swamiya Devasthanam Temple. In 1921, the Trustees conveyed a plot of land in favour of Mangadu Ellappa Chettiar for the setting up of a choultry to facilitate the activities of the Devasthanam. The choultry was found to be inadequate to meet the requirements of the devotees who came to attend religious festivals. Hence, considering the need to develop the temple and for the convenience of the devotees, it was found that the construction of another choultry had become necessary. The Trustees agreed to hand over possession of the property to Bagyammal. Insofar as material, the Deed of Settlement provides thus:

“Witnesseth that a ground plot was given in possession to Mangadu Ellappa Chettiyar residing at House No. 4, Mootaikaran Street, Muthialpet, Chennai Pattinam in the year 1921, and a big choultry having the constructed and relating to the Sacred activities of the Devasthanam being done properly and since the said choultry does not contain sufficient space to receive big crowd attending the festivals during the months of Aadi, and considering the development of the temple and since we thought that construction of another choultry had become necessary and on our request made to K. Kandasamy Chettiar at the village of Thiruvottiyr. He, with the help of his daughter along with Bagyammal [sic] w/o Late. Thirupathi Narayana Samy Chettiar had agreed to construct the choultry, and therefore according to the boundaries mentioned in the schedule below, all the four of us have unanimously and in writing have agreed to handover possession of the said property to the said Ammal and there is no right or interest either for us or our

generation in future on the said property of land being taken in possession by above said Bagyammal and she can construct the free choultry by forming Silasasanam and she shall maintain the same till her life time and afterwards make provision permanently for the heirs and agents to be appointed and shall maintained the same, the above said shall be utilized at all times for the use of the public. It should not be let out for rent. No right shall be claimed by her on this choultry. The boundaries for the said choultry shall be ascertained by the heirs and agents appointed by Bagyammal. Even if tax arises for the said choultry it shall be dealt with by the parties of Bagyammal only. In the above choultry... Hindu Pilgrims shall be allowed to stay for three days for performance of marriage and other auspicious function and one day, two days and three days for Devasthanam purposes for Bagyammal and her parties and at their own desire, may be utilized the place for auspicious functions. No place should be given for persons to misuse or commit unclean at acts. The heirs or agents shall not execute any mortgage, sale etc relating to the said choultry and the ground plot.”

(Emphasis supplied)

11. The issue before the High Court was whether the above settlement constituted a specific endowment within the meaning of Section 6(19) of the Act of 1959. The High Court held that the recitals in Exhibit-A1 indicated that Bagyammal was entrusted with the suit property only to construct an additional choultry to accommodate the devotees of Sree Agastheeswara Swamiyar Devasthanam Temple. The Deed of Settlement indicated that the public would be entitled to use the choultry. Bagyammal was restrained from creating any encumbrance on the property. In the view of the High Court:

“Here also under Ex. A.1 Pakkiyammal was given only a right to construct an additional choultry in the suit property and there was endowment created by dedicating the same to the use of the public particularly to those devotees who throng the temple during Thai and Adi festivals. Since the Choultry, which is in existence could not accommodate them the trustee who wrote Ex. A.1 had felt that an additional choultry is absolutely necessary to accommodate the devotees who visit the temple during the months of Thai and Adi. Pakkiyammal was given a right of maintenance of the above said choultry and she was not given any right to neither use the choultry for more than three days or to get any income from out of the above said choultry. It has further been specifically stated in Ex. B.1 that only out of her own income Pakkiyammal has to maintain the above said choultry. So, the above said dedication of choultry to the public under Ex. A.1 is only an endowment which will attract the provision contemplated under Section 63(a) of the HR & CE Act.”

(Emphasis supplied)

The High Court held that the endowment was for a specific purpose:

“Under Ex. A.1 there is a specific endowment to the effect that the choultry to be constructed by the Pakkiyammal is to be endowed for the purpose of public use.”

12. Shri S Nagamuthu, learned Senior Counsel assailed the judgment of the High Court and submitted that there was no specific endowment by the Deed of Settlement of 4 June 1926 within the meaning of that Section 6(19). In assessing the correctness of the submission, it is necessary to analyse the definition of the expression ‘specific endowment’ in Section 6(19). A specific endowment is defined to mean:

(i) Any property or money endowed for the performance of any specific service in a math or temple; or

(ii) Any property or money endowed for the performance of any charity in a math or temple; or

(iii) Any property or money endowed for the performance of any other religious charity.

13. The expression ‘religious charity’ is defined to mean a public charity associated with Hindu festivals or observances of a religious character, whether or not it is connected to a temple or math. Explaining the expression ‘religious charity’, Justice J C Shah, speaking for a three judge Bench of this Court in *Commissioner, Madras Hindu Religious and Charitable Endowments v Narayana Ayyangar*¹ held:

“4...Clause (13) of Section 6 defines “religious charity” as meaning “a public charity associated with a Hindu festival or observance of a religious character, whether it be connected with a math or temple or not”. The definition prescribes two conditions which go to constitute a religious charity: there must be a public charity and that charity must be associated with a Hindu festival or observance of a religious character. If these be fulfilled, a public charity will be a religious charity, even if it is not connected with a math or temple.”

14. In a recent three judge Bench decision of this Court in *M J Thulasiraman v Hindu Religious & Charitable Endowment Admn*², this Court while dealing with interpretation of a stone inscription to determine whether the nature of the institution called ‘Bakers Choultry’ amounted to specific endowment under the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959, held thus:

“14. In the present case, the rock inscription in the “Bakers Choultry”, which governs the functioning of the choultry, provides for the feeding of Brahmins. This is clearly a charity which benefits the “public”, in line with the holding of the aforementioned Constitution Bench decision of this Court.

16. As such, the public charity described in the rock inscription, being associated with a religious festival, constitutes a religious charity as defined under the Act.

17. As already mentioned above, under Section 6(19) of the Act, the definition of “specific endowment” includes any money that has been endowed for the

performance of a religious charity. Following our holding that the rock inscription provides for a religious charity, it is sufficient to show that money has been endowed for the performance of the same for it to constitute a specific endowment under the Act.

18. While the word “endow”, and the connected word “endowment”, have actually not been defined under the Act, from their usage in the Act and judgments on the subject, it is clear that they relate to the idea of giving, bequeathing or dedicating something, whether property or otherwise, for some purpose. In the context of the Act, the purpose is with respect to religion or charity. [See P. Ramanatha Aiyar: The Law Lexicon, 2nd Edn., p. 634, 635; Pratapsinghji N. Desai v. Charity Commr. [Pratapsinghji N. Desai v. Charity Commr., 1987 Supp SCC 714] , para 8]. In the present case, the rock inscription clearly provides for the utilisation of money from the “Bakers Choultry” for the purposes of performing the charitable activity of feeding Brahmins during the specified religious festivals. As such, it is clear that the rock inscription creates a “specific endowment” as specified under Section 6(19) of the Act, which falls within the ambit of the Act.

23. In the facts of the present appeal, the contents of the rock inscription are sufficient for us to hold that there has been a valid divestment and to reject the contention of the counsel for the appellants. The rock inscription clearly indicates that the choultry is to be managed by the community of bakers, who will use the balance funds for the benefit of others. Further, the inscription also states that the managers do not have any power of alienation with respect to the choultry. In the present appeal therefore, as in M.R. Goda Rao Sahib [M.R. Goda Rao Sahib v. State of Madras, AIR 1966 SC 653] , there has been a clear divestment of the right to receive a certain part of the income, with the inscription also stipulating a bar on the right of the manager to transfer the choultry.”

(Emphasis supplied)

15. In the present case, it emerges from the Deed of Settlement dated 4 June 1926 that the trustees initially settled a plot of land for the construction of a choultry in 1921. The choultry which was in connection with the activities of the Devasthanam was found to be inadequate to meet the requirements of the devotees during religious festivals. Consequently, on 4 June 1926, a Deed of Settlement was executed under which Bagyammal was entrusted with the construction of an additional choultry. The choultry was to be specifically utilised for the purpose of extending facilities to pilgrims who visited the Devasthanam. There was a restraint on the creation of an encumbrance either on the choultry or on the land. The choultry was to be utilised at all times for the use of the general public. No right could be claimed by Bagyammal on the choultry. The choultry was to be maintained by Bagyammal, her descendants or her nominees. In view of the clear terms emerging from the deed, the definition of the expression ‘specific endowment’ in Section 6(19) is attracted. The purpose of the Act of 1959 is to consolidate the law relating to the administration and governance of Hindu religious and charitable institutions

and endowments in the State of Tamil Nadu. The property was endowed specifically for the performance of a religious charity in the temple and was covered within the scope of definition of 'specific endowment' in Section 6(19).

16. The learned Trial Judge was evidently in error in coming to the conclusion that there was an absence of a 'specific endowment' within the meaning of Section 6(19). The High Court was entirely correct in reversing the judgment of the Trial Court. Consequently, there is no merit in the appeal.

17. The appeal is accordingly dismissed. There shall be no order as to costs.

Judgment Referred.

¹(1965) 3 SCR 0168

²(2019) 8 SCC 0689