Kamaraju Venkata Krishna Rao vs The Sub-Collector, Ongole And Anr on 8 August, 1968

Equivalent citations: 1969 AIR 563, 1969 SCR (1) 624, AIR 1969 SUPREME COURT 563

Author: K.S. Hegde

Bench: K.S. Hegde, S.M. Sikri, R.S. Bachawat

PETITIONER:
KAMARAJU VENKATA KRISHNA RAO

Vs.

RESPONDENT:
THE SUB-COLLECTOR, ONGOLE AND ANR.

DATE OF JUDGMENT:
08/08/1968

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SIKRI, S.M.
BACHAWAT, R.S.

CITATION:
1969 AIR 563 1969 SCR (1) 624

ACT:
Andhra Inams (Abolition & Conversion into Ryotwari) Act 36 of 1956, s. 2(E)-if a tank fell within the definition of a charitable institution.

HEADNOTE:
The appellant claimed that certain property comprised in an Inam which was abolished by virtue of the Andhra Inams (Abolition & Conversion into Ryotwari) Act 36 of 1956 should be registered in his name. His contention was that prior to its abolition he was the Inamdar of that Inam though he had the liability to repair a tank in his village from out of the income of Inam was granted for a charitable purpose, the object of assuming the Inam was granted for a charitable purpose, the. object of the charity being a tank, the same

could not be considered a charitable institution.
HELD: (i) It was clear from the evidence that the -Inam was granted in favour of the tank and was not a grant in favour of the appellant's family subject to the liability to 'repair the tank; and furthermore that the ancestors of the appellant and subsequently the appellant were looking after the management of the tank.

(ii) Under Hindu law a tank can be an object of charity and when a dedication is made in favour of a tank, it is considered as a charitable institution. Once it was held that the Inam in the present case was in favour of the tank, the tank in question must be considered a charitable institution within the meaning of s. 2(E) of the Act. Consequently, after the abolition'of the Inam, the Inam property is converted into Ryotwari property of the tank, to be managed by its manager. Admittedly the appellant was the present manager and hence the property in question must be registered in the name of the tank but would' continue to be managed by the appellant so long as he continued to be its manager. [628 H-629 C]

Minister of National Revenue V. Trusts and Guarantee Co. Ltd., [1940] A.C. 138; Masjid Shahid Ganj and Ors. V. Shiromani Gurdwara Parbandhak Committee, Amritsar and Anr, A.I.R. 1940 P.C. 116; Jamnabai V. Khimji Vallubdass & Ors., I.L.R. (1890) 14, Bom, 1 at p. 9; and V. Mariyappa and Ors. v.B.K. Puttaramayya and Ors. I.L.R. [1957] Mys. 291: referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1103 of 1955. Appeal from the order dated August 9, 1963 of the Andhra Pradesh High Court in Writ Petition No. 431 of 1961. D. Natsaralu, A. Subba Rao and K. Javaram, for the appellant.

B. Parthasarathy, for respondent No. 1.

T. Satyanarayana, for respondent No. 2.

The Judgment of the Court was delivered by Hegde, J. A short, none the less interesting question of law arises for decision in this appeal by certificate, and that question is whether a tank can be considered as a charitable institution within the meaning of those words in s. 2(E) of the Andhra Inams (Abolition & Conversion into Ryotwari Act) 1956 (Act No. 36 of 1956) (to be hereinafter referred to as the Act).

The Inam with which we are concerned in this case stands abolished under the Act. The appellant wants the property comprised in that Inam to be registered in his name. His contention is that prior to its abolition he was the/namdar of that Inam though he had the liability to repair the tank in his

village from out of the income of that/nam. The Authorities under the Act have rejected 'Iris claim that he was the Inamdar of the Inam in question. They have come to the conclusion that the Inam was in favour of the tank and that he was in possession of the Inam property only as the Manager of the tank which according to them was a charitable institution. This conclusion has been upheld by the High Court.

It is not known as to who granted the Inam in question. The grant is lost in antiquity. The only evidence we have relating to this/nam are the entries in the Inam register. A copy of that register has been produced in this case. Therein the Inam is shown to have been granted to the tank "uracheruvu". Under column 8 it is mentioned that it was given for repairs of the pond called uracheruvu situated close to the village. Under column 10 it is mentioned that it is to be in force so long as the repairs of the tank are performed. The ancestor of the appellant was shown to be the Manager of the charitable institution viz., the tank. Under the remarks column it is mentioned "The pond is of great use for the cattle and people of the village. The Inam can be confirmed permanently so long as the repairs are performed. The pond for which the Inam was originally granted was situated north to the village and is now out of use. At the request of the villagers the late Collector Mr. Fraser issued an order in 1819 that the proceeds of this Inam can be applied to the present existing Kunta which is south to the village and so of use."

From these entries it is clear that the Inam was granted in favour of the tank known as "uracheruvu". It has been so considered at least ever since 1819. Therefore we are unable to uphold the contention of the appellant that it was a grant in favour of his family subject to the liability to. repair the tank. It appears that the ancestors of the appellant and at present the appellant is looking after the management of the tank.

Mr. Narsaraju, learned Counsel for the appellant contended that even if we come to the conclusion that the Inam was granted for a charitable purpose, the object of the charity being a tank, the same cannot be considered as a charitable institution. According to him a tank cannot be considered as an institution. In support of that contention of his he relied on the dictionary meaning of the term 'institution'. According to the dictionary meaning the term 'institution' means "a body or organization of an association brought into being for the purpose of achieving some object". Oxford Dictionary defines an 'institution' as "an establishment organisation or association, instituted for the promotion of some object especially one of public or general utility, religions, charitable, educational, etc." Other Dictionaries define the same word as 'organised society established either by law or the authority of individuals, for promoting any object, public or social'. In Minister of National Revenue V. Trusts a.nd Guarantee Co. Ltd. (1) the Privy Council observed:

> "It is by no means easy to give a definition of the _ word "institution" that will cover every use of it. Its meaning must always depend upon the context in which it is found."

In Masjid Shahid Ganj and Ors. V. Shiromani Gurdwara Prabandhak Committee, Amritsar and Anr.(2) the Privy Council considered a Madrasah as institution though it doubted whether the same can be considered as a "juristic personality". This is what the Privy Council observed:

> "A gift can be made to a madrasah in like manner as to a masjid. The right of suit by the mutwali or other manager or by any person entitled to a benefit (whether individually or as a member of the public or merely in common with certain other persons) seems hitherto to have been found sufficient for the purpose of maintaining Mohomedan endowments. At best the institution is but a caput mortuum, and some human agency is always required to take delivery of property and to apply it to the intended purposes. Their Lordships, with all respect to the High Court of Lahore, must not be 'taken as deciding that a "juristic personality" may be extended for any purpose to Muslim institutions generally or to mosques in particular. On this general question they reserve their opinion."

We may at this stage state that the Act has not defined either the expression "charitable institution" or even "institution". Therefore we have to find out the meaning of that term with reference to the context in which it is found. We must remember that the (1) [1940] A.C. 138. (2) A.I.R. 1940 P.C.,

116. expression "charitable institution" is used in a statute which abolishes Inams. The Inam in question must undoubtedly have been granted by a Hindu. Most of the Inams abolished by the Act were those granted by Hindu Kings in the past. According to Hindu conceptions a tank has always been considered as an object of charity. In the Tagore Law Lectures delivered in 1892 by late Parelit Prannath Saraswati on "The Hindu Law of Endowments", "From very ancient times the sacred writings of the Hindus divided works productive of religions merit into two divisions named ishta and purta a classification which has come down to our times. So much so that the entire objects of Hindu endowments will be found included within the enumeration of ishta and purta works. In the Rig Veda ishtapurttam (sacrifices and charities) are described as the means of going to heaven. In commenting on the same passage Sayana explains ishtapurtta to denote "the gifts bestowed in srauta and smarka rites." In the Taittiriya Aranyaka, ishtapurtta occur in much the same sense and Sayana in commenting on the same explains ishta to denote "Vedic rites like Darsa, Purnamasa etc. and purta "to denote Smarkta works like tanks, wells etc.".

At page 26 he again quotes Vyasa in these words:

> "Tanks, wells with flights of steps, temples, the bestowing of food, and groves-these are called purttam."

At page 27, the learned lecturer enumerates the purtta works. Amongst them is included the construction of works for the storage of water, as wells, baolis, tanks etc. The learned lecturer devotes his tenth lecture to "purtta". In the course of that lecture he again states that the construction of reservoirs of water is. classed by Hindu sages amongst the "purtta" and charitable works. In this connection he quotes from various treatises such as:

(i) Ashwalayana Grihya Parishishta;

(ii) Vishnu Dharmottara;

(iii) Skanda Purana;

(iv) Nandi Purana;

(v) Aditya Purana;

(vi) Yama;

(vii) Mahabharata etc. etc. In Jamnabai v. Khimji Vullubdass and Ors.(1) Sir Charles Sargent Kt., C.J. while interpreting a will observed thus:

(1) I.L.R. [1890] 14, Bom., 1 at p. 9. 13 Sup. C1/68-9 "We come to the latter part of clause 6, which directs the building of a well and "avada", (cistern for animals to drink water from), out of the surplus of his fund after providing for the outley of the two sadavarats and repairing his property. Mr. Justice Jardine considered he could not presume a charitable object in a well and "avada". Such an object is so frequently the result of charitable intention in Oriental countries, and i.s so entirely in accordance with the notions of the people of this country that we think that, in the absence of anything to show that the testator intended the well and "avada" to be built for the benefit of the property-and there is nothing in the presen't will to show such intention they should be presumed to have intended by the testator for the use of the public."

In V. Mariyappa and Ors. v.B.K. Puttaramayya and Ors(x) a Division Bench of the Mysore High Court observed thus:

"The maintenance of Sadavartas, tanks, seats of learning and homes for the disabled or the destitute and similar institutions is recognised by and well known to Hindu law, and when maintained as public institutions they must be taken to have a legal personality as a Matha or the diety in a temple has, and the persons in charge of the Management would occupy a position of trust."

That decision proceeds on the basis that a tank can be a charitable institution under Hindu law. That decision was quoted with approval by late Bijan Kumar Mukherjea who later became the Chief Justice of this Court, in his Tagore Law Lectures delivered in August 1951. Therein he observed:

"It has been held that though Mutts and temples are the most common forms of Hindu religious institutions, dedication for religious or charitable purposes need not necessarily take one of these forms and that the maintenance of sadabartas, tanks, seats of learning and homes for the disabled or the destitute and similar institutions are recognised by and well known to Hindu law and when maintained as public institutions, they must be taken to have a legal personality as a Matha or the deity in a temple has, and the persons in charge of the management would occupy a position of trust."

From the above discussion it is seen' that under Hindu law a tank can be an object of charity and when a dedication is made in (1) I.L.R. [1957] Mys. 291.

favour of a tank, the same is considered as a charitable institution. It is not necessary for our present purpose to decide whether that institution can also be considered as a juristic person. Once we come to the conclusion that the Inam with which we are concerned in this case was an Inam in favour of the "uracheruvu" (tank) that tank must be considered as a charitable institution under the Act. Consequently after the abolition of the Inam, the Inam property gets itself converted into Royatwari property, of the "uracheruvu", to be managed by its Manager. Admittedly the appellant is its present Manager. Hence the property in question has to be registered in the name of the tank but it will" continue to be managed by the appellant so long as he continues to be its Manager.

In the result subject to our observations as regards the management of the property, the appeal is dismissed. No costs.

R.K.P.S. Appeal dismissed.