

[2019] 11 S.C.R. 1125

M. J. THULASIRAMAN AND ANOTHER

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v.

THE COMMISSIONER, HINDU RELIGIOUS & CHARITABLE
ENDOWMENT ADMINISTRATION AND ANOTHER

(Civil Appeal No.4676 of 2010)

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SEPTEMBER 03, 2019

[N. V. RAMANA, MOHAN M. SHANTANAGOUDAR
AND AJAY RASTOGI, JJ.]

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959: C

s. 6(16) and (19) - Institution in question - Nature of - Whether a private property or 'specific endowment' - Held: As per the evidence (rock inscription), the public charity described therein constitutes a religious charity - Thus it creates a 'specific endowment' as specified u/s. 6(19) - Therefore, the property in question constitutes a specific endowment and is not a private property. D

Words and Phrases:

'Specific endowment', 'religious charity' - Meaning of, in the context of Tamil Nadu Hindu Religious and Charitable endowments Act, 1959. E

Dismissing the appeal, the Court

HELD: 1. A “specific endowment” means 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. In the present case there is no question of performing the service in the temple or a math, the endowment in the present case must fall under the second category, i.e., it must be for the performance of a religious charity, to be a specific endowment. [Para 10] [1131-F] F

2. A “religious charity” has been defined to mean a public charity associated with Hindu festival or observance of a religious character. The second part of Section 6(16) of the Tamil G

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- A **Nadu Hindu Religious and Charitable endowments Act, 1959** clarifies that there is no requirement for the public charity to be connected with a temple or a math. The phrase “public charity” has not been specifically defined under the Act. The distinction in Hindu law between religious endowments which are public and those which are private is that in a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons. 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. [Paras 11, 12] [1132-A-D]

Mahant Ram Saroop Dasji v. S.P. Sahi, AIR 1959 SC 951 : [1959] Suppl. SCR 583 - followed.

- D **3. In the present case, the rock inscription in the institution in question which governs the functioning of the institution provides for the feeding of Brahmins. This is clearly a charity which benefits the “public”. The rock inscription specifically states that the charity of feeding the Brahmins is to be done at the time of specific religious festivals, viz., “Arubathumoovar Brahmotsavam” which is held in the Mylapore temple, and the festival in Sri Thiagarajaswami temple, Thiruvotriyur, Chennai. As such, the public charity described in the rock inscription, being associated with a religious festival, constitutes a religious charity as defined under the Act. [Paras 13, 14 and 15] [1132-E-G; 1133-B]**
- F ***The Commissioner, Madras Hindu Religious and Charitable Endowments v. Narayana Ayyangar and Ors. AIR 1965 SC 1916 : [1965] SCR 168 - relied on.***
- G **4. Under Section 6(19) of the Act, the definition of “specific endowment” includes any money that has been endowed for the performance of a religious charity. As it is held that the rock inscription provides for a religious charity, it is sufficient to show that money has been endowed for the performance of the same for it to constitute a specific endowment under the Act.**
- H **[Para 16] [1133-C]**

5. While the word “endow”, and the connected word “endowment”, have actually not been defined under the Act, from their usage in the Act and judgments on the subject, it is clear that they relate to the idea of giving, bequeathing or dedicating something, whether property or otherwise, for some purpose. In the context of the Act, the purpose is with respect to religion or charity. [Para 17] [1133-D-E] A

Pratapsinghji N. Desai v. Deputy Charity Commissioner Gujarat, (1987) Supp. SCC 714 : [1987] SCR 909 - relied on.

The Law Lexicon by P. Ramanatha Aiyar Second Edn., p. 634, 635 - referred to. C

6. In the present case, the rock inscription clearly provides for the utilization of money from the institution in question for the purposes of performing the charitable activity of feeding Brahmins during the specified religious festivals. As such, it is clear that the rock inscription creates a “specific endowment” as specified under Section 6(19) of the Act, which falls within the ambit of the Act. [Para 17] [1133-E-F] D

7. On perusal of the inscription, it cannot be said that the rock inscription did not constitute a specific endowment as the same was vague, secular in nature and did not result in any divestment of title. The rock inscription clearly stipulates the festivals during which the activity of feeding of Brahmins should be conducted. Not only are these festivals Hindu festivals, but the reference to "Brahmins" in the rock inscription itself clearly indicates that the endowment is not of a secular nature. [Para 21] [1134-E-G] E

M.R. Goda Rao Sahib v. The State of Madras, AIR 1966 SC 653 : [1966] SCR 643 - relied on. F

8. The contents of the rock inscription are also sufficient to hold that there has been a valid divestment. The rock inscription clearly indicates that the institution is to be managed by the community of bakers, who will use the balance funds for the benefit of others. Further, the inscription also states that the managers do not have any power of alienation with respect to the institution. [Para 22] [1135-D-E] G

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- A 9. The predecessor-in-interest of the appellants had been party to earlier proceedings, before the Charity authorities and the Courts, wherein he had filed pleadings to the effect that the “Bakers Choultry” constituted a “specific endowment”. Although the predecessor-in-interest of the applicant ultimately withdrew the application before the Deputy Commissioner wherein he made the said pleading, it is quite disingenuous of him to have subsequently filed an application before the Commissioner claiming the same property to be his personal property. [Para 23] [1135-F-G]
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- C *K.S. Soundararajan and Ors. v. Commissioner of Hindu Religious and Charitable Endowments and Ors.* (2016) 15 SCC 597 : [2015] 10 SCR 176 - relied on.
- D *Commissioner for Hindu Religious Endowments Board, Madras v. VinayakarArudra Tiruppani Sabha, AIR 1953 Madras 407 ; M.AR.AR.RM.AR. Ramanathan Chettiar v. The Commissioner for Hindu Religious and CharitableEndowments, Madras (1978) 91 LW 337 - referred to.*

E	<u>Case Law Reference</u>	
	AIR 1953 Madras 407	referred to
	(1978) 91 LW 337	referred to
	[1959] Suppl. SCR 583	followed
F	[1965] SCR 168	relied on
	[1987] SCR 909	relied on
	[2015] 10 SCR 176	relied on
G	[1966] SCR 643	relied on

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4676 of 2010.

From the Judgment and Order dated 27.11.2008 of the High Court of Judicature at Madras in Appeal Suit No. 128 of 2000.

R. N. Keswani, Ram Lal Roy, Advs. for the Appellants. A

B. Vinodh Kanna, R. Nedumaran, Advs. for the Respondents.

The Judgment of the Court was delivered by

N. V. RAMANA, J.

1. This appeal is directed against judgment dated 27.11.2008, passed by the High Court of Judicature at Madras in Appeal Suit No. 128 of 2000, whereby the appeal filed by the appellants under Section 70(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter "the Act") was dismissed. B

2. The short issue before us relates to the nature of the institution called "Bakers Choultry", situated at No. 23, South Mada Street, Mylapore, Chennai- 600004, as well as the nature of the endowment it has been burdened with. C

3. The genesis of this dispute lies in the year 1987, when the appellants' predecessor-in-interest filed an application under Section 63(a) of the Act before the Deputy Commissioner, Hindu Religious and Charitable Endowments Administration Department, Madras for a declaration to the effect that the "Bakers Choultry" is a private property belonging to him, with a duty cast on him to perform certain private charities. This application was dismissed *vide* order dated 19.03.1990, and the appeal against the above order, before the Commissioner, Hindu Religious and Charitable Endowments Administration Department, Madras, also came to be dismissed *vide* order dated 02.03.1994. Being aggrieved, the appellants' predecessor-in-interest then filed a civil suit, being Original Suit No. 4510 of 1994, under Section 70(1) of the Act, challenging the orders of the Deputy Commissioner and the Commissioner. However, this civil suit also came to be dismissed *vide* judgment dated 30.03.1999. An appeal being Appeal Suit No. 128 of 2000 was thereafter filed before the High Court of Judicature at Madras, wherein due to the demise of the appellants' predecessor-in-interest the present appellants were brought on record as his legal representatives. The High Court dismissed the appeal *vide* impugned judgment dated 27.11.2008. The appellants thereafter filed the present Civil Appeal by way of Special Leave. This Court, *vide* order dated 14.05.2010, directed that status quo as to possession is to be maintained during the pendency of this appeal. D E F G H

- A 4. The learned counsel for the appellants, in challenging the concurrent findings of the Courts below, submitted that in the facts of the present case the Courts were incorrect in holding that a specific endowment existed with respect to the ‘‘Bakers Choultry’’, particularly one relating to a religious purpose. The learned counsel has placed reliance upon two judgments of the High Court of Judicature at Madras, *viz.*, ***Commissioner for Hindu Religious Endowments Board, Madras v. Vinayakar Arudra Tiruppani Sabha***, AIR 1953 Madras 407 and ***R.M.AR.AR.RM.AR. Ramanathan Chettiar v. The Commissioner for Hindu Religious and Charitable Endowments, Madras***, (1978) 91 LW 337, to support his submission that the rock inscription being vague, secular in nature, and not resulting in any divestment of title thereby could not be considered a ‘‘specific endowment’’ under the Act.
- B 5. On the other hand, the learned counsel for the respondents submitted that the appellants were, in effect, challenging four concurrent findings by the Courts below and the respondent authorities. He submitted that the arguments being raised by the appellants were already canvassed before the High Court, which had dismissed the appellants appeal by giving cogent reasoning *vide* the impugned judgment which does not merit any interference. The counsel for the respondents further submitted that the stone inscription found inside the choultry would reveal that a specific endowment has been created for the purpose of feeding ‘‘brahmins’’ and poor people, during certain festivals, and would therefore be an endowment which falls under the ambit of the Act. Lastly, the counsel submitted that the predecessor-in-interest of the appellants had taken part in earlier proceedings relating to same property
- C wherein he had claimed the property to be trust property, and as such, could not now claim the same to be private property.
- D 6. Heard the learned counsels for the parties at length.
- E 7. It is pertinent to note that the counsels for both parties, for the most part, confined their arguments to the interpretation of a rock inscription which is found in the ‘‘Bakers Choultry’’, allegedly of the year 1834, to substantiate their respective claims. The rock inscription admittedly states the following:
- F ‘‘all of us who do the bakery business shall hereditarily utilize the balance for the feeding of Brahmins during the festivals of Thiruvotriyur and Mylapore and for other proper charity expenses
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and those who conduct the charities of the aforesaid choultries shall have no right whatsoever to alienate the said choultries and anything belonging to them by way of usufuctuary mortgage, gift, sale, etc., but they shall have power to conduct the charities of the choultries appropriately, to support Brahmins therein as they deem fit and receive offerings.”

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8. The question that arises for our consideration in the present case is to interpret the above inscription and determine whether the same amounts to a specific endowment as defined by the Act, or not.

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9. Before we proceed further, it is necessary to have a look at Sections 6(19) and 6(16) of the Act. Section 6(19) of the Act defines the phrase “specific endowment” and is as extracted below:

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(19) “specific endowment” means 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 (17);

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Section 6(16) of the Act defines a “religious charity” as below:

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(16) “religious charity” means a public charity associated with Hindu festival or observance of a religious character, whether it be connected with a math or temple or not;

10. From the above, it is clear that a “specific endowment” means 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. As it is admitted that in the present case there is no question of performing the service in the temple or a math, the endowment in the present case must fall under the second category, *i.e.*, it must be for the performance of a religious charity, to be a specific endowment.

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11. A “religious charity” has been defined to mean a public charity associated with Hindu festival or observance of a religious character. The second part of Section 6(16) of the Act clarifies that there is no requirement for the public charity to be connected with a temple or a math.

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- A 12. While the phrase “public charity” has not been specifically defined under the Act, some guidance as to its interpretation can be derived from a Constitution Bench decision of this Court in ***Mahant Ram Saroop Dasji v. S.P. Sahi***, AIR 1959 SC 951, wherein the Court, while determining whether the Bihar Hindu Religious Trusts Act (1 of 1951) applied to both public trusts as well as private trusts, observed as follows:
- “**6.** ... [I]t is necessary to state first the distinction in Hindu law between religious endowments which are public and those which are private. 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...”

(emphasis supplied)

- E 13. In the present case, the rock inscription in the “Bakers Choultry”, which governs the functioning of the choultry, provides for the feeding of Brahmins. This is clearly a charity which benefits the “public”, in line with the holding of the aforementioned Constitution Bench decision of this Court.
- F 14. Further, the rock inscription specifically states that the charity of feeding the Brahmins is to be done at the time of specific religious festivals, *viz.*, “Arubathumoovar Brahmotsavam” which is held in the Mylapore temple, and the festival in Sri Thiagarajaswami temple, Thiruvotriyur, Chennai. The phrase “associated with” in the definition of religious charity has been interpreted in a three-Judge Bench decision of this Court, in the case of ***The Commissioner, Madras Hindu Religious and Charitable Endowments v. Narayana Ayyangar and Ors.***, AIR 1965 SC 1916, which is extracted as below:
- “**5.** ... The expression "associated" in Section 6(13) of Act 19 of 1951 is used having regard to the history of the legislation,

the scheme and objects of the Act, and the context in which the expression occurs, as meaning “being connected with” or “in relation to”. The expression does not import any control by the authorities who manage or administer the festival.”

(*emphasis supplied*) B

15. As such, the public charity described in the rock inscription, being associated with a religious festival, constitutes a religious charity as defined under the Act.

16. As already mentioned above, under Section 6(19) of the Act, the definition of “specific endowment” includes any money that has been endowed for the performance of a religious charity. Following our holding that the rock inscription provides for a religious charity, it is sufficient to show that money has been endowed for the performance of the same for it to constitute a specific endowment under the Act.

17. While the word “endow”, and the connected word “endowment”, have actually not been defined under the Act, from their usage in the Act and judgments on the subject, it is clear that they relate to the idea of giving, bequeathing or dedicating something, whether property or otherwise, for some purpose. In the context of the Act, the purpose is with respect to religion or charity. [See *P. Ramanatha Aiyar: The Law Lexicon*, Second Edn., p. 634, 635; *Pratapsinghji N. Desai v. Deputy Charity Commissioner Gujarat*, 1987 Supp. SCC 714, paragraph 8]. In the present case, the rock inscription clearly provides for the utilization of money from the “Bakers Choultry” for the purposes of performing the charitable activity of feeding Brahmins during the specified religious festivals. As such, it is clear that the rock inscription creates a “specific endowment” as specified under Section 6(19) of the Act, which falls within the ambit of the Act.

18. The same conclusion was reached by this Court in the *Narayana Ayyangar* case (*supra*), wherein a Fund, instituted for the purposes of feeding Brahmin pilgrims attending the Sri Venkatachalapathiswami shrine at Village Gunaseelam on the occasion of the Rathotsavam festival, was stated to be a religious charity. In that case, the Court held that:

“7. On the facts found, it is clear that on the occasion of the Rathotsavam festival of Sri Prasanna Venkatachalapathiswami

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- A 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 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..."
19. Similarly, in the case of *K.S. Soundararajan and Ors. v. Commissioner of Hindu Religious and Charitable Endowments and Ors.*, (2016) 15 SCC 597, this Court again dealt with a similar issue. In this case, the Court was required to determine the nature of certain charities mentioned in a Will, wherein it was stated that persons of the same caste as the testator would be fed on the occasion of Panguni festival every year. The Will also provided for the supply of food to persons during the day of Chitra Pournami. In this context, the Court held that the abovementioned two charities constitute religious charities, and that it was within the ambit of the High Court under the Act to pass orders regarding the framing of a scheme for administering the same.
- E 20. As regards the contention of the learned counsel for the appellants, that the rock inscription did not constitute a specific endowment as the same was vague, secular in nature and did not result in any divestment of title, it must be stated that a bare perusal of the inscription would indicate that the first two contentions ought to be rejected. The rock inscription clearly stipulates the festivals during which the activity of feeding of Brahmins should be conducted. Not only are these festivals Hindu festivals, but the reference to "Brahmins" in the rock inscription itself clearly indicates that the endowment is not of a secular nature.
- G 21. Finally, with respect to the learned counsel for the appellants' submission regarding the absence of divestment of property for the constitution of a specific endowment, the same would have to be rejected. A three-Judge Bench of this Court, in the case of *M.R. Goda Rao Sahib v. The State of Madras*, AIR 1966 SC 653, while holding that divestment is necessary, decided on the facts of that case that a
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settlement deed which provided for a charge on properties for the A
payment of money amounted to a divestment:

“4. There is no dispute that in order that there may be an
endowment within the meaning of the Act, the **settlor must
divest himself of the property endowed**. To create an
endowment he must give it and if he has given it, he of course
has not retained it; he has then divested himself of it. Did the
settlers then divest themselves of anything? We think they did.
By the instrument the settlers certainly divested themselves
of the right to receive a certain part of the income derived
from the properties in question. They deprived
themselves of the right to deal with the properties free of
charge as absolute owners which they previously were...”

(emphasis supplied)

22. In the facts of the present appeal, the contents of the rock
inscription are sufficient for us to hold that there has been a valid
divestment and to reject the contention of the counsel for the appellants.
The rock inscription clearly indicates that the choultry is to be managed
by the community of bakers, who will use the balance funds for the
benefit of others. Further, the inscription also states that the managers
do not have any power of alienation with respect to the choultry. In
the present appeal therefore, as in the case of *M.R. Goda Rao Sahib*
(*supra*), there has been a clear divestment of the right to receive a
certain part of the income, with the inscription also stipulating a bar on
the right of the manager to transfer the choultry.

23. Another factor which merits our consideration is the fact that
the predecessor-in-interest of the appellants had been party to earlier
proceedings, before the Charity authorities and the Courts, wherein he
had filed pleadings to the effect that the “Bakers Choultry” constituted
a “specific endowment”. Although the predecessor-in-interest of the
applicant ultimately withdrew the application before the Deputy
Commissioner wherein he made the said pleading, it is quite
disingenuous of him to have subsequently filed an application before
the Commissioner claiming the same property to be his personal
property.

24. Therefore, taking into consideration the existing law and the
facts of the present case, we hold that the “Bakers Choultry”, and the H

- A rock inscription therein, constitute a “specific endowment” as defined under the Act, and the same is not the private property of the appellants. The well reasoned judgment passed by the High Court, impugned before us, therefore warrants no interference.

25. Appeal is consequently dismissed, with no costs. Pending B applications, if any, also stand disposed of. Needless to say that the status quo granted *vide* order dated 14.05.2010 stands vacated.

Kalpana K. Tripathy

Appeal dismissed.