

SUPREME COURT OF INDIA

Idol of Sri Renganathaswamy

Vs.

P.K.Thoppulan Chettiar, Ramanuja Koodam Anandhana Trust

C.A.No.9492 of 2019

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

19.02.2020

JUDGMENT

Dr D.Y.Chandrachud,J.,

SLP(C) No 10520 of 2017

1. This appeal arises from a judgment dated 1 December 2016 of a Single Judge of the Madurai Bench of High Court of Judicature at Madras. The High Court dismissed the appellant's second appeal and upheld the judgment dated 31 August 2005 of the Principal District Judge, Tiruchirapalli and the decree dated 10 November 2004 of the Second Additional Subordinate Judge, Tiruchirapalli, permitting the first respondent to sell a portion of the suit property to the fourth respondent.

2. The first respondent is a trust represented by its Managing Trustee. The second and third respondents are members of the first respondent. The suit property was originally purchased on 2 June 1887 by Thoppulan Chettiar. On a portion of the property, he constructed a 'Stone Mandapam' for the deity of Sri Renganathaswamy. During the Hindu festival months, he used to invite the deity of Sri Renganathaswamy and receive its blessings. In addition, Thoppulan Chettiar also conducted other charitable activities at the suit property for the benefit of the devotees, namely supplying drinking water and millet porridge for three days during the Gajendra Moksham and Eighteen Padi festivals from the "Mahimai" fund (God's account), which was established from his granary business. After fourteen continuous years of carrying on these charitable activities, on 8 July 1901, Thoppulan Chettiar executed a Deed of Settlement, prohibiting the future sale or mortgage of the suit property and directing his descendants to continue carrying out these charitable activities upon his death from the income of 'their business'. The relevant clauses of the Deed of Settlement are examined in a later section of this judgement.

3. By a lease deed dated 29 April 1978, the suit property was leased out to Sri Renga Fibre for twenty years. Sri Renga Fibre further sub-let the suit property to various third parties. A portion of the suit property admeasuring 2,500 square feet was encroached upon by third

parties and the first respondent had filed a *suit*¹ for eviction of the encroachers before the Principal Subordinate Judge, Trichy. Owing to the difficulties in maintaining the suit property and preventing encroachment, the managing trustees of the first respondent decided to sell the suit property (20,865 square feet) to the fourth respondent, leaving aside 4,135 square feet, where the ‘Stone Mandapam’ was situated. The object of the sale was to use the interest generated from the sale consideration for carrying out the object of the charity. By an agreement dated 1 February 2001, the first respondent sought to sell land admeasuring 20,865 square feet (out of property admeasuring 25,000 square feet) to the fourth respondent. The present dispute concerns the proposed sale of the 20,865 square feet.

4. The first respondent instituted a *suit*² in 2004 before the Second Additional Subordinate Judge, Tiruchirapalli, seeking permission for sale of the suit property in favour of the fourth respondent and to deposit the sale proceeds in a nationalised bank. The proposed sale was resisted by the appellant, namely the idol of Sri Renganathaswamy represented by its Executive Officer (the fourth defendant). It was contended by the appellant that the trust had no right to alienate the property and that Thoppulan Chettiar had dedicated the entire property to the idol for the performance of charitable activities. The appellant alleged that the first respondent is a public religious trust created for carrying out specific charities and therefore the suit property constituted a specific endowment as contemplated under Section 6(19) of the Tamil Nadu Hindu Religious and *Charitable Endowments Act 1959*³. According to the appellant, under Section 34 of the Act of 1959, only the Commissioner of Hindu Religious and Charitable Endowments has the power to grant sanction for alienation of the suit property of a trust and the civil court has no jurisdiction.

5. On 10 November 2004, the Second Additional Subordinate Judge decreed the first respondent’s suit and held that the Act of 1959 was not applicable to the first respondent trust as it was a private trust and not a public trust. The trial judge relied upon the fact that the register of properties owned by the appellant made no mention of the suit property and held that the Deed of Settlement did not vest the suit property in the appellant. Accordingly, it was held that Section 34 of the Act of 1959 had no applicability and the proposed sale could be sanctioned only by a civil court.

6. In appeal, by a judgement dated 31 August 2005, the Principal District Judge, Tiruchirapalli upheld the judgment of the trial court. The appellant preferred a second appeal before the Madras High Court. By its judgement dated 1 November 2016 the High Court dismissed the second appeal, holding that the Deed of Settlement did not create any charge or encumbrance in favour of the appellant. The High Court held that Section 34 of the Act of 1959 had no applicability as the first respondent trust is a private trust and not a religious trust and therefore, the civil court could permit the proposed sale of the property. These findings have been challenged by the appellant before this Court.

7. Mr Mohan Parasaran, learned Senior Counsel appearing on behalf of the appellant assailed the judgment of the High Court on the following grounds:

(i) The Deed of Settlement stated that Thoppulan Chettiar had purchased the property for the performance of the charitable work with reference to Sri Renganathaswamy sanctum. Thoppulan Chettiar raised the deity in the black stone hall constructed for the said purpose. The suit property had been reserved and allotted for the work of charity and had therefore lost its secular character;

(ii) According to the Deed of Settlement, during the Gajendra Moksham and Eighteen Padi festivals, water and millet porridge was to be distributed when the idol is kept in the aforesaid black stone hall. Hence, a religious charitable endowment had been created and attached with the festivals of the appellants temple and therefore, dedication of the property for creation of an endowment of a religious character stood established;

(iii) The charity was to be performed from the income derived from the suit property. If the income was found to be higher, the excess income was to be kept as reserve family fund;

(iv) The trustees were prohibited from selling or mortgaging the suit property specifically dedicated for the purpose of the charity;

(v) The suit filed by the respondent is not maintainable as Section 34 of the Act of 1959 empowers the Commissioner to sanction any sale of the property governed by the Act of 1959. The Section makes it clear that the sanction cannot be given without the approval of the Government and any sale without the approval would be null and void; and

(vi) The first respondent cannot seek sanction of the civil court to sell an endowed property as Section 108 of Act of 1959 bars a civil suit from being instituted in respect of matters covered by the provisions of the Act of 1959.

8. Opposing these submissions, Mr V Giri, learned Senior Counsel appearing on behalf of the respondents submitted that:

(i) The provisions of the Act of 1959 are not applicable to the first respondent. Under Section 3, the provisions of the Act of 1959 are applicable to charitable endowments only upon the issuance of a notification by the government on grounds of mismanagement or maladministration by the trustees. There exists no notification extending the applicability of the provisions of the Act of 1959 to the first respondent trust;

(ii) The charities to be undertaken by the private trust are not confined to only Hindus. The first respondent is a secular trust established for the public in general and without any distinction on grounds of religion, caste or creed;

(iii) The Deed of Settlement does not create any specific endowment in favour of the

appellant deity. The performance of the public charity is not directed to be performed in the temple and the charity is to be performed only at the suit property; (iv) The management and administration of the first respondent trust is only dealt with by the lineal descendants of the founder of the trust. The HR & CE Department never appointed any trustees and no member of the public participated in the management of the first respondent trust;

(v) The civil court has the jurisdiction in respect of the suit filed by the first respondent seeking permission for the sale of the suit property. Section 1 of the Indian Trusts Act 1882 will have no applicability to the first respondent trust as it exempts both public and private charitable endowments;

(vi) The restraint created in the Deed of Settlement is void under Section 10 of the *Transfer of Property Act 1882*⁴. The trustees of the first respondent are not able to perform the charities on account of encroachments in the suit property. By virtue of the doctrine of cypres, the suit property should be allowed to be sold to the fourth respondent for the purpose of fulfilling the intention of the settlor to carry out the charity; and

(vii) DW 5, the assistant superintendent of the temple, admitted during his cross-examination that the temple never exercised any control over the respondent trust and there is no dedication of the suit property in favour of the temple.

The rival submissions fall for consideration.

9. The question that arises for our consideration is whether the Deed of Settlement dated 8 July 1901 creates a specific endowment, regulated by the Act of 1959. In order to adjudicate upon the dispute, it is necessary for this Court to determine the nature of the endowment under the Deed of Settlement. The existence of a specific endowment is a question to be determined in the light of the material terms used in the Deed of Settlement. The nature of the instrument must be ascertained on a fair and reasonable construction of the Deed considered as a whole. The terms of the Deed of Settlement are as follows:

“Settlement Deed

This deed of settlement is made on 8th July of 1901 by Thoppulan Chettiar aged 75, s/o Krishnan Chettiar, Mettu Street, Palakarai, Thiruchirapalli.

The settler purchased the punja land mentioned in the schedule of property out of his own income on 02.06.1887 for the performance of charity work in reference to Sri Renganathaswamy sanctum for a Rs. 750/- on that from the built sturdy buildings and for raising Renganathaswamy, in black stone hall. Out of the income derived from his business in Palakarai and from the yearly income from the farm land, raised Renganathaswamy in the black stone hall during Chithirai Gajendra

Motcham and padi 18 festival's and for the benefit of the devotees during these festivals has been erecting water shed and distributing millet porridge for three days and has been performing this for 14 years. He is still ready to continue this till his life time. After his life time, for continuing this charity work his son T. Ramiah Chetty and his brother T.Thiruvenkiden chetty, Sivalingam padayachi geethapuram Rengapuram M.C.Veeranan alias Mumman Maniyakaran Maruthai Maniyakaran Geethapuram Rengamaniyakaran's son Appavu Maniakaran T.S.Kasthoori these people asked not to sell or mortgage the said property. Three sons of the settler have to continue this charity work after the settlor's life time. If any of the 3 is not interested in doing this others should not trouble him. After the three sons should bear the expenses of these charity work out of their business. After their life time it should be continued by their heirs and continue to receive the reverence. If the income is higher, they should keep it as family fund after meeting the expenses. If it is low, they should meet the expenses out of the family fund. This charity work is not liable for family debts or the debts incurred by 3 sons. Settlor obtained their consent and signatures of 2 sons mentioned below. Stone well farm is reserved for doing charity work. Property allotted for charity work:

Trichy District, Srirangam Sub District, Melur region, Geethapuram, Raghunathpuram South - Lakshmi Ammanakar farm West - Namasivaye Asari farm East - Amma Mandakepadi Punja land kuli 66, Black stone hall on that farm, municipal number 440 worth Rs. 3,000/- maintenance of this land and the black stone hall is being carried out by the settler and after his life time the said 3 sons should continue to maintain them.”

(Emphasis supplied)

The following points emerge from the Deed of Settlement:

(i)Thoppulan Chettiar purchased the suit property in 1877 for the purpose of performing charitable work in reference to Sri Renganathaswamy sanctum. In a part of the suit property, a black stone structure was constructed for Sri Renganathaswamy. During the Hindu festivals of Gajendra Moksham and Aadi, the deity was invited and placed on the black stone structure and Thoppulan Chettiar used to receive providence from the deity;

(ii)During the Hindu festivals, Thoppulan Chettiar also erected a water shed and performed charitable activities of distributing millet porridge for the “benefit of the devotees” who visited the Sri Renganathaswamy sanctum on the suit property. He had been performing the charities for fourteen years prior to the Deed of Settlement;

(iii) During the lifetime of Thoppulan Chettiar, these charitable activities were financed out of the “Mahimai” fund (God's account), which was replenished by both the settlor's own business income and the income arising from the suit

property;

(iv) After the settlor's lifetime, he wished his three sons and their descendants to continue this charitable work and continue receiving providence from the deity. His three sons were to bear the expenditure for the charity "out of their business". If, after meeting all the expenditure for undertaking the charity, the heirs possessed excess income, the excess amount was to be transferred to a family fund to be used at a future date for funding the charitable activities in case the family income was insufficient; and

(v) There was an absolute prohibition on the sale or mortgage of the suit property, which was "reserved" and "allotted" for charitable work. Similarly, the family fund could not be used for clearing debts incurred by the three sons.

10. In order to determine whether the Deed of Settlement creates a specific endowment regulated by the Act of 1959, it is necessary to refer to the relevant provisions of the Act. Section 6(19) defines a specific endowment as follows:

"6. (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);"

A specific endowment can result from the allocation of either property or money (or both). Further, the allocation of the property or money can be for either a specific charity or service in a particular math or temple. Alternatively, it can be for the performance of "any other religious charity".

11. During the lifetime of Thoppulan Chettiar, the charitable activities were financed out of the income arising from the suit property. However, the Deed of Settlement makes no mention of the income arising out of the suit property and instead creates an obligation on the settlor's legal heirs to fund the charitable activities out of their own business incomes. Therefore, in the present case, no question arises of any endowment of "money" and we only have to deal with the question of whether the suit property itself was endowed. Accordingly, we now analyse the provisions of the deed and turn to the question of whether the suit property was endowed, and if it was, whether such endowment was in favour of a specific temple or for the performance of "religious charity".

12. The term "endow" means to give or bequeath a thing, property or otherwise. Where the text of the deed purports to divest the property from the settlor and reserves it for a charitable purpose, the property has been endowed. In certain cases, an endowment may not be absolute towards the charitable purpose and may reserve some portion of the property or resultant income from the property for the legal heirs of the settlor. The question of whether the settlor intended the religious purpose to be the primary beneficiary subject to a charge in favour of the legal heirs of the settlor, or whether the heirs were the

primary beneficiaries subject to a charge towards the continuation of the charitable purpose must be determined by reading the settlement deed as a whole.

13. In *Menakuru Dasaratharami Reddi v Duddukuru Subba Rao*⁵, a Constitution Bench of this Court dealt with the question of whether the suit properties were the subject-matter of a public charitable trust or were merely charged with the obligation to undertake specific charities. Justice P B Gajendragadkar (as the learned Chief Justice then was), speaking for the Court, held:

“5. ... Now it is clear that dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete, a trust in favour of public religious charity is created. If the dedication is partial, a trust in favour of the charity is not created but a charge in favour of the charity is attached to, and follows, the property which retains its original private and secular character. Whether or not dedication is complete would naturally be a question of fact to be determined in each case in the light of the material terms used in the document. In such cases it is always a matter of ascertaining the true intention of the parties; it is obvious that such intention must be gathered on a fair and reasonable construction of the document considered as a whole. The use of the word “trust” or “trustee” is no doubt of some help in determining such intention; but the mere use of such words cannot be treated as decisive of the matter. Is the private title over the property intended to be completely extinguished? Is the title in regard to the property intended to be completely transferred to the charity? The answer to these questions can be found not by concentrating on the significance of the use of the word “trustee” or “trust” alone but by gathering the true intent of the document considered as a whole...”

(Emphasis supplied)

14. The Deed of Settlement must be examined as a whole to determine the true intention of the settlor. Where the settlor seeks to divest himself of the property entirely for a religious purpose, a public religious charity is created. In the present case, the Deed of Settlement creates an absolute prohibition on the subsequent sale or mortgage of the suit property. The Deed of Settlement provides that, “The settlor purchased the punja land mentioned in the schedule of property... for the performance of charity work in reference to Sri Renganathanswamy sanctum”. The property outlined in the schedule of the Deed of Settlement is described as, “Property allotted for charity work”. With respect to the legal heirs, the Deed of Settlement creates an obligation on the settlor’s legal heirs to continue the charitable activities at the suit property out of their business incomes. The settlor had a clear intent to divest himself and his legal heirs of the property and endow it for the continuation of the charitable activities at the suit property. The purpose of the endowment was to carry on charitable work. The Deed of Settlement obligates the legal heirs to continue the charitable activities at the suit property.

15. Having established that the Deed of Settlement created an endowment for charitable

purposes, we now turn to whether the endowment was a “specific endowment” as defined under Section 6(19) of the Act of 1959. As noted above, a “specific endowment” can be for either a specific charity or service associated with a particular math or temple, or alternatively, can be for the performance of “any other religious charity”. Some guidance on how to distinguish an endowment to a particular temple and a “religious charity” generally can be found in the Act of 1959 itself. The term “religious charity” has been defined in Section 6(16) as follows:

“6. (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;” The definition also clarifies that a “religious charity” may be distinct from a charity associated with a particular temple, and for a charity to constitute a “religious charity”, there is no requirement for the public charity to be connected with a particular temple or a math. In terms of the statutory definition, for a charity to constitute a “religious charity” under the Act of 1959, two conditions must be met. First, it must be a “public charity” and second, it must be “associated with” a Hindu festival or observance of a religious character. If these two conditions are satisfied, a charity is a “religious charity”.

16. The distinction between a public and private charity was set out by a Constitution Bench decision of this Court in *Mahant Ram Saroop Dasji v S P Sahi*⁶. In that case, the Court had to determine whether the Bihar Hindu Religious Trusts Act (1 of 1951) applied to both public as well as private trusts. It described the difference between public and private charities as follows:

“6. ... it is necessary to state first the distinction in Hindu law between religious endowments which are public and those which are private. To put it briefly, the essential distinction is that in a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description; in a private trust the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained. The fact that the uncertain and fluctuating body of persons is a section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion would not make any difference in the matter and would not make the trust a private trust...”

(Emphasis supplied)

Where the beneficiaries of a trust or charity are limited to a finite group of identifiable individuals, the trust or charity is of a private character. However, where the beneficiaries are either the public at large or an amorphous and fluctuating body of persons incapable of being specifically identifiable, the trust or charity is of a public character. This test has been consistently followed by subsequent benches of this Court, most recently in a three judge Bench decision of this Court in *M J Thulasiraman v Hindu Religious & Charitable Endowment Admn*⁷. In the present case, the Deed of Settlement states that the charity is to be carried for the benefit of the ‘devotees’ who visit during certain Hindu religious

festivals. The charity is one which benefits the public and the beneficial interest is created in an uncertain and fluctuating body of persons. The “devotees” as a class of beneficiaries are not definitive and therefore, the respondent trust is a public trust.

17. The next criteria that must be fulfilled for a charity to constitute a “religious charity” under Section 6(16) is that the public charity must be associated with a Hindu festival or observance of a religious character. The term “associated with” as constitutive of the relationship between the charity and the Hindu festival has been interpreted in a three-judge Bench decision of this Court in *Commr, Madras Hindu Religious and Charitable Endowments v Narayana Ayyangar*⁸, where a fund was set up for carrying out charity in relation to feeding Brahmins attending the Sri Prasanna Venkatachalapathiswami shrine on the occasion of Rathotsavam festival. The question before this Court was whether the fund set up for the purpose of feeding the Brahmins was a “religious charity” within the meaning of Section 6(13) of the Madras Hindu Religious and Charitable Endowments Act of 1951. Justice J C Shah, speaking for this Court held:

“5. ... The expression “associated” in Section 6(13) of Act 19 of 1951 is used having regard to the history of the legislation, the scheme and objects of the Act, and the context in which the expression occurs, as meaning “being connected with” or “in relation to”. The expression does not import any control by the authorities who manage or administer the festival.

7. On the facts found, it is clear that on the occasion of the Rathotsavam festival of Sri Prasanna Venkatachalapathiswami shrine, pilgrims from many places attend the festival and the object of the charity is to feed Brahmins attending the shrine on the occasion of this festival. It is not disputed that setting up a Fund for feeding Brahmins is a public charity. The primary purpose of the charity is to feed Brahmin pilgrims attending the Rathotsavam. This public charity has therefore a real connection with the Rathotsavam which is a Hindu festival of a religious character, and therefore, it is a religious charity within the meaning of Section 6(13) of Madras Act 19 of 1951.”

(Emphasis supplied)

18. For a religious charity to be “associated” with a Hindu festival, the work of the charity must be “connected with” or “in relation to” the festival. The test is not whether the particular temple or authority administering the festival exercises any control over the activities of the charity. Where there exists a nexus between the charitable work and the occurrence of the festival, the charity is “associated with” the festival. In a two-judge Bench decision of this Court in *K S Soundararajan v Commr of Hindu Religious & Charitable Endowments*⁹, this Court had to determine whether offering food to people on the occasion of a deity passing through a river on a specific festival was a religious charity. This Court relied upon the decisions in *Mahant Ram Saroop Dasji and Commr, Madras Hindu Religious and Charitable Endowments* and held that the abovementioned charity was a religious charity and it was within the ambit of the High Court to pass orders regarding the framing of a scheme under Section 64 of the Act of 1959.

19. In a recent decision of this Court in *M J Thulasiraman v Hindu Religious & Charitable Endowment Administrator*¹⁰, this Court had to determine whether an inscription on a rock found in the “Bakers Choultry” constituted a “specific endowment” under the Act of 1959. The inscription stated that the money from the “Bakers Choultry” must be used to feed certain Brahmins. Justice N V Ramana, speaking for a three judge bench of this Court held that the inscription created a specific endowment. The Court held:

“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.

15. Further, the rock inscription specifically states that the charity of feeding the Brahmins is to be done at the time of specific religious festivals viz. “Arubathumoovar Brahmotsavam” which is held in the Mylapore temple, and the festival in Sri Thiagarajaswami temple, Thiruvotriyur, Chennai

16. As such, the public charity 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 which 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.”

(Emphasis supplied)

The decision of the three judge bench in *M J Thulasiraman* makes it abundantly clear where the charity has a “public” character, and is “associated with” a Hindu festival, the charity falls within the definition of “specific endowment” under Section 6(19) of the Act of 1959.

20. In the present case, the Deed of Settlement states that the charity is to be carried on for the benefit of the “devotees” of Sri Renganathaswamy who visit during the Chithirai Gajendra Moksham and Padi Eighteen festivals. The “devotees” as the ultimate beneficiaries of the charity are not an identifiable group of individuals, but constitute an uncertain and fluctuating body of persons. The “devotees” as a class of beneficiaries are not definitive. The respondent trust is a public trust. The Deed of Settlement spells out that the charitable acts carried out by the settlor:

“during Chithirai Gajendra Motcham and padi 18 festival’s and for the benefit of

the devotees during these festivals has been erecting water shed and distributing millet porridge for three days”

The activities of the first respondent trust have a connection with Chithirai Gajendra Moksham and Padi Eighteen festivals and the charity is to be carried on for the benefit of the “devotees” of Sri Renganathaswamy sanctum. The festivals are Hindu religious festivals and the use of the expression “devotees” indicates that there exists a direct nexus and association between the public charity described in the Deed of Settlement and the Hindu religious festivals. Reference to “devotees” in the Deed of Settlement also indicates that the endowment is not of a secular nature. The charity which is described in the Deed of Settlement is a public charity associated with a Hindu religious festival. The charity is a “religious charity” under Section 6(16). Applying the reasoning set out in *M J Thulasiraman* to the facts of the present case, where money (or property) is endowed for the performance of a religious charity, a “specific endowment” as defined in Section 6(19) is created. Therefore, the first respondent trust is a “specific endowment” under the Act of 1959.

21. The appellant in the present case has asserted that there existed a specific endowment in its favour. The Deed of Settlement reveals that even though there was no dedication of the suit property in the name of the appellant, Thoppulan Chettiar had dedicated the property for the purpose of carrying out the charity. The charity of offering services to devotees of Sri Renganathaswamy who visited during particular Hindu religious festivals was of a religious nature. DW 5, the Assistant Superintendent of the appellant temple, admitted during his cross-examination that the appellant temple did not exercise control over the respondent trust and there is no dedication of the suit property in its favour. In these circumstances, it is evident that the Deed of Settlement did not create a specific endowment in favour of the appellant. However, as we have seen, the activities of the first respondent trust do satisfy the definition of a “religious charity” under the Act of 1959. Therefore, we note that the specific endowment created by the Deed of Settlement is not in favour of the appellant idol but an endowment to a religious charity.

22. Based on the above observations and findings, we find that the Deed of Settlement does create a “specific endowment” as regulated by the Act of 1959. The specific endowment created is an absolute endowment in favour of the “religious charity” as understood under the Act of 1959. Section 108 of the Act of 1959 bars the jurisdiction of civil courts to try matters regulated by the provisions of the Act of 1959. Section 108 provides thus:

“Bar of suits in respect of administration or management of religious institutions, etc.—No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act.”

In view of Section 108, no suit or legal proceedings in respect of the administration

or management of a religious institution or any other matter for determining or deciding which provision is made in the Act shall be instituted in a civil court. Any dispute with respect of administration or management of religious institutions is governed in accordance with the provisions of the Act of 1959. In the present case, the suit filed by the first respondent is not maintainable as *under Section 34¹¹* of the Act of 1959, the Commissioner is the appropriate authority to approve the proposed sale of land by the first respondent.

23. Learned Senior Counsel appearing for the respondents has raised the argument that under Section 3¹² of the Act of 1959, the provisions of the Act are applicable to charitable endowments only upon the issuance of a notification by the government on grounds of mismanagement by the trustees. It has been argued that in the present case, absent any such notification, the provisions of the Act of 1959 will have no applicability to the first respondent. However, the above submission cannot be accepted. The applicability of Section 3 is restricted to cases where the government has reasons to believe that a Hindu public charitable endowment is being mismanaged. Section 3 empowers the government to cause an inquiry into the affairs of such charitable endowment and in the interests of the administration of such charitable endowment extend the provisions of the Act of 1959. In the present case, absent any such allegations or the Government having any reasons to believe that the trust is being mismanaged, the first respondent cannot place reliance upon Section 3 to exclude itself from the applicability of the provisions of the Act of 1959. As long as there exists a “specific endowment” as defined in Section 6(19), the provisions of the Act of 1959 will apply to first respondent. As shown above, in the present 1908) for the purposes of enforcing the attendance of witnesses and compelling the production of books, accounts, documents, securities, cash and other properties belonging to or in the custody of such charitable endowments and shall follow the procedure applicable under the said Code in regard to recording of evidence and hearing of parties. (3) If, after considering the report of the Commissioner submitted under sub-section (1), the Government are satisfied that such charitable endowment is being mismanaged and that, in the interests of the administration of such charitable endowment, it is necessary to extend thereto all or any of the provisions of this Act and of any rules made thereunder, they may, by notification, extend to such charitable endowment the said provisions, and thereupon, the provisions so extended shall apply to such charitable endowment as if it were a specific endowment : Provided that before issuing such a notification, the Government shall publish in the *Fort St. George Gazette, a notice of their intention to do so, specifying the reasons for the action proposed to be taken by them and fixing a period which shall not be less than two months from the date of publication of the notice, for the persons interested in the endowment concerned to show cause against the issue of the notification and consider their objections, if any. (4) Notwithstanding anything contained in this section, the Government may, on application made by the trustee of any Hindu or Jain public charitable endowment, or where there are more trustees than one, then by those trustees or a majority of them and with the concurrence of the trustee or trustees making the application, extend, by notification, to such charitable endowment all or any of the provisions of this Act and of any rules made thereunder, and thereupon the provisions so extended shall apply to such charitable endowment as if it were a specific endowment. case, the specific endowment

created is an absolute endowment in favour of the “religious charity” as understood under the Act of 1959. Therefore, the provisions of the Act of 1959 are applicable to the first respondent.

24. For the above reasons, we allow the appeal and set aside the order of the Single Judge of the Madurai Bench of the High Court of Judicature at Madras. In consequence, the suit filed by the first respondent shall stand dismissed. However, the first respondent is at liberty to adopt the prescribed procedure under the Act of 1959. There shall be no order as to costs.

Judgment Referred.

¹ OS No 706 of 1984

⁴ Transfer of Property Act

⁷ (2019) 8 SCC 0689

¹⁰ (2019) 8 SCC 0689

² O S 60 of 2004

⁵ AIR 1957 SC 0797

⁸ AIR 1965 SC 1916

³ Act of 1959

⁶ (1959) Supp (2) SCR 583

⁹ (2016) 15 SCC 0597

¹¹ Alienation of immovable trust property.— (1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution :

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly consider by the Commissioner:

Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.

Explanation.—Any lease of the property above mentioned through for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

(2) When according such sanction, the Commissioner may impose such conditions and give such direction, as he may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of a mortgage regarding the discharge of the same within a reasonable period.

(3) A copy of the order made by the Commissioner under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of a copy of the order, and any person having interest may within three months from the date of the publication of the order appeal to the Court to modify the order or set it aside.

(4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions.

(5) Nothing contained in this section shall apply to the imams referred to in section 41.

¹² Power to extend Act to Charitable Endowments.— (1) Where the Government have reason to believe that any Hindu or Jain public charitable endowment is being mismanaged, they may direct the Commissioner to inquire, or to cause an inquiry to be made by any officer authorized by him in this behalf, into the affairs of such charitable endowment and to report to them whether, in the interests of the administration of such charitable endowment, it is necessary to extend thereto all or any of the provisions of this Act and of any rules made thereunder.

(2) The Commissioner or the officer authorized by him under sub-section (1) shall, while making an inquiry under 1908) for the purposes of enforcing the attendance of witnesses and compelling the production of books, accounts, documents, securities, cash and other properties belonging to or in the custody of such charitable endowments and shall follow the procedure applicable under the said Code in regard to recording of evidence and hearing of parties.

(3) If, after considering the report of the Commissioner submitted under sub-section (1), the Government are

satisfied that such charitable endowment is being mismanaged and that, in the interests of the administration of such charitable endowment, it is necessary to extend thereto all or any of the provisions of this Act and of any rules made thereunder, they may, by notification, extend to such charitable endowment the said provisions, and thereupon, the provisions so extended shall apply to such charitable endowment as if it were a specific endowment :

*Provided that before issuing such a notification, the Government shall publish in the *Fort St. George Gazette, a notice of their intention to do so, specifying the reasons for the action proposed to be taken by them and fixing a period which shall not be less than two months from the date of publication of the notice, for the persons interested in the endowment concerned to show cause against the issue of the notification and consider their objections, if any.*

(4) Notwithstanding anything contained in this section, the Government may, on application made by the trustee of any Hindu or Jain public charitable endowment, or where there are more trustees than one, then by those trustees or a majority of them and with the concurrence of the trustee or trustees making the application, extend, by notification, to such charitable endowment all or any of the provisions of this Act and of any rules made thereunder, and thereupon the provisions so extended shall apply to such charitable endowment as if it were a specific endowment.