

Madras High Court

Annamalai Ayye Chatram ... vs Authorised Officer (Land ... on 28 August, 1986

Equivalent citations: (1987) 1 MLJ 79

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ORDER Nainar Sundaram, J.

1. The lands covered by a deed of Trust dated 31st January, 1978 were the subject-matter of the proceedings under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Act 58 of 1961), hereinafter referred to as the 'Act'. The trust in question represented by its honorary trustee is the petitioner in this writ petition. The contention raised by the petitioner before the respondents was that the lands are those held by a religious trust of a public nature falling under Section 2(1)(ii) of the Act and hence the Act would not apply to such lands. This contention has not been accepted by the respondents and the ultimate order passed by the second respondent is being impeached in this writ petition.

2. The deed of Trust lays down that the income from the lands after the expenses shall be utilised for feeding Brahmins on Dwadasi days. It is not in dispute that the said objects of the Trust are being carried out. The second respondent opined as follows-

But in this case the feeding is not related in any manner to any such occasion of public significance. Thus it is essentially a private purpose. The contention that the feeding of Brahmins is a public purpose of a charitable nature and such feeding of any day of religious significance would be a public purpose and also of religious nature cannot be accepted because even if finding is construed as a public purpose, the religious nature must be inter-linked with it.

The above view of the second respondent cannot be supported in view of pronouncements of Courts, including that of the highest court in the land. It would suffice the purpose if I make reference to a few of them. Even as early as 1960 in *Ramaswami v. Aiyasami*, a Bench of this Court consisting of *Ramaswamy. J.* and *Ananthanarayanan, J.* as he then was, dealt with a case of a trust for *Samaradhanai* and observed as follows:

A public or charitable trust on the other hand has for its object the members of an uncertain and fluctuating body and the trust itself is of a paramount and indefinite character and is not confined within the limits prescribed to a settlement upon a private trust.

It is obvious that *Samaradhana dharmam* is prescribed and that *Samaradhana* followed by the heirs of the partners who founded the *Dharmam* was only feeding the poor and not feeding the Brahmins alone - an undoubted public charitable and religious trust.

The correct legal position therefore is, that even the *dharmam* of feeding Brahmins as a class-not necessarily destitute or only of the poor but an indefinite class not restricted to privileged individuals-would constitute a public religious or charitable Trust.

3. In Commissioner, H.R. and C.E., Madras v. Narayana Iyengar, the question as to whether a Samaradhana fund is a religious charity within the meaning of Section 6(13) of the Madras Hindu Religious and Charitable Endowments Act (1951)(Act 19 of 1951) came up for consideration and the Supreme Court found that Fund to be a public charity associated with a Hindu festival, namely, Rathotsavam in a temple. The definition of 'religious charity' under Section 6(13) of the Madras Act 19 of 1951 runs as follows:

a public charity associated with Hindu festival or observance of a religious character, whether it be connected with a math or temple or not.

There was no dispute before the Supreme Court that setting up a fund for feeding Brahmins is a public charity. That was also the view of the Bench of this Court whose decision was taken on appeal before the Supreme Court. However, this Court declined to bring the Samaradhanai Fund within the ambit of Section 6(13) of the Madras Act 19 of 1951, on the opinion that the expression 'associated with a Hindu festival or observance of a religious character' imported some unity of purpose or common object or common endeavour between the festival and the charity and this element was lacking in that case. Disagreeing with the view of this Court, the Supreme Court observed as follows:

A Hindu religious festival or observance may have a local significance, in that it is celebrated or observed in a particular locality in connection with a shrine, temple or math, or it may be a festival or observance celebrated generally without any connection with any temple or math. In the case of such general festivals or observances there is no one who can be said to control the celebrations, and the definition of 'religious charity' includes such general festivals and observances. It cannot be assumed that there must always be a set of persons who control the celebration of a festival or an observance. The test suggested by the High Court that in order that there should be, between the charity and the festival or observance such a relation that the administration of the charity must be controlled by those who celebrate the festival or observance in a temple or math, besides they being inapt in the case of general festivals and observances can only be evolved if words which are not found in the definition of 'religious charity' are added thereto.

That Dwadasi day is a day of religious significance to Hindus cannot be put in issue and in fact has not been put in issue. As per the clause in the deed of Trust, the feeding of Brahmins should be done on Dwadasi days. Ekadasi, the eleventh day of every fortnight in a lunar month is sacred to Lord Vishnu and complete fasting is prescribed. Dwadasi is the day following Ekadasi and. it is the twelfth day of every fortnight in a lunar month. Breaking of the fast on that day within a stipulated period is considered essential. A special diet is also prescribed. There are puranic stories about this significance and observance, for example, Ambarisha. Hence, Dwadasi day is a day of religious observance for Hindus is beyond doubt. Feeding of Brahmins as an indefinite class, an uncertain and fluctuating body would certainly amount to a public Trust. Such feeding should take place on Dwadasi days, makes it associated or linked with an observance of religious character. Hence, the conclusion that it is a public charity associated with an observance of a religious character should necessarily follow. The expression in 'observance' must have a wider meaning is the view of a Bench of this Court to which I have been a party in Thangavelu Udayar and Ors. v. Avudayarkoil Annachathiram S.T.A. No. 315 of 1977, dt. 11.8.1982. In the said pronouncement, it was also opined

that performing Dharmam especially Annadhanamis to seek salvation, in other words Moksham and it would amount to observance of a religious character. Our Hindu tradition does not draw a line of distinction between religion and charity and charity is always regarded as part of religion and religious observance. In this view, I have to hold that the trust in the present case has both the elements, being public as well as religious and certainly it would fall within Section 2(1)(ii) of the Act so as to take the lands in question out of the mischief of the Act. In this view, this writ petition is allowed. No costs.