

A K. S. SOUNDARARAJAN AND ORS.

v.

COMMISSIONER OF H.R. & C.E. AND ORS.

(Civil Appeal No.2401 of 2003)

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NOVEMBER 24, 2015

[M. Y. EQBAL AND C. NAGAPPAN, JJ.]

Trust and Charities:

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Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 – s. 64 – Power of Commissioner to settle a Scheme under – In respect of charities mentioned in a Will – On facts, Will by testator wherein apart from bequeathing certain properties he had put KN-brother's son in possession of certain items to perform charities mentioned in the Will out of the income of the properties, however, KN alienated portion of the land – Application u/s. 64 for setting a scheme in respect of the charities in the Will by community of testator before Deputy Commissioner – Application rejected holding that Trust is a private trust – However, Commissioner held that its a public trust and charities to be performed are religious charities – Said order of Commissioner upheld by the courts below – Division Bench of High Court modified the order to the extent that scheme framed to be confined to specific endowments attached to the temple – On appeal, held: Specific endowment is a religious institution – For the purpose of s. 64 as per explanation the institution means a temple or a specific endowment attached to a temple – Expression 'attached' in the explanation to s. 64(1) has to be construed having regard to the history of the legislation and the scheme and objects of the Act – High Court rightly held that it is to be understood in the sense of providing for the performance of any service or charity in or connected with temple – Charities of offering

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Neivedyam to Swami during Punguni Uthiaram festival and the feeding by way of Pundhi Bojanam on the occasion of God Kallalagar passing through Vaigai river to Vandiyur on Chitra Pournami day are religious charities and constitute a service to the Deity in the temple – Thus, High Court was right in concluding that the framing of a scheme in respect of these matters is within the ambit of powers vested u/s. 64 of the Act.

Mahant Ram Saroop Dasji vs. S.P. Sahi and Ors. 1959 Supp. (2) SCR 583; Commissioner, Madras Hindu Religious and Charitable Endowments vs. Narayana Ayyangar and Ors. 1965 (3) SCR 168 – referred to.

Case Law Reference

1959 Supp. (2) SCR 583 referred to. Para 7

1965 (3) SCR 168 referred to. Para 8

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2401 of 2003

From the Judgment and Order dated 13.12.2000 of the High Court of Judicature at Madras in Letters Patent Appeal No. 183 of 1994]

R. Venkataramani, R. Nedumaran, Neelam Singh, Yashraj Bundela for the Appellant.

E. C. Agrawala, Rajesh Kumar, P. N. Ramalingam, R. Ayyam Perumal (for LRs of R-5), Enakshi Mukhopadhyay, M. Yogesh Kanna, Jayant Patel for the Respondents.

The Judgment of the Court was delivered by

C. NAGAPPAN, J. 1. This appeal is preferred against the judgment and decree dated 13.12.2000 passed by the

A High Court of Judicature at Madras in Letters Patent Appeal No.183 of 1994, wherein the Division Bench held that the first object of the three charities mentioned in the Will, is of private Trust and the rest are of public Trust and therefore, the respondent no.1 and 2 therein, have power under Section 64 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, to frame a scheme, in so far as, the public Trust is concerned.

2. Briefly the facts are summarized as follows : One Sundararaja Naidu had no male issues, except two daughters and his brother's son is Kondasamy Naidu and he executed a registered Will dated 7.12.1949 bequeathing properties mentioned in Item nos. 1, 2 and 3 absolutely in favour of them and directed Kondasamy Naidu to be in possession of Item no.4 and perform the charities mentioned in the Will from out of the income of the said properties and prohibited the alienation of the said item of land. Later Kondasamy Naidu alienated a portion of land in Item no.4 in the Will and claimed to have purchased some other properties from out of the sale proceeds.

3. Five persons claiming to belong to the community of the testator filed application before the Deputy Commissioner for Hindu Religious and Charitable Endowments under Section 64 of H.R. & C.E. Act for setting a scheme in respect of the charities mentioned in the Will of Sundararaja Naidu. The Deputy Commissioner held that the Trust is a private Trust and no scheme could be framed. On appeal his order was set aside by the Commissioner, who held that the Trust is a public Trust and charities required to be performed are religious charities and the beneficiaries are the members of the public and a scheme could be framed and in fact required to be framed. Meanwhile Kondasamy Naidu died and his legal representatives instituted a statutory suit for setting aside the

order of the Commissioner referred to supra. The trial court dismissed the suit and judgment was affirmed by a single Judge of the High Court and in the Letters Patent Appeal preferred, the Division Bench modified the order of the Commissioner to the extent that the scheme to be framed shall be confined to the specific endowments attached to the temple, namely, performance of Pooja and Neivedyam to Subramania Swami on the occasion of Panguni Uthiram and by feeding by way of Pundhi Bojanam on the occasion of God Kallalagar passing through Vaigai river on the Chitra Pournami day to Vandiyur. Challenging the same the plaintiffs have preferred the present Civil Appeal.

4. Mr. R. Venkataramani, learned senior counsel appearing for the appellants contended that the pious acts to be performed under the Will, have no relationship whatsoever to the Deities mentioned and there is no charitable activity of public character and the pious acts do not constitute public Trust and the High Court misconstrued Section 64(1) of the Act by misreading the Will and by holding that the term 'attached' occurring in the explanation under Section 64(1) has to be understood broadly. Per contra the learned counsel appearing for the respondents contended that the High Court has rightly held that the pious acts mentioned in the Will are religious charities and the framing of scheme in respect of it, is within the ambit of power conferred under Section 64 of the Act.

5. Provision is made in the Will for the performance of following charities:

"1) During Panguni festival at Thirupparankundram every year according to income supplying of food to the people of our own caste and performing poojas and neivadhiyam to Swami without fail.

A 2) Also every year on Chitra Pournami when Kallalagar entering into Vaigai River and going to Vandipur, supplying of food called Arasa.”

B 6. The Presiding Deity of the temple at Thirupparankundram is Subramaniaswami and the performance of Neivedyam and Pooja to the said Swami during festival mentioned as first charity is clearly a service to be rendered to the Deity in the Temple. Supply of food on Chitra Pournami day every year has to be done when God C Kallalagar is taken in procession through the Vaigai river on way to Vandipur, is the second charity mentioned in the Will. It is necessary to refer at this stage to some of the relevant provisions of the Act. “Religious institution” has been defined in Section 6(18) as meaning a math, temple or specific D endowment. “Specific endowment” in Section 6(19) reads thus: “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 E (17)”. “Religious charity” is defined in Section 6(16) 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. “Religious endowment” or F “endowment” has been defined in Section 6(17) to mean 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 G concerned and also the premises thereof but does not include gifts or property made as personal gifts to the Archaka, Service holder or other employee of a religious institution.

H 7. The Constitution Bench of this Court in the decision in Mahant Ram Saroop Dasji Vs. S.P. Sahi and Ors. [1959

Supp.(2) SCR 583] has succinctly stated the distinction in Hindu Law between religious endowments which are public and those which are private, as under: A

“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.” B C D

8. This Court in the decision in Commissioner, Madras Hindu Religious and Charitable Endowments Vs. Narayana Ayyangar and Ors. [1965 (3) SCR 168], while considering the charity to feed Brahmins on the occasion of Rathotsavam festival of Sri Prasanna Venkatachalapathiswami Temple in Gunaseelam, when feeding is not done in the Temple premises but at a separate place, held that it is a public charity by observing thus : E

“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 F G H

A 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.”

B The object of the second charity herein is to feed on the occasion of God Kallalagar being taken out in procession on Chitra Pournami day by entering into Vaigai river and going to Vandiyur, and therefore, it is a religious charity and such a service should be regarded as one meant for the Deity. Specific endowment is a religious institution as per the definition stated supra. For the purpose of Section 64 of the Act, as per C explanation provided, the institution means a temple or a specific endowment attached to a temple. The expression ‘attached’ in the explanation to Section 64(1) has to be D construed having regard to the history of the legislation and the scheme and objects of the Act and as rightly held by the High Court it is required to be understood broadly in that sense of providing for the performance of any service or charity in or connected with temple.

E 9. The charities of offering Neivedyam to Swami during Punguni Uthiaram festival and the feeding by way of Pundhi Bojanam on the occasion of God Kallalagar passing through Vaigai river to Vandiyur on Chitra Pournami day are religious charities and constitute a service to the Deity in the temple F and in our view, the High Court is right in concluding that the framing of a scheme in respect of these matters is within the ambit of powers vested under Section 64 of the Act.

G 10. There are no merits in the appeal and the same is dismissed. No costs.