

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Thursday, the Fourteenth day of December,
One thousand Nine hundred and Seventy Eight.

PRESENT

The Honourable Mr. Justice NAINAR SUNDARAM.

Civil Revision Petition No. 3314 of 1975

Hajia Ayisha Nachiar Kalvi Arakkattalai	}	Petitioner
Nagore by its trustee Hajia S.M.I. Ayisha		(APPELLANT)

Vs.

The State of Tamil Nadu represented by ... Respondent
the Collector of Thanjavur.

Petition under section 83 of the Tamil Nadu Land Reforms Act 58/61, (Fixation of Ceiling on Land) Act, 1961 as amended by Act 17/70 praying the High Court to revise the order of the Court of the Land Tribunal at Nagapattinam, dated 4th September 1976 and made in C.M.A. (Land Tribunal) No. 35/76 (MRI. Case No. 6H/Trust/NGT/A3, on the file of the Authorised Officer, Nagapattinam.

ORDER: This petition coming on for hearing on Friday 20th day of October, 1978, Wednesday the 15th day of November 1978, upon perusing the petition, the orders of the lower courts and the record in the case and upon hearing the arguments of Mr. R. G. Rajan, Advocate for the petitioner and of the Additional Government Pleader, on behalf of the Respondent, and having stood over for consideration till this day, the court may the following:

O R D E R

The Revision petitioner is Hajia Ayisha Nachiar Kalvi Arakattalai, Nagore, by its trustee Hajia S.M.I. Ayisha Nachiar, Nagore, proceedings under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, LVIII of 1961 hereinafter referred to as the Act were initiated at the Authorised Officer (L. Ref.), Nagapattinam against Tmt. Hajia, S.M.I. Ayisha Nachiar. It has been found that she gave away an extent of 10.50 standard acres of lands to the petitioner trust. Since the trust by itself could come within the definition of 'person' under section 3(34) of the Act, the holdings of the Trust themselves were subject to separate assessment under the provisions of the Act. The Authorised Officer countenanced an exclusion under

Section 3(22) of the Act of an extent of 0.67 Standard Acres and held that the net holdings of the trust came to 9.83 standard acres. The trustee put forth a contention that the trust is of a nature which would come within the definition of a 'religious trust' of public nature' within the meaning of the Section 2(1)(ii) of the Act and hence the provisions of the Act would not apply to the lands held by the petitioner trust. The Authorised Officer, on a consideration of the deed of trust marked in the case as Ex-P1. dated 31st December 1969 and the evidence of one A.H. Shaik Mohammed, who is the son of the Trustee's sister, examined as P.W.1 came to the conclusion that the trust is a public trust of a charitable nature within the meaning of section 5(1)(d)(i) of the Act and held that the petitioner trust is eligible to retain only 5 standard acres and the balance of 4.83 standard acres was declared as surplus. The petitioner Trust preferred an appeal CMA(LT) No.35 of 1976, which was heard and disposed of by the Land Tribunal at Nagapattinam, and the Land Tribunal, also on an analysis of the recital in the deed of trust, came to the conclusion that there is nothing religious in the trust in question and it could only be held to be a public trust of a charitable nature and in this view, confirmed the order of the Authorised Officer. The present revision is directed against the orders of the Land Tribunal.

Mr. R.G. Rajan, learned Counsel for the petitioner, would urge that there is a misconception in the minds of the forums below with regard to the proper construction of the recitals in the deed of trust. According to the learned Counsel, a proper construction of the recitals in the deed of trust in the light of certain principles of Mohammedan law would compel the court to uphold the contention of the revision petitioner that the Trust in question is a 'religious' trust of public nature 'within the meaning of section 2(1)(ii) of the Act. To appreciate the contention of the learned counsel for the petitioner, it is necessary to extract hereunder the relevant recitals in the deed of trust.

It is not possible to import straightaway the conception of a 'trust' as understood in the ordinary legal parlance, for the purpose of application of the provisions of the Act to the facts of this case. The Act has set out special definitions in respect of various categories of trust. Only when there is lack of a specific definition, we will be compelled to look to the import and implication of an expression used, as normally understood, in the general

branch of law. Section 2 under which the petitioner seeks a total exemption reads as follows:-

2. Act not to apply to lands held by existing religious institution or religious trust of public nature -

(1) Subject to the provisions of sub-section (2) and (3) of Section 6 nothing contained in this act shall apply to lands held—

(i) by any religious institution, or

(ii) by any religious trust of a public nature, which is in existence on the date of the commencement of this act.

2. Notwithstanding anything contained in sub-section (1), no such religious institution or religious trust of a public nature as is referred to in sub-section (1) shall acquire by any means whatsoever any land after the date of the commencement of this Act.

3. Notwithstanding anything contained in this Act, purposes of this Act, purposes of this section—

(a) Where a public trust in existence on the date of commencement of this Act, has been created both for a public purpose of a religious nature and for any other public purposes; or

(b) Where the income from a public trust in existence on the date of the commencement of this act is appropriated both for a public purpose of a religious nature and for any other public purpose, such public trust shall be deemed to be a religious trust of a public nature'.

Section 3(34) defines A 'person' as follows:-

"34 'person includes any company, family, firm, society or association of individuals, whether incorporated or not, or any private trust or public trust'.

"Private trust" has been defined under Section 3(36-A) of the Act' and the definition runs as follows:-

"36(A). 'Private trust includes a trust under which the beneficiaries are persons, who are ascertained of capable of being ascertained'. Section 3(36.AAA) defines 'Public trust as follows:-

"36(AAA) Public trust means a trust for a public purpose of religious charitable or of an educational nature;".

"Religious institution" is defined by Section 3(36)B in the following terms:-

"(36.B) 'Religious institution' means any

(i) temple

(ii) math; (iii) Mosque; or (iv) Church; which is dedicated to, or for the benefit of, or used as of right by, the public as a place of religious worship".

In the case of a 'public trust of charitable nature' the provision to be applied is found under section 5(1)(d)(i) of the Act and it runs as follows:-

(i) The ceiling area in the case of a public trust of a charitable nature in existence on the date of the commencement of this Act (other than such trusts under which the institutions referred to in clause (c) (i) or the beneficiaries) shall be 5 (five) standard acres.

Provided that such extent of land is held by such trust on the date of the commencement of this Act.

Under the petitioner makes out a case that the Trust in question is a religious trust of a public nature within the meaning of section 2(1)(ii), there is no dispute that the assessment of the ceiling area has got to be done as it has been done, by forums below, under section 5(1)(d)(i) of the Act.

Mr. R.G. Rajan, learned Counsel for the petitioner, wants to derive support from the definition of 'Wakf' under Section 3(1) of the Wakf Act (Act 29 of 1954), which runs as follows:-

(1) 'Wakf' means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim Law as pious, religious or charitable and includes—

(i) a wakf by user;

(ii) grants (including mashrut-ul-khidmat) for any purpose recognised by the Muslim Law as pious, religious, or charitable; and

(iii) a wakf-salal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable; and 'wakf' means any person making such dedication; "In my view, this could not be of such help to the petitioner for the simple reason, apart from using the expression

'religious' it does not further elucidates as to the import and implication of the expression 'religious' and we have to fall back upon the conceptions of Mahommedan law and other 'branches of law about 'religious purpose of a trust'. Learned counsel draws my attention to the following passage found in NAWAB ZAIN YAR JUNG..V. THE DIRECTOR OF ENDOWMENT (1963(1) SCR 469- 479-487).

"Similarly, the Muslim law relating trusts differs fundamentally from the English Law. According to Mr. Ammar Ali, the Mohammadan Laws owes its origin to 'a rule laid down by the prophet of Islam; and means the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings". As a result of the creation of a wakf, the right of wakf is extinguished and the ownership is transferred to the Almighty. The manager of the wakf is the mutawalli, the Governor, Superintendent, or curator. But in that capacity, he has no right in the property belonging to the wakf; the property is not vested in him and he is not a trustee in the legal sense". Therefore there is no doubt that the wakf to which the Act applies is, in essential features, different from the trust as is known to English Law". This again does not throw such light on the question as to when a trust is to be treated as 'religious', for the extract made above is more on the question as to the creation of a wakf. To bring the matter within the ambit of 'religious' trust of a public nature, 'the dedication of the property must be for religious purposes. The link between the practice of religion and the utilisation of the property must be evident. The utilisation of the income from the property must be for the practice of the religion in question or otherwise for religious purposes. If the purpose is merely charitable, it would be very difficult to bring the dedication as one for religious purpose. The distinction is subtle but, however, it is **portent** because the provisions of the Act require that for a trust to claim total exemption from the provisions of the Act, it must be a religious trust of a public nature. May be, there could be cases where the trust could be both religious as well as charitable. Such a contingency has been contemplated and provided for under Section 2(3) of the Act, when it says that the public trust could be both for a public purpose of a religious nature and for any other public purpose. But, the presence of a religious purpose, may be alongwith other purposes is a condition

precedent so as to attract the total exemption under section 2(1)(ii) of the Act. The recitals extracted above, in my view, do not make out that the objects of the Trust are, 'religious' in character. There is no doubt, and there is no dispute before me, that the Trust in question is a public trust, because it is intended to serve a section of the public. It speaks about rendering financial and other assistance to educational institutions, proper administration of the same, promotion of Tamil Artistic and cultural activities, colleges and technical institutions, rendition of help to destitute Muslim students for educational purposes, establishment and running houses for them giving of scholarships, stipends and prizes to poor Muslim boys and girls for education and discharging other ancillary purposes. It is impossible to spell out that the aforesaid objects are 'religious' in character. Learned counsel appearing for the petitioner has not brought to my notice any decision of any High Court or of Supreme Court which has recognised purposes similar to the above as religious purpose. In Sattar Ismail Vs. Hamid Said (AIR. 1944 Madras 504), this court considered the reading of Koran over the tomb of the founder as religious and pious. In Bai Hirbal and Kesar Bai Charitable and Religious Trust Vs. Commissioner of Income Tax (1968 (68) ITR 821) the High Court of Bombay held that the reading of the Holy Koran is not only a religious and pious act, but it would constitute a valid purpose of a public religious endowment.

The decisions have been followed by Ramanujam, J. in A.K. Valalevvai Marigair Dharman vs. The State of Tamil Nadu (CRP.No.1628 of 1976, dated 1st November 1978). The learned Judge was concerned with a case where the object of the Trust was to run a madarasa wherein Muslim girls and boys are given religious lectures and lessons in Koran, and the learned Judge "held that the recitals indicate that religious instructions and lessons in Koran and also lectures on principles of Islamic religion are given in the Madarasa for the benefit of Muslim girls and boys and it would come within the purview of Section 2(1)(ii) of the Act so as to claim total exemption from the provisions of the Act. In State of Tamilnadu Vs. Annachatram Trust Thanjavur (C.R.P. No.3139 of 1977) dated 1st March 1978), Ismail, J. found on the facts on the case that the intention of the author of the trust was to perform charities on certain occasions and days considered to be sacred or beneficial religiously and hence, the trust in question in that case comes within the meaning of a religious trust of a public nature'.

In *Narayanan Ayyangar Vs. Commissioner* (H.R. & C.E. Madras 974 LW 140), a Division Bench of this court was concerned about the definition of a 'religious charity' within the meaning of Section 6(13) of the Madras Hindu Religious and Charitable Endowment Act, XIX of 1951 which read as follows:-

"Religious Charity means a public charity associated with a Hindu festival or observant of a religious character whether it be connected with math or temple or not".

The object of the Trust was to conduct reading charity to the members of the Brahim Community from out of the income of the properties belonging to the Trust and it was being performed for some years on the day of the Gar Festival of the deity of a particular temple; and in latter years, the feeding was being done on all the ten days of the Festival but on no other day in the year. The trustees were the founders of the trust and after them their heirs, who managed it as hereditary trustees, and conducted the feeding charity. The trustees of the Shrine conducting the festival had no manner of check, control or supervision over this feeding charity. The Rathothsavam festival and the feeding charity have nothing to do with each other. On the question as to whether this Samarathanai Kattalai is a religious charity as defined under section 6(13) of Madras Act XIX of 1951 the learned Judge of the Division Bench held that the mere fact that the founders of the feeding charity thought that it will be meritorious to feed Brahmin on an important festival occasion which is a sacred occasion cannot establish any link or connection between the occasion and the charity itself and as there was no unity of purpose or a common object or a common endeavour between the festival and the charity there is no association between the two within the language of the enactment. I am obliged to refer to the dictum of the above decision to stress upon the importance of the existence of the link between the object of the trust and the practice of the religion in question according to its tenets. In the present case, the objects cannot be characterised to be religious and there is link between the objects of the Trust and any tenets of the Mahommedian religion.

In this view, I am not able to appreciate and accept the submissions made by the learned counsel for the petitioner and I find

no error, either of law or jurisdiction, committed by the forums below so as to compel this court to interfere in revision.

Accordingly this revision is dismissed. There will be no order as to costs.

(Sd.) K.V. RAMACHANDRAN,
Asst. Registrar.

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