

A THAYARAMMAL (DEAD) BY LR.

v.

KANAKAMMAL AND ORS.

DECEMBER 6, 2004

B [D.M. DHARMADHIKARI AND H.K. SEMA, JJ.]

*Hindus Law :*

C *Religious endowment—Property dedicated for public use as Dharmachatram—A resting place for travelers and pilgrims—Donor indicating no administrator or manager—Held, such a dedication made by a Hindu for religious or charitable purposes in strict sense is neither a gift nor a trust—Such a property is itself raised to the category of juristic person.*

D *Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959:*

E *Ss. 6(5) and (17)—Charitable and religious endowments —Owner dedicating his property for being used by public as Dharmachatram (Choultry)—No administrator or manager appointed—Held, High Court rightly opined that the suit property which was a dedication for charitable purposes on neither be claimed by plaintiff as a trustee nor by defendant as owner—However, order of High Court modified to the effect that the suit property being a 'charitable endowment' would be taken in control for administration, management and maintenance by State Government and*  
F *the Commissioner invoking powers under the Act—Administrator Generals Act, 1963—Official Trustees Act, 1913—S. 10.*

*Evidence Act, 1872 :*

G *Property dedicated for public use—Document of dedication being a stone inscription—Evidentiary value of.*

H **Suit properties were dedicated for being used by the public as 'Dharmachatram', where travelers and pilgrims could take shelter and be provided with refreshment. The document of dedication was a stone inscription of the year 1805 on the front wall of the property. The**

plaintiffs, who claimed themselves in occupation of a portion of the property, filed a suit for eviction of the defendants from the other portion thereof contending that the latter had wrongly encroached upon it. The stand of the defendants was that they purchased the said portion in a court sale in execution of a compromise decree in respect of the suit property. The trial court and the first appellate court partly decreed the suit and rejected the claim of the defendants holding that the compromise decree was collusive and the property being of a public trust, the defendants could claim no title thereto. In the second appeal filed by the defendants the High Court also rejected their claim. However, the High Court modified the decree holding that as the owner of the property did not appoint any trustees, the plaintiffs too could not claim any right to the property in the assumed status of a trustee; and directed that the Administrator General and the Official Trustee of Madras should take over the management of the property. Aggrieved, both the plaintiffs and the defendants filed the present appeals.

Dismissing the appeal, the Court

HELD : 1. The contents of the stone inscription, which is of the year 1805 and has a presumptive evidentiary value under the Evidence Act, clearly indicate that the owner dedicated the property for use as 'Dharmchartra' (Choultry) i.e. a resting place for the travellers and pilgrims. Such a dedication by a Hindu for religious or charitable purposes, in the strict legal sense is neither a 'gift' nor a 'trust'. A religious endowment does not create title in anybody's favour in respect of the property dedicated. A property dedicated for religious or charitable purpose for which the owner of the property or the donor has indicated no Administrator or Manager becomes *res nullius* i.e. the belonging to nobody. Such a property is itself raised to the category of a juristic person. [741-D-E; 741-F-G]

*Manohar Ganesh v. Lakhmiram*, ILR 12 Bom. 247 and *Krishna Singh v. Mathura Ahir*, AIR (1972) All 273, referred to.

*B.K. Mukherjea on Hindu Law of Religious and Charitable Trusts*, fifth Edn. by AC Sen, referred to.

2. The High Court was right in holding that the suit property which was a dedication for charitable purposes cannot be claimed by the

A *plaintiff as a trustee or the defendant as owner*, but it failed to make a distinction between a 'trust' in strict legal sense and a 'religious or charitable endowment' as understood in customary Hindu Law. Section 10 of the Official Trustees Act shows that it is applicable only in relation to a property subject to a trust for which there is no trustee available within the local limits of the jurisdiction of the High Court. It is only in such cases that the High Court can appoint an official trustee to take over the property for management. Such is not the case here. Similarly, Administrators-General Act of 1963 can have no application to a charitable endowment to which the provisions of Tamil Nadu Charitable and Religious Endowments Act, 1955 are directly applicable.

C [742-C-D; 742-F-G-H]

D 3.1. Sections 6(5) and 6(17) of the Tamil Nadu Charitable and Religious Endowments Act, 1955 define 'Charitable Endowments' and 'religious endowment' respectively to include amongst other religious institutions and charitable institutions, 'choultries' endowed for the benefit of public. The Commissioner appointed under Section 9 and his delegates have been conferred with ample powers under Chapter III particularly Sections 23 and 24 to take necessary steps for maintenance and management of all 'religious endowments' within the State to which the provisions of the State Act are applicable. The State Government is empowered under Section 3 to extend the provisions of the Act to 'religious endowment'. [743-A-B; 743-E-F]

F 3.2. The judgment of the High Court is upheld with the modification that instead of Administrator General under Act No. 45 of 1963 or Official Trustee under Act No. 2 of 1913, the suit property which is a 'charitable endowment' shall be taken in control for administration, management and maintenance by the State Government and the Commissioner by invoking their powers under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. [743-G-H]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6060 of 1999.

From the Judgment and Order dated 3.12.98 of the Madras High Court in S.A. No. 93 of 1985.

H WITH

C.A. No. 6061 of 1999.

M.N. Rao, Y. Ramesh, Ms. Sasmita Tripathy, Y. Raja Gopala Rao for the Appellant in C.A. No. 6060/99 and Respondent in C.A. No. 6061/99.

Santosh Paul, Sandeep Chhabra, Rajeev Sharma, Ms. Shree Devi and M.J. Paul for the Respondent in C.A. No. 6060/99 and Appellant in C.A. No. 6061/99.

The Judgment of the Court was delivered by

**DHARMADHIKARI, J. :** These two cross appeals have been filed as both the plaintiffs and defendants feel aggrieved by the judgment of the learned Single Judge of the High Court of Madras passed in Second Appeal whereby decree granted by the two courts below has been modified with directions to the Administrator General under the Administrators-General Act No. 45 of 1963 and the Official Trustee of Madras under Official Trustees Act No. 2 of 1913 (hereinafter referred to as Act 45 of 1963 and Act No. 2 of 1913) to administer the suit properties as properties of the public trust.

The facts, relevant to the institution of the suit leading to the present two cross appeals are as under :

The properties in suit describe in Schedule 'A' & 'B' are admittedly properties dedicated for being used by the public as Dharmachatram. The document of dedication is in the nature of a stone inscription on the front wall of the property. The property has been dedicated as a Dharmachatram meaning a 'Choultry' of South India where travellers and pilgrims can take shelter and the be provided with refreshment. The stone inscription is of the year 1805 and has a presumptive evidentiary value under the Evidence Act. The inscription is in Tamil and the contents of it have been explained to us in which the dedicator has clearly described himself as the owner of the property which he dedicated to the general public as a resting place. There is no trustee mentioned therein and the witness to the dedication is no human-being but *Lord Thyagaraja Himself*. The inscription translated into English reads as under :

"Srinivas Sagaptam 6729. Kaliyuga Karthan 4905. Panchegam

A Vattage Dharpitham, 57 years of Ralthase, 3rd day. Ippasi Mar 15  
(Tamil) Wednesday. Today, at Chennai Towa belongs to Tadhaval  
Community, Pachaiyammal, wife of Torairallur Sadayappa Pillai,  
dedicated this property as Dharmachatram, which being boundaries  
B in East side sixteen Pillar Mandapam. Southside Nallena Mudaliar  
Chatram, west side Kammal Chatram, North side Nada Veethi and  
being 73 feet length towards south and north, 31 feet width, towards  
west to east. This Dharmachatram along with all the appurtenant  
rights can be used till the last days of Moon and Sun. No one can  
sell or mortgage this chatram. Thyagaraja Swamlyal and  
C Vaduvudaiyammal are witnesses. Any person who would create  
any encumbrance by selling or purchasing would incur a curse like  
the one, to be incurred by a person who would slaughter a cow on  
the banks of Holy Ganga in Kasi.”

D The case of the plaintiffs was that they are in occupation of a part of  
the dedicated property described in Schedule ‘A’ of the plaint in the capacity  
as trustees. It is further pleaded that a portion of the said property mentioned  
in Schedule ‘B’ has been wrongly encroached upon by the defendants who  
are liable to be evicted and enjoined from entering into the possession of  
any part of the dedicated property.

E The suit was contested by the defendants pleading *inter alia* that they  
have acquired titled to the portion of property in their possession on the basis  
of purchase made by them in court sale which was conducted in the course  
of execution of a compromise decree reached in respect of the suit property  
between parties to that suit.

F The trial court and the first appellate court partly decreed the suit.  
There is a concurred finding recorded by them that the compromise decree  
was collusive and the property being of a public trust, the defendant can  
claim no ownership to the property on the basis of the alleged purchase of  
G the same in court sale.

H The defendants preferred as Second Appeal to the High Court. The  
High Court came to the conclusion on the basis of the contents of stone  
inscription on the outer wall of the property that it was dedicated for public  
use. No trustees were appointed by the owner of the property who dedicated  
the property as Dharmachatra. The High Court, therefore, held that the

defendant could not acquire any title to Schedule 'B' property on the basis of court sale. The plaintiffs also cannot claim any right to the property in his assumed status of a trustee.

The High Court on the above findings and conclusions modified the decree granted by the courts below and directed that as the property belongs to a public trust with no scheme provided for its management through appointed trustees, the Administrator-General under Act 45 of 1963 and Official Trustees Act 1913 should take over the management of the trust.

The operative part of judgment of the High Court in Second Appeal with the directions contained therein need verbatim reproduction as the counsel appearing in these two cross appeals have assailed them in favour of the their parties :

"In the result the second appeal is allowed in part. The judgment and decree of both the courts below in the suit O.S. No. 21/75 on the file of II Additional Subordinate Judge's Court at Chengalpattu dated 29.11.1977 and in the first appeal in A.S. No. 272 of 1978 on the file of District Court at Chengalpattu dated 20 12.1983 are modified, and the suit in O.S. No. 21/75 on the file of II Additional Subordinate Judge's Court at Chengalpattu is decreed declaring that the suit property consisting of the plaint A and B schedule properties are "Dharmachatram" and it is a public Trust, and the Administrator General and Official Trustee of Madras is directed to take delivery of possession of the suit property consisting of the plaint A and B schedule properties through the process of Court before the Subordinate Judge's Court at Chengalpattu, and the Administrator General and Official Trustee of Madras is directed to administer the suit property as a public Trust property in accordance with the provisions of the Administrator General Act 45/63 and the Official Trustees Act 2/1913. In other respects the suit claim of the Respondent/Plaintiffs for the reliefs of possession and permanent injunction and also for damages for use and occupation is dismissed. In the circumstances of the case each party is directed to bear their own costs throughout.

The Registry is directed to send a copy of this Judgment and decree in the second appeal in S.A. No. 93 of 1985 immediately to the

A Administrator General and Official Trustee at Madras and to the Subordinate Judge's Court at Chengalpattu."

B The principal submission of the learned counsel appearing in these appeals representing legal representative of the deceased plaintiff, is that the High Court wrongly held that the property dedicated was a 'Trust'. According to the learned counsel it was a 'Charitable Endowment' to which the provisions of Act 45 of 1963 and Act No. 2 of 1913 were not attracted. It is submitted that the property described is Dharmachatram is covered by definition of the word 'Charitable Endowments' in Section 6(5) of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 (hereinafter shortly referred to as the 'State Act.').

C It is submitted that the endowment is not registered. The family members of plaintiffs since generations have been occupying a portion of the suit property and putting it to use for providing shelter and refreshment to travellers and pilgrims. It is argued that the High Court ought not to have disturbed the concurred findings of the subordinate courts and modified the decree in Second Appeal.

D On the other side, as respondents and appellants in the cross appeal, learned counsel argues that the contents of the stone inscription do not amount in law to creation of any Trust and the plaintiffs, therefore, can claim no status of a Trustee. It is contended that the defendants having purchased the property in a court auction and been placed in possession have better title than the plaintiffs who are mere imposters with a bogus claim as trustees. It is, therefore, prayed that the judgment of the High Court should be set aside and the suit of the plaintiff should be dismissed in Toto.

E After hearing learned counsel appearing for the parties the perusing the relevant record of the case, the main question which according to us needs decision is as to the nature of the property and whether the stone inscription on the outer wall of the property indicates creation of a 'Trust' or a 'Charitable Endowment'.

F In the contents of the stone inscription affixed on the property in dispute, it is described as "Dharmachatram." In Hinduism, right from the Vedic period, there were institutions like *Sarais* and Dharmachatra which are resting places. A hymn addressed to the Marut (winds) (*Rigveda Ashtka*

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Chapter IV) speaks of refreshments “being ready at the resting places on the road.” This hymn indicates the existence of accommodation for the use of travellers.

Dharmachatram is ‘Choultry’ of South India meaning a place where pilgrims or travellers may find rest and other provisions. Hindus in India consider the establishment of temples, mutts and other forms of religious institutions or excavation and consecration of tanks, wells and other reservoirs of water, planting of shady trees for the benefit to travellers, establishment of Choultries, sarais or alms houses and Dharamsala for the benefit of mendicants and wayfarers and pilgrims as pious deeds which would bring heavenly bliss and happiness to a Hindu. The PROPATHA of the Vedas is the same thing as Chuntry or Sarai and sometimes it is described as ‘PRATISHREYAGRAH’. (See : *BK Mukherjea on Hindu Law of Religious and Charitable Trusts*, fifth Edition by AC Sen pages 15, 16 & 26).

The contents of the stone inscription clearly indicate that the owner has dedicated the property for use as ‘Dharamchatra’ meaning a resting place for the travelers and pilgrims visiting the Thyagraja Temple. Such a dedication in the strict legal sense is neither a ‘gift’ as understood in the Transfer of Property Act which requires an acceptance by the donee of the property donated *nor* it is a ‘trust’. The India Trusts Act as clear by its Preamble and contents is applicable only to private trusts and not to public trusts. A dedication by a Hindu for religious or charitable purposes is neither a ‘gift’ nor a ‘trust’ in the strict legal sense. (see : *BK Mukherjea on Hindu Law of Religious and Charitable Trusts*, fifth Edition by AC sen pages 102, 103)

A religious endowment does not create title in respect of the property dedicated in anybody’s favour. A property dedicated for religious or charitable purpose for which the owner of the property or the donor has indicated no Administrator or Manager becomes *res nullius* which the learned Author in the Book (supra) explains as property belonging to nobody. Such a property dedicated for general public use is itself raised to the category of a juristic person. Learned author at page 35 of his commentary explains how such a property vests in the property itself as a juristic person. In *Manohar Ganesh v. Lakhmiram*, ILR 12 Bombay 247, it is held that ‘the Hindu Law like the Roman Law and those derived from it recognizes not only corporate bodies with rights or property vested in the corporation apart from its

**A** individual members, but also judicial persons and subjects called *foundations*. The religious institution like mutts and other establishments obviously answer to the description of *foundations* in Roman law. The idea is the same, namely when property is dedicated for a particular purpose, the property itself upon which the purpose is impressed, is raised to the category of a juristic person so that the property which is dedicated would vest in the person so created.” And so it has been held in *Krishna Singh v. Mathura Ahir*, AIR (1972) Allahabad 273 that a mutt is under the Hindu Law a juristic person in the same manner as a temple where an idol is installed.

**C** The learned judge of the High Court was right in coming to the conclusion that the property in suit which was a dedication for charitable purposes cannot be claimed by the *plaintiff* as a *trustee* or the *defendant* as *owner*. Having thus come to the conclusion, the High Court failed to make a distinction between a ‘trust’ in strict legal sense and a ‘religious or charitable endowment’ as understood in customary Hindu Law. It is because of its failure to see this distinction that it committed an error in directing that Administrator General in accordance with the provisions of Administrators General Act No. 45 of 1963 and a official trustee under Official Trustee Act No. 2 of 1913 should take over the property for administration.

**E** We have looked into the provisions of the two Acts 45 of 1963 and Act 2 of 1913 and we find that recourse to them was not warranted when State enactment viz. Tamil Nadu Charitable and Religious Endowments Act 1955 expressly governs the subject-matter in dispute.

**F** Section 10 of the Official Trustees Act from its contents shows that it is applicable only in relation to a property subject to a trust for which there is no trustee available within the local limits of the jurisdiction of the High Court. It is only in such cases that the High Court can appoint an official trustee to take over the property for management. Such is not the case here.

**G** Similarly, the High Court can appoint an Administrator General under the Administrators-General Act of 1963 only in case there is none to whom letters of Administration in exercise of its powers of grant of probate and letters of Administrator under the Indian Succession Act can be granted. The Act of 1963 can have no application to a charitable endowment to which the provisions of State Act are directly applicable.

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Sections 6(5) & 6(17) of the State Act define 'Charitable Endowments' and 'religious endowment' respectively to include amongst other religious institutions and charitable institutions, 'choultries' endowed for the benefit of public. The definition clauses read as under :

*Section 6(5).* Charitable endowments" means all property given or endowed for the benefit of, or used as of right by, the Hindu or the Jain community or section thereof, for the support or maintenance of object of utility to the said community or section, such as resthouses, *choultries*, patasalas schools and colleges, houses for feeding the poor and institutions for the advancement of education, medical relief and public health or other objects of alike nature; and includes the institution concerned.

*Section 6(17).* "Religious endowment" or "endowment" means all property belongs to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service 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."

The Commissioner appointed under Section 9 of the State Act and other authorities under him like Joint, Deputy and Assistant Commissioner as his delegates have been conferred with ample powers under Chapter III particularly Sections 23 & 24 to take necessary steps for maintenance and management of all 'religious endowments' within the State to which the provisions of the State Act are applicable. The State Government is empowered under section 3 of the State Act to extend the provisions of the Act to 'religious endowment'.

For the reasons aforesaid both the appeals are dismissed and the judgment of the High Court is upheld with the modification that instead of Administrator General under Act No. 45 of 1963 or official trustee under Act No. 2 of 1913, the suit property which is a 'charitable endowment' shall be taken in control for administration, management and maintenance by the State Government and the Commissioner by invoking their powers under the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959.

**A** Copies of this judgment be sent to the State Government of Tamil Nadu and the Commissioner for Hindu Religious and Charitable Endowments in the State of Tamil Nadu for taking necessary actions as required in law for proper maintenance and administration of the property in suit.

**B** R.P. Appeals dismissed.