IN THE HIGH COURT OF JUDICATURE AT MADRAS

Thursday, the first day of February
One thousand nine hundred and seventy nine

Present: The Hon'ble Mr. Justice Ramanujam

Civil Revision Petition Nos. 2875 and 3120 of 1977

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Sri Sankaraswamy Madam Represented by Madathipathy M.G. Krishnaswamyji, Swamigal Karunthattangudi	..	Petitioner in C.R.P. 2875/77 (Appellant)
Sri Palswamy Madam Represented by Madathipathy M.G. Krishnaswamy Swamigal		Petitioner in C.R.P. 3120/77 (Appellant)
The Authorised Officer (Land Reforms) Thanjavur North Street, Thanjavur Town and Munsif	..	Respondent in both C.R.Ps. (Respondents).

...

Petition under Section 83 of Tamil Nadu Reforms fixation of Ceiling on Land Act 58/61 and praying the High Court to revise the orders of the Court of the Land Tribunal and Subordinate Judge, Thanjavur, **dated 13th** September 1977 and made in C.M.A. 16 and 19 of 1977 respectively (M.R. I 125 PPN Trust M. dated 29th November 1976 and MR.I. IB PPN. Trust M. dated 29th November 1976 Authorised Officer (L. Reforms), Thanjavur.

Order

These petitions coming on for hearing on this day upon perusing the petition, the order of the lower courts and the records in these cases and upon hearing the arguments of Mr. S. Kothandarama Nainar, Advocate for the petitioner in both the petitions and of Mr. K. Venkataswami, Additional Government Pleader on behalf of the respondent in both the petitions the court made the following order.

C.R.P.No. 2875 of 1977: This revision is directed against the order of the Land Tribunal and Thanjavur in CMA No. 16 of 1977 affirming the order of the Authorised Officer holdings that the petitioner as a public Trust is entitled to hold only 5 standard acres under Section 5(1)(d) of Act 58 of 1961.

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In the proceedings under Tamil Nadu Act 58 of 1961, the petitioner put forward two objections before the Authorised Officer. One is that the petitioner trust being a public trust of a religious nature, it is completely/exempted from the provisions of the Act and therefore, there is no question of fixing a ceiling area for the trust, secondly, it was contended that even if the Trust cannot be treated as a public trust of a religious nature, it should be treated as a private trust, in which even it is entitled to hold 15 standard acres. The Authorised Officer held that the trust cannot be treated as a public trust of a religious nature and therefore, it cannot be excluded from the operation of the Act under Section 2 of the Act, and that some of the objects of the petitioner-trust being the charitable nature, the Trust should be treated as a public charitable trust. In that view, he held that the petitioner-trust is entitled that to hold only 5 standard acres under section 5(1)(d) of the Act. The matter was taken in appeal to the Land Tribunal.

However, the Land Tribunal agreed with the view taken by the Authorised Officer and rejected the petitioners' appeal.

The contention put forward by the petitioner's learned counsel before me is that the Trust in question is essentially a private trust and therefore it is entitled to hold 15 standard acres, and that the view taken by the authorities below that the petitioner-trust is a public trust of a charitable nature is erroneous and, therefore, it cannot legally be sustained.

The learned counsel, however, does not and in fact, could not challenge the finding of the authorities below that the petitioner institution is not a public trust of a religious nature, so as to claim exemption under the provision of Section 2 of the Act.

Therefore, the only question that has to be considered in this revision is whether the petitioner institution is a private trust as contended for by the learned counsel for the petitioner or is a public trust of a charitable nature as urged by the learned Government Pleader appearing for the respondent. For deciding that question, it is necessary to see as to what are the dominant objects for which the petitioner institution has been founded.

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The petitioner institution has been founded by a deed of trust, dated 28th April 1876. That deed has been executed by one Venkatachala Pillai in favour of one Sankara Swamigal for carrying out the following objects from and out of the properties endowed under the Document (1) to perform the daily pooja in the Samadhi of one Viswanatha Lingeswaraswami as also the Samadhi of the said and (2) to perform, the Annual Guru Pooja on the birth day of the founder as also to conduct Thannerpandal in the pial of the Madam every year during summer. The said trust deed also says that Sankara Swamigal can perform such other charities as he may decide in his discretion from and out of balance of the income from the properties. Thus, the main objects of the Trust are to perform daily pooja and annual Guru Pooja at the Samadhi errected in the Madam, to conduct Guru Pooja annually on the birth day of the founder, and to conduct Thanneer Pandal in the pial of the Madam during summer. The provisions of the said deed of trust came up for consideration in certain earlier proceedings. The petitioner Trust which is called Sri Bankaruswamy Madam was created as a Mutt and the provisions of the Hindu Religious and Charitable Endowments Act were extended. This was challenged by the Madam before the Commissioner and the Commissioner held that it is not a Mutt as defined in the Act. Relying on the decision of the Commissioner of the Hindu Religious and Charitable Endowments holdings the petitioner Madam as not a mutt as defined in the Hindu Religious and Charitable Endowments Act, the Authorised Officer held that the petitioner - Madam is not a religious trust public nature so as to get exclusion from the Act under Section 2. But that does not decide the issue as to whether the petitioner Trust is a private trust or a public trust as defined in Tamil Nadu Act 58 of 1961.

A 'Person' has been defined in Section 3(34) of the Act as including any company, family, firm, society or association of individuals, whether incorporated or not; or any private trust or public trust. As per this definition, a public trust as well as a private trust will come under the definition of 'person'. A "private trust" has been defined in Section 3(36-A) and as per the said definition, a trust under which the beneficiaries are persons, who are ascertained or capable of being ascertained will be a private trust. Section 3 (36AAA) defines "public

trust" as a trust for a public purpose of religious, charitable or of as educational nature. For the fixation of ceiling area, a distinction is made between a private trust and public trust, though both of them have been brought in under the definition of 'person' under Section 5(1)(d) a public trust of a charitable nature is entitled to hold only 5 standard acres except in respect of such trusts which will come under clause (c)(i) of Sub-Section (1) of Section 5. Admittedly, the trust in question cannot come within the purview of clause (c)(i) of Sub-Section (1) of Section 5 as it relates to only educational institutions and orphanages. Under Section 5(3-A) the Land owned by a private trust is taken to be a land owned by the beneficiaries under the private trust and each such beneficiary indeed to be the owner of the land to the extent of the share of his beneficial interest in the trust and the extent of the share held by such beneficiary shall be taken into account while determining the ceiling area of the beneficiary. The explanation to the said sub-section (3-A) of Section 5 says that the founder of a private trust shall be deemed to be a beneficiary under such private trust, if any income or part thereof from such private trust, is enjoyed by him or his heirs, or by his family or the family of his heirs. This sub-section 3(a1) of Section 5 will cover only such private trust under which either the entire benefit gone to certain specified persons or the entire administration of the trust is under the management of the founder or the members of his family.

In this case, sub-section (3-A) of Section 5 cannot come into operation in this case as the trust had been founded by the person who is not alive and as the trust is not being managed by the founder or the members of his family. The beneficiaries of the trust are the Samadhis, for the dominant objects of the trust are to perform daily poojas at the Samadhis and also annual Guru Pooja on the birth day of the founder, It is true that there is a direction in the document to conduct Thanneer Pandal in the pial of the Madam during summer. But that appears to an incidental object but not the dominant or the primary object of the trust. As already stated, the primary object to provide for daily poojas at the Samadhis and also to perform annual Guru Pooja therein during which some Sadhus are to be fed. If the petitioner institution is treated as a public trust, then it will come within the

scope of Section 5(1)(d). But if it is held to be a private trust, then it has to be treated as a person who is entitled to hold 15 standard acres as it will not come within the scope of the provisions contained.

In Sub-Section (3-A) of Section 5 under which either the founder or the beneficiaries of the private trust can be taken to own the land endowed for the trust. Thus, the main question to be decided is whether on the language of the trust deed, the institution should be treated as a public trust or a private trust.

In the decision in Santhappayyar-Vs.-Periaswami (ILR 14 Madras-1) a Division Bench of this court had to consider the nature of a trust created for the purpose of maintaining the samadhi of a Guru. It was held that the grant in that case was not for the benefit of any Section of the public either as a place of worship, such as a temple, or a religious establishment, and that the intention under the documents not being to confer a benefit either upon the people in general or upon any class thereof and the granter's main object being only to perpetuate the spiritual family of his Guru by providing for succession in the line of his disciples and for the performance of religious services and Guru pooja, the trust in that case cannot be said to be a public trust. In that case, it was found that a few Paradesis were usually fed when Guru Pooja was performed and water pandal was also maintained in the mutt. Notwithstanding the same, Muthusami Ayyar, J., Speaking for the Bench observed that the institution in that case was in the nature of a private trust and that the performance of certain charities such as Thanneerpandal was not contemplated as independent charities in which any class of public was to have any direct or indirect interest. This decision was followed and applied in Prassaddas-Vs.-Jagannath (AIR 1933 Calcutta 519). In this case, a provision was made in a trust deed that the whole of the income of the debuttar property should be solely spent for the performance of the pooja for the deity installed in a private temple and also for carrying out certain charities objects. The question arose as to whether it is in the nature of a public trust or a private trust. The Division Bench of the Calcutta High Court held following view in Sathappayyar-Vs.-Periasami (IL 14 Madras-1), that where the provision was that the whole of the income of the debutter property shall be wholly spent for the

purpose of the deity and if the income of the property increases, to the feeding of the poor and the students, that provision by itself cannot make the endowment a public charitable one and that the provision about feeding of the poor is part and parcel of the main object of performing pooja to the diety and cannot be regarded as independent charity in which any class of the public was to have a direct and independent interest. A similar view has also been taken in the matter of charusile Desai (AIR 1947 - Calcutta 148). In that case, a trust has been created to preserve the settles own private diety. However, the settlement deed also made a provision for the feeding of the poor. The question arose whether the provision made in the settlement deed for feeding the poor will make the trust a public charitable trust, so as to claim exemption from the provisions of the Income Tax Act. The Division Bench of the Calcutta High Court held that the provisions contained in the deed of settlement for poor feeding is only incidental to the pooja for the deity and it cannot be itself make the trust anything beyond a private one. This decision refers and approves the principles laid down in Sathapayya-Vs.-Periasami (ILR 14 Madras-1) and Prassaddas-Vs.-Jaganathan (AIR 1933 - Calcutta-519). As has been pointed out in Padmavatni-Vs.-Narsilal (AIR 1956 Bombay-81) for determining the nature of the trust, all the classes of the trust deed have to be read together and harmonized with each other of the founder and what is in fact the dominant object of the charity.

Adopting the said approach of reading the document as a whole to determine the dominant object of the trust with reference to the intention of the founder in the present case, it will appear to be clear that the intention of the testator was to provide for the daily pooja and the annual Guru Pooja in the Samadhis and for the performance of the Guru Pooja on the birth day of the founder during which the Sadhus who attend the Guru Pooja have to be fed. The other object of performing Thanneer-pandal at the pial of the Madam is not as separate and inde-pendent object apart from the main object of upkeep, main-tenance, and performance of the pooja at the Samadhi.

Applying the principles laid down in the decisions above referred to, I am clearly of the opinion that the trust in this case has to be held to be private trust, in which no beneficiary

has got any special interest and which is not managed either by the founder or by the founder's heirs. Such a private trust alone will not come within the scope of sub-section (3-A) of Section 5. A private trust is a person coming within the scope of Section 5(1) that will mean that the petitioner as a private trust will be entitled to hold 15 standard acres and not 5 standard acres as has been decided by the authorities below.

This revision petition is, therefore, allowed. There will be no order as to costs.

C.R.P.No. 3120 of 1977: The petitioner in this case is a madam called Sri Palswami Madam. The properties have been endowed for the Madam under document dated 12th January 1903. Under the said document, certain properties have been endowed by one Kuppuswami Raju in favour of one Govindasami who is a sishya of one Sri Palswamigal for the purpose of the upkeep of the Samadhi of Sri Palswamigal and also for performing the daily pooja and Neivedyam in the said Samadhi. It also provided for the performance of annual Guru Pooja in the Madam. It also provided that in addition to the performance of the above poojas, upkeep of the Samadhi as well as the performance of the daily pooja and the annual Guru Pooja, Sadhus who come and worship in the Samadhi are to be fed.

The petitioner trust owned an extent of 16.82 standard acres. The Authorised Officer held that the petitioner-Madam is entitled to hold only 5 standard acres and in that view declared the balance as excess lands. The matter was taken in appeal to the Land Tribunal and the Land Tribunal also affirmed the view of the Authorised Officer.

The petitioner has, therefore, come before this court challenging the decision of the authorities below and contending that the petitioner-trust should be taken to be a private trust without any specified beneficiary, which is not administered either by the founder or by the founder's heirs, and therefore, it has to be treated as a person entitled to held 15 standard acres.

The C.R.P.No. 2875 of 1977, it has been held that a trust created for the upkeep and for the performance of the pooja in a Samadhi can only be treated as a private trust and the incidental object of feeding the poor during Guru Pooja and conducting Thanneerpandal during certain seasons of the year will not make

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the trust of a public charitable nature. Applying the principles laid down in the said decision, this revision petition is allowed and that the petitioner-trust is held entitled to hold 15 standard acres as a private trust not coming within the scope of sub-section (3-A) of Section 5 of the Act. No costs.

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

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