IN THE HIGH COURT OF JUDICATURE AT MADRAS

Wednesday, the thirty first day of January
One thousand nine hundred and seventy nine

Present: The Hon'ble Mr. Justice Ramanujam

Civil Revision Petition No. 2694 of 1977

Vaiyapuri Paradesi
Annadhana Chatram and Dharma
Sthapanam by fit person
T.V. Lakshminarayana Reddiar .. Petitioner (Appellant)

Vs.

The Authorised Officer,
(L. Ref.), Cuddalore .. Respondent (Respondent)

Petition under Section 83 of Madras Act 58 of 1961 praying the High Court to revise the order of the Court of the Subordinate Judge, of Cuddalore, dated 10th December 1976 and made in C.M.A. No. 111 of 1976.

ORDER

This petition coming on for hearing on this day upon perusing the petition, the order of this court and the record in the case and upon hearing the arguments of Mr. P.S. Ramachandran, Advocate for the petitioner and of Mr. K. Venkataswami, Additional Government Pleader on behalf of the respondent, the court made the following order:-

The petitioner herein is an institution called Vaiyapuri Paradesi Annadhana Chatram and Dharmasthapanam situate in Nellikuppam, South Arcot district. On the ground that the said institution is only of a charitable nature and not of a public religious character, its ceiling area has been fixed at five standard acres under Section 5(1)(b) of the Tamil Nadu Land Reforms Act 58 of 1961.

The petitioner institution has an extent of 55.61 acres equivalent to 27.35 standard acres. Having regard to fact that the ceiling area for a public charitable nature is five standard acres, an extent of 22.35 standard acres has been treated as

surplus, and the institution has been asked to surrender the said extent as surplus lands.

The claim put forward by the institution was two fold. Firstly it contended that it is a public trust of a religious nature and therefore it is entitled to be exempted from the provisions of section 2 of Tamil Nadu Act 58 of 1961. Secondly, even assuming that the trust, as originally created by the founder, was only a charitable trust, as a result of the Government notifying the same under Section 3 of the Tamil Nadu Act 22 of 1959, it should be taken to be a religious institution. These contention having been rejected and the petitioner having been held to be entitled to hold only 5 standard acres, as a public charitable institution, he filed an appeal before the Land Tribunal questioning the decision of the Authorised Officer. The Tribunal also agreed with the view of the Authorised Officer and held that the institution is only of a charitable nature and not a public trust of a religious nature so as to get the benefit of exemption from the provisions of the Act.

Before me Mr. P.S. Ramachandran, learned counsel for the petitioner, contends that though the documents under which the petitioner trust has been created proceeds on the basis that it is purely of a charitable nature, still, having regard to the fact that the charity to be performed under the document is more or less in the precincts of the temple, it should be taken to be a religious trust. I have perused the document dated 8th April 1897, Exhibit A-1, under which the trust has been created. That document says that certain properties have been purchased from public subscription and they have been endowed for the purpose of performing annadana chatram, that is feeding of the poor, in a place which is situated just opposite to Sri Prasanna Venkatachalapathi temple. The document also provides for the method of selection of trustees and for the due administration of the said trust. But the document does not say that the poor feeding which is the sole object of the trust, should be conducted in connection with any festival in the temple or that it is confined only to the worshippers in the temple. The poor feeding contemplated under the document does not have any connection with the temple or the festivals conducted therein. Therefore, the charity referred to in the document is

unconnected with the temple and its affairs. Therefore, it is clear that the trust as created under the original document, Exhibit A-1 dated 8th April 1897, is purely of a charitable nature. I am not inclined to agree with the learned counsel for the petitioner that merely because the poor feeding is done in a place just in front of the temple it will make a purely charitable trust into a religious and charitable trust. To make a charitable trust a religious trust as well, it must be shown that the object of the trust had some nexus or connection with the temple or its affairs or the worship or the conduct of the festivals therein. As already stated, the document of trust does not restrict the poor feeding either to the worshippers or to the persons who resort to the temple for worship. Nor is it restricted to any festival or religious function offered in the temple. The Authorities below have, therefore come to the right conclusion that the trust in this case, as originally created, was only of a charitable nature and not a religious trust of public nature.

This leads to the next contention of the learned counsel which is based on a notification issued by the State Government under Section 3 of the Tamil Nadu Act 19 of 1961. By a notification issued under the said section, the provisions of the said Act had been made applicable to the institution. Subsequent to the notification, the Area Committee appointed certain trustee for the said institution, exercising its power under Section 12(2) of that Act. The said order appointing the trustees of the area committee was challenged before this court in S. Krishna Reddiar, V. Venkatakrishna Reddiar and others (W.P.No. 977 of 1956) and Rajagopalan,J. While quashing the said order appointing the trustees, observed that on the notification of the Government under Section 3, the institution has become a religious institution, and that the Area Committee had no jurisdiction to appoint trustees to such religious institutions and therefore, the order appointing trustees by the Area Committee cannot be sustained in law. The said observation has been relied on by the learned counsel for the petitioner in support of his stand that though the trust as originally created was only of a charitable nature, it became a religious institution as a result of the notification issued by the Government under Section 3 of the Tamil Nadu Act, 19 of 1961. The question, is how, far this contention of the learned counsel could not be accepted.

The effect of the notification issued under Section 3 of the said Act is not to change or alter the character of the trust, but to treat it as a specific endowment for the purpose of the application of the provisions of the Act. This is clear from sub-section (3) of Section 3 which says that on a notification issued by the Government under that sub-section extending all or any of the provisions of the Act to the Charitable endowments, the provisions so extended shall apply to such charitable endowments was if it were a specific endowments. The expression "as it it were" is of considerable significance. The use of this expression indicates that a charitable endowment is not treated as a specific endowment for all purposes but it has to be treated as a specific endowment only for the purposes of the application of the provisions of the Act under which the notification has been issued. Therefore, it is not possible to say that as a result of the notification the petitioner institution, which was only a charitable endowment, had automatically become a specific endowment or a religious institution. It it were a specific endowment it will, of course, come under the definition of religious institution as defined in the said Act. But having regard to the fact that a charitable endowment has to be treated as a specific endowment only for the purposes of the application of that Act but not for all purposes I am of the view that the character of the institution cannot be said to have been changed by the issue of the notification under Section 3. No doubt the observation of Rajagopalan, J. in the case referred to above is to the effect that on a notification the institution will come under the definition of a specific endowment as as such, under the definition of a religious institution. But the learned Judge as considering the applicability of the provisions of the Act to the restitution with reference to the powers of the Area Committee to appoint trustee for the institution. There cannot be any dispute that for the purposes of the application of the provisions of the Hindu Religious and Charitable Endowments Act, the institution should be deemed to be a specific endowment. It is for that reason the learned Judge has proceeded to treat the petitioner institution as a religious institution. Here we are not considering the applicability of the /provisions of the/ the Hindu Religious and Charitable Endowments Act to the institution. We are concerned with the applicability of the provisions of the Tamil Nadu Act 58 of 1961 to the petitioner institution

and the mere fact that the institution has been treated as a religious institution for the purpose of another Act, on the basis of a notification issued under that Act, it cannot be said that the institution has become a religious institution as contended for by the learned counsel for the petitioner.

The learned counsel for the petitioner then contends that while a private trust, as a person, is entitled to hold 15 standard acres, a charitable institution which is a public trust, has been deprived of such a benefit by restricting the ceiling area to 5 standard acres and that this virtually works considerable hardship on institutions like the petitioner institution which have been founded purely for charitable purposes. According to the learned counsel, there is no basis for showing this hostile treatment as against public charitable trusts while Legislature has chosen to give 15 standard acres for private trusts not coming within the scope of Section 5(3A). There is considerable force in the said submission of the learned counsel. In fact there appears to be no basis for making the distinction between the ceiling extents which are to be held by a private trust and a public trust and to deprive the public trust of the properties which have been endowed for charities by fixing a lower ceiling area. However, this is not a matter for the court. It being a legislative policy, it is for the Legislature to consider that question.

In this view the Civil Revision Petition fails and is dismissed. There will be no order as to costs.

(Sd.) K.V. Ramachandran,
Assistant Registrar (A.S.)

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Verified Peshkar