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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD)Nos. 868 & 869 of 2008

The Tiruchirappalli Consumer
Co-Operative Wholesale Stores,
Rep. By its Special Officer,
No.12/17, E.V.R.Road, Pudur,
Trichy.

... Appellant in
both the Appeals

/Vs./

The Church of South India
Trust Association, Trichy-Thanjavur Diocese,
Rep.By its Authorised Agents,

1) Rev.Dr. Sureshkumar,
S/o.Albert,
Arockiasamy Diocese Treasurer.

2 Rev.S.Thilak Samuel
S/o.Solemn Pandian, Clerical Secretary.
(Both Having at Pudur, Trichirappalli).

...Respondents in
both the Appeals

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure
Code against the Judgment and Decree passed in A.S.Nos.153 & 154 of



2007 on the file of the Learned Principal District Judge, Trichirappalli, dated 30.10.2007 confirming the Judgment and Decree passed in O.S.Nos.916 of 2001 & 504 of 1998 on the file of the Learned Subordinate Judge, Trichirappalli, dated 30.10.2006.

For Appellant : Mr.M.P.Senthil

For Respondents : Mr.R.Devaraj, for R-1 & R-2

COMMON JUDGMENT

These appeals have been preferred against the Judgment and Decree passed in A.S.Nos.153 & 154 of 2007 on the file of the Learned Principal District Judge, Trichirappalli, dated 30.10.2007, confirming the Judgment and Decree passed in O.S.Nos.916 of 2001 & 504 of 1998 on the file of the Learned Subordinate Judge, Trichirappalli, dated 30.10.2006.

2. The defendant is the appellant herein and the plaintiff is the respondent herein. For the sake of convenience, the parties shall be referred to as plaintiff and the defendant. Since the issue involved in the second appeals are one and the same this Court is inclined to pass this common order.



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3. The plaintiffs have filed suit in O.S.Nos.504 of 1998 & 916 of 2001 to direct the plaintiff to vacate and hand over the possession and for awarding damages for wrongful occupation for a period from 01.01.1993, till delivery of possession under Order 21 Rule 12 of the Civil Procedure Code. The said suit was allowed. Against the same, the defendant has preferred an appeal in A.S. Nos.153 & 154 of 2007 and the same were dismissed. Against the same, the present two second appeals are preferred by the defendant.

4. At the time of admission, the second appeals are admitted on the following substantial questions of law:

1. *Whether the Courts below right in law in holding that the Respondent Association is a public Trust and entitled to benefits of the notification under G.O.Ms.No.2000, Home 16.08.1976 exempting the provision of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 in the absence of any positive and acceptable evidence especially when the Respondent Association is registered under Indian Companies Act?*
2. *Whether the Courts below are right in not advertng to the lease under Ex.A.1 and the same would be termed as yearly lease and as such notice under Ex.A.1 is not a valid*



notice under Section 106 of Transfer of Property Act?

3. *Has not the Courts below committed an error in law in not considering that a company registered under Section 91 of Companies Act claim themselves as a public trust and has not answered whether the company can be termed as a public trust?*

5.The 1st substantial question of law raised is whether the plaintiff is Trust, hence exempted from the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and entitled to the benefits of exemption granted under G.O.Ms.No.2000, Home 16.08.1976. The contention of the plaintiff is that they are Trust, hence they are exempted from the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 based on the G.O.Ms.No.2000, Home 16.08.1976. When the Trust is exempted, then the appropriate remedy to evict the tenant is suit. In order to prove the plaintiff is Trust the plaintiff had relied on Ex.A.9 Articles of Association and Ex.A.18 Rules and Regulations of the Trust. Under Ex.A.9, the Home of the Church was described which is extracted hereunder:

“மேற்சொன்ன அரசாணையின்படி பார்க்கும்போது இந்து, கிருத்துவ, முஸ்லீம் மதப்போது அறக்கட்டளை என்றிருக்கும்



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தருணத்தில் தமிழ்நாடு வாடகைக் கட்டுப்பாட்டுச் சட்டத்தின் கீழ் மனு தாக்கல் செய்யக்கூடியதல்ல என்பதும் வழக்காக தாக்கல் செய்யக்கூடியதென்பதும் தெரியவருகிறது.

10. வாதி நிறுவனம் பொது அறக்கட்டளை நிறுவனம் என தெரிவித்து தாவா வழக்குகளை தாக்கல் செய்துள்ளது. பொது அறக்கட்டளை என்பதை நிரூபிக்கும் வகையில் வாதி நிறுவனத்தில் குறிப்பாணை மற்றும் Articles of Association வா.சா.ஆ.8 என தாக்கல் செய்யப்பட்டுள்ளது. அதில் வாதி நிறுவனம் என்ன நோக்கத்திற்காக ஆரம்பிக்கப்பட்டது என்பது குறித்து பிரிவு 3ல் கூறப்பட்டுள்ளது.”

On perusal of the same, it is seen that the Church was created for carrying out various charities, hospitals, dispensaries and colleges etc. From this, it is evident that the Appellant herein is a Trust, consequently the benefits of G.O.Ms.No.2000 is applicable to them. Therefore, the said suit is maintainable. Accordingly, the 1st substantial question of law-1 is answered in favour of plaintiff and against defendant.

6. The 2nd substantial question of law is under section 106 of Transfer of Property Act notice is mandated and under Ex.A.1 six months notice is mandated for terminating the lease. It is seen that the plaintiff had issued lawyer notice dated 23.01.1998 and the same was received by



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the defendant on 28.01.1998, then the defendant had replied on 18.02.1998 which are marked as Ex.A2 to Ex.A8. As per the lease agreement the period of lease is from 01.01.1993 for a period of five years 23.01.1998. Once the lease is terminated after five years through notice dated 23.01.1998 marked as Ex.A2, then the same has satisfied the condition imposed under lease agreement Ex.A1. Moreover, the suit is filed on 03.09.1998 and the suit was allowed on 30.06.2006. At this point of time, issuance of notice cannot be a valid ground. Therefore, this Court is not inclined to entertain the 2nd substantial question of law.

7. The 3rd substantial question of law is when a company is registered under Section 91 of Companies Act, can the company claim themselves as a public trust. The Learned counsel appearing for the respondents submitted that the issue is settled in several judgments and relied on the paragraph No.5 of the Judgment rendered by the Hon'ble Supreme Court in the case of *Mulla Gulam Ali and Safiabai D.Trust Vs. M/s.Deeli Kumar and Co., reported in 2001(1) LW 652*, the same is extracted hereunder:

.....



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“5. The mere fact that the control in respect of the administration of the trust vested in a group of people will not itself take away the public character of the trust. Indeed if the trust is not administered properly and the objects of the trust are not carried out certainly for the benefit of the public resort can be had to Section 92 of the Civil Procedure Code and get a scheme framed for the proper administration of the trust and by displacing the trustees who are presently managing the trust. If that is the position in law we fail to understand as to how the High Court took the view that in spite of the finding recorded by the Courts below that the appellant is a public charitable institution and is engaged in such activities and has given several donations to several institutions which are exhibited as receipts before this Court, we find to substance in the contention of that it is not a charitable trust. The finding recorded by the High Court in this regard is, therefore, set aside and the finding recorded by the Courts below are restored”.

8. The same issue is dealt with in C.R.P(MD)No.242 of 2001, dated 23.02.2021 and the relevant paragraph Nos.10, 11 & 12 are extracted hereunder:

.....

“10.In a judgment reported in 2001 2 MLJ 1 SC



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between Mulla Gulam Ali and Safiali D Trust vs. M/s.Deelip Kumar and Company, the Hon'ble Supreme Court has held as follows:-

"The object of the Trust is relevant criteria. The control in respect of administration of trust vested in a group of people belonging to one family does not take away public character of the trust object of trust are to give donations to educational and charitable institution to give scholarship to poor and deserving students to give medical aid, and assistance in deaf and dumb, widows, destitute, orphan etc. is a public trusts."

11.In the present case on hand, the respondent institution have number of colleges and schools in and around the Tiruchirappalli Town and within Tiruchirappalli District. In Ex.R7 bye-law, the normal activities of the society is described as follows:-

*"7.Normal Activities of the Society
Activities of the society in furtherance of its objects are cooperative societies, Agricultural or Industrial Settlements etc. vii. Assistance during natural calamities such as drought, fire, floods, cyclones etc. viii. Development and welfare of the people especially the down-trodden ix. Rural development x. Economic and community*



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development xi. Welfare of the physically handicapped xii. Women Welfare xiii. Welfare of the displaced persons xiv. Promotion of nonformal and adult education xv. Providing of Health Care facilities xvi. Provision of civic amenities for tourists and pilgrims and xvii. Such other activities incidental to the organisation and working of the Society and for the proper management of its affairs."

12. On perusal of the above normal activities of the respondent institution, the learned Judge came to the conclusion that it is a public trust and as per GO 2000, the petition mentioned property is exempted under the Act and therefore, dismissed the petition under Section 8(5) of the Act, stating that it is not maintainable. Even the procedure enumerated under Section 8(5) of the Act was not followed correctly and on that ground also, the learned Judge dismissed the application. In my opinion, since the respondent is held to be a public trust, there is no need to go into the procedure to be followed under the Act. The rent controller and the rent control appellate authority have rightly held that the respondent is a public trust and the petition mentioned property is exempted under the Act, as such, the petition under Section 8(5) of the Act is not maintainable, where, I do not find any infirmity. "



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9. In the present case the articles of association would clearly indicate the public activity of the trust, wherein it is stated that the plaintiff is carrying on hospitals, dispensaries and colleges etc. Therefore, this Court is of the considered opinion that the appellant has not placed any contrary evidence to hold the plaintiff is not carrying on public activity. Hence by following the aforesaid judgements, this Court is of the considered opinion that the plaintiff is a public trust.

10. Therefore all the substantial questions of law are held in favour of the plaintiff and against the defendant. Hence the second appeal is liable to be dismissed and accordingly dismissed. Consequently, the defendant is directed to vacate the premises and hand over possession to the plaintiff. However, the defendant sought time to vacate the premises, but the plaintiff submitted that the premises is necessary before the academic year. It is seen that the defendant is a cooperative society, a public institution and also paying rent without any default. Therefore, the defendant/appellant is directed to vacate the premises and handed over possession to the plaintiff/respondent on or before 30.03.2025. Failing which the plaintiff may seek remedy as per law.



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11. Accordingly, both the Second Appeals are dismissed and the Judgment and Decree passed by the Courts below are hereby confirmed. There shall be no order as to costs.

24.10.2024

Index : Yes / No
NCC : Yes / No

KSA

Note : Issue a copy of order on 07.11.2024

TO:

1. The Principal District Court,
Trichirappalli.
2. The Subordinate Court,
Trichirappalli,
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

Common Judgment made in
S.A.(MD)Nos. 868 & 869 of 2008

Dated:
24.10.2024