BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.10.2023
DELIVERED ON : 17.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.No.29 of 2003

1.The Special Commissioner and
Commissioner,
HR&CE Administration Department,
Nungambakkam High Road,
Chennai-34.

2.The Joint Commissioner /
Executive Officer,
Arulmighu Dhandayuthapaniswamy
Devasthanam, Palani,
Dindigul District. ... Petitioners

Vs.

1.Saadhu Seenimalai Thambiran Swami
Madam (Trust Palani),
Represented by M.Sasikumar.

2.V.V.Vasan

3.N.Kanagamani

4.P.Raman @ Ramu Thevar

5.N.Ravikumar

6.M.Purushothaman ... Respondents

(R-1 name substituted vide order, dated 05.06.2014 made in M.P(MD)No.1 of 2014 in C.R.P.No.29 of 2003)

(R-2 to R-6 impleaded vide order, dated 22.07.2009 made in C.M.P(MD)No.1908 of 2005 in C.R.P.No.29 of 2003)

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the decree and order passed in Trust O.P.No.7 of 1996, dated 06.12.1999 and consequential decree, dated 28.06.2000 on the file of the learned District Judge at Dindigul, allowing the said petition filed under Section 34 and 35 of the Indian Trust Act and praying to set aside the same.

For P-1 : Mr.C.Satheesh
Government Advocate

For P-2 : Mr.K.Govindarajan

For R-1 : Mr.M.Saravana Kumar

For R-2 & R-4 : Mr.Isaac Mohanlal
Senior Counsel
for Mr.H.Thayumanasamy

For R-3 : No appearance

ORDER

The present Revision Petition has been filed by third parties to Trust O.P.No.7 of 1996 on the file of the Principal District Court, Dindigul, challenging an order, dated 28.06.2000, wherein the learned Principal District Judge was pleased to permit the respondent Madam to alienate the properties. After obtaining leave of the Court, the third parties, namely, the Hindu Religious and Charitable Endowment Department and the Executive Officer of Arulmigu Dandayuthapaniswamy Devasthanam, Palani have filed the present Revision Petition.

2. **Facts leading to the filing of the present revision petition are as follows:**

(i) Saadhu Chennimalai Thambiran Swamy Madam represented by one L.Manoharan had filed Trust O.P.No.7 of 1996 before the Principal District Court, Dindigul contending that the petition scheduled properties and other properties having an extent of around 23 acres were purchased by one Chennimalai Vellalar Thambiran under a registered sale deed, dated

02.07.1910 as his separate property in his individual name. The said Thambiran had dedicated himself to religious activities and he had established a Madam and he was performing Guru Pooja and Annadhanam. In the year 1925, he passed away leaving behind his only daughter, Chenniammal.

(ii) The said Thambiran, was interned in Samadhi and nearby the said Samadhi, a Vinayagar Temple was also constructed. Swamigal's daughter, Chenniammal had passed away leaving behind her sons, Chennimalai Gounder, Chellappa Gounder and Ramasamy Gounder. The legal heirs were also continuing with the religious duties performed by Thambiran Swamigal.

(iii) Chenniammal and his sons jointly had created an endowment deed on 09.05.1930 appointing five persons as trustees for managing the properties and to continue the religious duties. Out of the five administrators, Vellaiyangiri Gounder and Pongiya Gounder had passed away. Narayanaswamy Gounder and Kuppusamy Gounder were not keeping in good health and they were not able to administer the properties. In such circumstances, A.G.Velayudha Gounder, one of the trustees had filed O.A.No.10 of 1968 before the Deputy Commissioner, HR&CE (Administration) Department, Madurai seeking to declare himself as the hereditary trustee of Saadhu Chennimalai Thambiran Swamy Mutt. An order was passed on 30.12.1967 appointing him as the hereditary trustee.

(iv) The said hereditary trustee, namely, A.G.Velayudha Gounder had executed a Will on 19.03.1971 in which five new trustees were appointed. The said A.G.Velayudha Gounder had executed a power of attorney, appointing one Lakshmana Gounder to take care of the Temple administration.

(v) The said Lakshmana Gounder had passed away on 17.07.1994 leaving behind his only son, namely, the petitioner in trust O.P. Even before his death, the said Lakshmana Gounder had executed a registered power deed on 03.05.1994 in favour of the petitioner in the trust O.P with all powers to administer the trust properties. After the death of Lakshmana Gounder, the petitioner is carrying out all the religious duties and he is in possession of the entire property.

(vi) Out of the 23 acres of land, buildings have been constructed in a small portion and they have been rented out. The balance extent of property is lying fallow and there is no income from the said property. In view of inflation, the petitioner is not able to properly carry out the Temple renovation and other charities. There is no proper income from the petition mentioned properties. There is also an attempt by the third parties to encroach upon the properties of the Mutt. In order to protect the properties of the Mutt, to raise the income and to properly perform the charities, it becomes necessary to alienate the properties which would fetch substantial amount. The petitioner had given an undertaking that he would alienate it to a person, who comes forward to the highest sale consideration and he would deposit the amount in a Nationalized Bank and utilise the interest to continue the performance of the charities.

(vii) The application filed under Section 7 of the Charitable and Religious Trust Act, 1920 was dismissed by the District Court on the ground that there are several vacancies in the board of trustees and unless the same is filled up, it will not consider the request for giving opinion. The said order was challenged before this Court in C.R.P.No.1770 of 1998. This Court was pleased to allow the revision petition and directed the District Court to consider the application filed by the petitioner on merits and if necessary by taking evidence. The said judgment is reported in ***1999 (3) CTC 390 (Sennimalai Swamy Madam Trust, Palani by L.Manoharan Vs. Nil)***.

(viii) After remand the learned District Judge considered the said application on merits and allowed the application, permitting alienation of the properties. Challenging the said order, the present Revision Petition has been filed.

3. **Contentions of the learned Counsels appearing for the revision petitioners are as follows:**

(i) A trust deed was created by Thambiran Swamigal by a registered document, dated 09.05.1930. As per the said trust deed, Naivedyam should be performed to Dandayuthapaniswamy Temple at Palani daily at the cost of Rs.66/- per day. Therefore, the said Trust has created a specific endowment in favour of the Palani Dandayuthapaniswamy Temple.

(ii) Since a specific endowment has been created as per Section 6 (19) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, the jurisdiction of the District Court cannot be invoked by filing a petition under the Indian Trusts Act, 1882.

(iii) When there is a specific endowment, permission to alienate the said property should be obtained only from the HR&CE Department as contemplated under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowment Act. The learned Principal District Judge has allowed the Trust O.P without issuing any notice to the Temple authorities in respect of endowment properties.

(iv) The learned Principal District Judge without properly appreciating the character of Madam and the nature of specific endowment had proceeded to pass orders permitting alienation of the properties.

(v) The learned Counsel appearing for the petitioner had relied upon ***AIR 2020 SC 4369, AIR 2006 SC 104, 1996 (1) L.W 231, 2007 (7) SCC 482*** to contend that the dedication is absolute in nature and therefore, a trust has been created which falls within the definition of specific endowment. Hence, the District Court has no jurisdiction to entertain the Trust O.P seeking permission to alienate the properties. Hence, he prayed for setting aside the order passed by the learned Principal District Judge.

(vi) The ancestor in title of the present petitioner had filed O.A.No.10 of 1968 under Section 63 (b) and (d) of Madras Hindu Religious and Charitable Endowments Act, 1959 to appoint him as a hereditary trustee admitting the fact that it is a specific endowment. Therefore, the petitioner in Trust O.P cannot now contend that it is not a specific endowment and it is a private trust.

4. **Contentions of the learned Senior Counsel appearing for the respondents are as follows:**

(i) A perusal of the Trust deed, dated 09.05.1930 will clearly show that the dedication is only to an extent of Rs.66/- per day and therefore, the dedication of the property for performance of Naivedyam to Palani Dandayuthapaniswamy Temple is partial in character and therefore, no trust has been created. At the most, it can only be said that a charge has been created over an extent of 23 acres. Therefore, the properties continued to retain the secular character and they are partible and alienable by the parties concerned.

(ii) The learned Senior Counsel further contended that where a Madam is created after interning a private person and a Samadhi is erected, the same cannot be considered to be a religious institution. Such an institution is unknown to Hindu law. Hence, performance of Guru Pooja to the Tomb of Thambiran Swamigal will not convert the same into a religious institution. Just because a Vinayagar Idol is installed near the Tomb, it would not support the case of the HR&CE Department.

(iii) A careful scanning of the trust deed, dated 09.05.1930 would reveal that there is no specific clause which prohibits the alienation or encumbrance over the property. Therefore, this Court can very well deduce that the dedication is only partial in nature amounting to charge over the property and it is not a complete dedication amounting to a creation of trust.

(iv) When the learned District Judge had dismissed the Trust O.P.No.7 of 1996, the same was challenged before the District Court in C.R.P.No. 1770 of 1998. This Court was pleased to allow the Civil Revision Petition after holding that Section 7 of the Charitable and Religious Trust Act, 1920 is similar to the provisions of Section 34 of the Indian Trusts Act. Therefore, at this length of time, HR&CE Department cannot raise any objection with regard to the maintainability of Trust O.P.No.7 of 1996 that the same is not maintainable but only an application under Section 34 of the HR&CE Act is maintainable before the Commissioner of the said Department. In the present case, after the orders of the learned District Judge, paper publication has been effected and after calling for bids from the general public, the sale deed in favour of the highest bidder has been confirmed. The revenue records have also been mutated in the name of the purchaser.

(v) The learned Senior Counsel further contended that sale deed in favour of the purchasers have been executed on 17.05.2001 by the learned District Judge and the present Revision Petition has been filed by the Department only on 14.06.2002 much belatedly.

(vi) Various constructions have come up in and around the subject matter of the petition, the Temple has not raised any objection with regard to the alienation of a portion of the trust property. A layout has been created by the purchasers and they have been sold to third parties, who have put up construction in the petition mentioned property. Therefore, at this length of time, any interference by the Court by setting aside the order of alienation would cause great prejudice not only to the respondents in the Revision Petition but also to third parties.

(vii) The learned Senior Counsel had relied upon the judgment of this Court in ***100 LW 672 (Rajeevalochanchar, Mahant of Uthirathi Srivaishnavite Mutt and Another Vs. D.Ramachar, Madras and Another)*** to contend that if a charity is not connected to the religious festival or observance of a religious character, it cannot be construed to be an endowment. He further relied upon the judgment of the Hon'ble Supreme Court reported in ***1973 (2) SCC 312 (S.Shanmugam Pillai and Others Vs. K.Shanmugam Pillai and Others)*** to contend that when there is no absolute dedication of property, only a charge has been created and as a consequence, there is no prohibition for alienation of the properties. He further relied upon ***AIR 1957 SC 797 (Menakuru Dasaratharami Reddi and Another Vs. Duddukuru Subba Rao and Others)*** to contend that to decide about the nature of dedication, the entire trust deed has to be looked into in the light of material terms used in the said document. Just because the word "trust" or "trustee" is used, it is not decisive in nature. Only if the income of the property is substantially intended to be used for charity, it can be construed to be a trust. On the other hand, if only a minor portion of the income is retained for maintenance of public charity and a substantial surplus is left in the hands of the manager for his own private purposes, it cannot be a complete dedication.

(viii) The learned Senior Counsel further relied upon ***2017 (6) MLJ 37 (R.Manoharan and Others Vs. Deputy Commissioner, HR&CE, Madurai and Another)*** to contend that performance of Guru Pooja and a Samadhi done by the family members cannot be considered to be a public institution. He further relied upon the judgment of this Court reported in ***2002 (3) MLJ 398 (R.Padmanabhan and Others Vs. Sri Vidhya Vakeesa Theerthar and Another)*** and contended that merely because the Temple is put up adjoining the Samadhi and some Guru Poojas have been performed, it cannot be construed as a religious institution.

(ix) The learned Senior Counsel further relied upon the judgment of the Hon'ble Supreme Court reported in ***AIR 1978 SC 1174 (Nagu Reddiar and Others Vs. Banu Reddiar and Others)*** to impress upon the Court that settlement in favour of a Tomb / Samadhi of ancestor of the settlors of the trust is not valid in the eye of law. He further relied upon the judgment of the Hon'ble Division Bench of this Court reported in ***AIR 1961 Madras 265 (Sri Ramanasramam by its Secretary G.Sambasiva Rao and Others Vs. The Commissioner for Hindu Religious and Charitable Endowments, Madras)*** to contend that unless Prana Pratishta is performed, spiritual descent cannot be invoked at such a place. Even if there is a Linga installed, it can only be symbolic and it can never be construed to be a place of public religious worship.

(x) The learned Senior Counsel further relied upon the judgment of the Hon'ble Supreme Court reported in ***2005 (6) SCC 166 (R.Murali and Others Vs. Kanyaka P.Devasthanam and Charities and Others)*** to contend that in a case of a religious denomination, it is protected under Article 26 of the Constitution of India and therefore, expressly protected under Section 107 of the HR&CE Act. In the present case, Saadhu Chennimalai Thambiran Swamigal could only be construed to be a denomination in character and the operation of the HR&CE Department is completely excluded.

(xi) The learned Senior Counsel further relied upon the judgment of the Hon'ble Supreme Court reported in ***AIR 1953 SC 491 (Saraswathi Ammal and Another Vs. Rajagopal Ammal)*** to reiterate the issue that only Hindu Saints could be defied and worshipped and there is no practice among the Hindus to put up a Tomb and perform Guru Pooja for an ordinary private individual. The learned Senior Counsel further referred to the judgment of the Hon'ble Supreme Court reported in ***Volume 59 L.W 263*** to impress upon the Court that performance of Guru Pooja at the Samadhi or Tomb of a person is not a charitable object recognized by the Hindu Law and a deed of endowment for the erection of a Tomb and a Temple over it and doing Annadanam is invalid as a dedication to charity. The learned Senior Counsel laid emphasis upon the fact that there being no religious institution and there being no complete dedication of the property, there is no specific endowment in favour of the revision petitioners Temple. Hence, the Temple has no *locus standi* to maintain the present Revision Petition. Hence, he prayed for sustaining the order passed by the learned District Judge and to dismiss the Revision Petition filed by the Temple officials.

5. I have given an anxious consideration to the submissions made on either side and perused the materials available on record.

Discussion:

6. For better appreciation of the facts and law, Section 6 (17) and Section 6 (19) of the Tamil Nadu HR&CE Act are extracted as under:

> *"6(17) "**religious endowment**" or "**endowment**" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the*

performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service holder or other employee of a religious institution;

*(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);"*

7. For considering the submissions raised on either side relating to dedication of the property, the relevant portion of the trust deed, dated 09.02.1930 is extracted as follows:

"சுமார் 5 வருடத்திற்கு முன் இறந்துபோன பூசாரி சென்னிமலைக்கவுண்டன் தர்மத்திற்காக சம்பாதித்தப்பணத்தைக்கொண்டு கிரயத்துக்கு வாங்கி அடியிற்கண்ட சொத்துக்கள் மதுரை ஜில்லா பழனியின் அடியிற் கண்ட பூமிகளில் கட்டியிருக்கும் மடத்தை சீராய் வைத்துக் கொண்டிருப்பதற்காகவும் பழனிமலையில் இருக்கும் தெண்டாயுதபாணி சுவாமிக்கு தினம் பட்டணம் 66 ரூ. இடைகொண்ட ஒருபடி அரிசி தினந்தோறும் நிவேதனம் செய்யவும் இந்த தர்மத்திற்காக உத்தேசித்து தர்மத்திற்காக

உபயோகபடுத்திவரும் ஏற்பாடு செய்து தரும சாசனம் எழுதி வைக்காமல் காலம் சென்று விட்டபடியால் நாங்கள் இப்போது ஷை பூசாரி சென்னிமலைக் கவுண்டரின் உத்திரவுப்படிக்கு நாங்கள் தருமமாக விட்டிருக்கிறோம்."

8. A perusal of the trust deed would clearly indicate that the income from the dedicated property should be utilized for the performance of daily Naivedyam to Palani Dandayuthapaniswamy Temple to an extent of one padi rice valuing Rs.66/-. A scanning of the above said document further reveals that a trust has been created for performing the above said service to the Temple utilizing the income from the trust property. The value of the property has been mentioned as Rs.2,000/-. There is no provision whatsoever permitting the alienation or encumbrance of the properties.

9. The Hon'ble Supreme Court in a judgment reported in ***AIR 1957 SC 797 (Menakuru Dasaratharami Reddi and Another Vs. Duddukuru Subba Rao and Others)*** in paragraph No.5 has held as follows:

> *"5. ....Now it is clear that dedication of a property to religious or charitable purposes may be either complete or*

partial. If the dedication is complete, a trust in favour of public religious charity is created. If the dedication is partial, a trust in favour of the charity is not created but a charge in favour of the charity is attached to, and follows, the property which retains its original private and secular character. Whether or not dedication is complete would naturally be a question of fact to be determined in each case in the light of the material terms used in the document. In such cases it is always a matter of ascertaining the true intention of the parties; it is obvious that such intention must be gathered on a fair and reasonable construction of the document considered as a whole.........."

The said judgment has been followed by the Hon'ble Supreme Court in a judgment reported in ***2020 (17) SCC 96 (Idol of Sri Renganathaswamy, Represented by its Executive Officer Vs. P.K.Thoppulan Chettiar, Ramanuja Koodam Anandhana Trust, Represented by its Managing Trustee and Others)***.

10. The Hon'ble Supreme Court in a judgment reported in ***AIR 1965 SC 1874 (Nirmala Bala Ghose and Another Vs. Balai Chand Ghose and***

Others) in paragraph Nos.9 and 18 has held as follows:

> *"9. ....Where there is a deed of dedication the question whether it creates an absolute or partial dedication must be settled by a concepectus of all the provisions of the deed. If the property is wholly dedicated to the worship of the idol and no beneficial interest is reserved to the settlor, his descendants or other persons, the dedication is complete: if by the deed what is intended to create is a charge in favour of the deity and the residue vests in the settlor, the dedication is partial............*
>
> *18. ....If, on a review of all the terms, it appears that after endowing property in favour of a religious institution or a deity, the surplus is either expressly or by implication retained with the settlor or given to his heirs, a partial dedication may readily be inferred, apparently comprehensive words of the disposition in favour of the religious endowment notwithstanding."*

11. The Hon'ble Supreme Court in a judgment reported in ***1973 (2) SCC 312 (S.Shanmugam Pillai and Others Vs. K.Shanmugam Pillai and Others)*** in paragraph No.32 has held as follows:

"32. ....If the income of the property is substantially intended to be used for the purpose of a charity and only an insignificant and minor portion of it is allowed to be used for the maintenance of the worshipper or the manager, it may be possible to take the view that dedication is complete. If, on the other hand, for the maintenance of charity a minor portion of the income is expected or required to be used and a substantial surplus is left in the hands of the manager or worshipper for his own private purposes, it would be difficult to accept the theory of complete dedication..........."

12. The Hon'ble Division Bench of this Court in a judgment reported in ***Volume 91 L.W 185 (G.Duraikannu Vs. A. Natesa Pillai and Others)*** in paragraph No.13 has held as follows:

"13. The legal position that emerges is that to ascertain whether the dedication is partial or absolute, we have to take the instrument as a whole. The intention of the author of the document has to be gathered and that has to be done only from the words used. Where, as here, the document speaks only of the income, the intention has to be ascertained from the disposal of the income. If, for the maintenance of public

charity, a minor portion of the income is required to be used and substantial surplus is left in the hands of the manager for his own private purposes, there would not be a complete dedication. But, if the contemplated expenditure on charity forms a substantial part of the income, then the dedication would be a complete one. The document before us does not contemplate any surplus being left in the hands of the person in charge of the properties. The purpose contemplated is that the charity is to be done in accordance with the status of the family. The expenditure is thus bound to be elastic, so that when the income increases, the obligation to pay for the charity also expands. It is not as if any specific amount alone was contemplated to be spent so as to leave a balance. Further, there are no words of disposal with reference to the balance, if any, of the income from the said properties. It is, therefore, manifest that the reservation for these purposes was absolute and not partial."

13. A careful perusal of the judgments of the Hon'ble Supreme Court and the Hon'ble Division Bench of this Court would clearly reveal that if the income from the property is substantially to be used for the purpose of charity and only a minor portion is allowed to be used by the Manager, it could be considered to be a complete dedication amounting to Trust.

14. **The following proposition of law could be deduced:**

(i) The true intention of the parties has to be gathered on a reasonable construction of the document considered as a whole.

(ii) If no beneficial interest is reserved to the settlor or his descendants, the dedication is complete. On the other hand, if the residue vests in the settlor, the dedication is partial and it creates a mere charge over the property.

(iii) A surplus may either by expressly or by implication and if it is retained with a settlor, a partial dedication may be inferred.

(iv) If a substantial surplus is left in the hands of the Manager for his own private purposes, it could be construed to be a partial dedication.

(v) If there are no words of disposal with reference to the balance, if any of the income from the properties, then the dedication is absolute and not partial.

15. In the present case, the value of the property has been mentioned as Rs.2,000/- in the trust deed, dated 09.05.1930. There is a direction to perform daily Naivedyam at the cost of Rs.66/- per day to Palani Dandayuthapaniswamy Temple. Therefore, it is clear that the performance

of service is related to a particular Temple. In the document, there is no reference about any surplus income or the mode of utilisation of the said surplus income.

16. In paragraph Nos.8 and 9 of the petition in the Trust O.P, it has been specifically averred by the trustee that there is no proper income from the properties and they are not able to carry out the charitable purposes. Therefore, a combined reading of the above said facts and the legal position would clearly establish that a specific endowment has been created for the performance of Naivedyam service to Palani Dandayuthapaniswamy Temple and the dedication is absolute in nature.

17. The Hon'ble Supreme Court in a judgment reported in ***AIR 1966 SC 653 (M.R.Goda Rao Sahib Vs. State of Madras)*** in paragraph No.14 has held as follows:

> *14. ....In my opinion, the expression "religious endowment" as defined in Section 6(14) and "specific endowment" as defined in Section 6(16) of the Act must be construed so as to include both absolute and partial dedication of property. This view is supported by reference to*

Section 32(1) of the Act which states:

> *"32. (1) Where a specific endowment attached to a math or temple consists merely of a charge on property and there is failure in the due performance of the service or charity, the trustee of the math or temple concerned may require the person in possession of the property on which the endowment is a charge, to pay the expenses incurred or likely to be incurred in causing the service or charity to be performed otherwise. In default of such person making payment as required, the Deputy Commissioner may, on the application of the trustee and after giving the person in possession a reasonable opportunity of stating his objections in regard thereto, by order, determine the amount payable to the trustee."*

This section, therefore, contemplates that "specific endowment" attached to a math or temple may consist merely of a charge on property. It is, therefore, not possible to accept the argument on behalf of the appellant that in order to constitute a "specific endowment" within the meaning of the Act there must be a transfer of title or divestment of title to the property.........."

18. In view of the judgment of the Hon'ble Supreme Court, it is clear that the "religious endowment" and "specific endowment" must be

construed so as to include both absolute and partial dedication of property in the light of Section 38 of the HR&CE Act (Section 32(1) of the old Act). Therefore, both the contentions of the learned Senior Counsel that it is only a partial dedication and therefore, it cannot be construed to be a specific endowment would stand rejected.

19. The Managing Trustee of Saadhu Chennimalai Thambiran Swamigal had approached the Deputy Commissioner of HR&CE (Administration) Department by filing O.A.No.10 of 1968 under Section 63 (b) and (d) of the Madras HR&CE Act, 1959 for a declaration that Chennimalai Thambiran Swamy Madam at Palani in Madurai District is only a Madam and a specific endowment and that he is the hereditary trustee of the same. After hearing the submissions of the Managing Trustee, the said petition was allowed declaring the Madam as a 'specific endowment' and appointing the petitioner therein, namely, A.G.Velayudha Gounder as a hereditary trustee. The present petitioners' ancestor in title have voluntarily approached the Department seeking declaration that the said Madam is a specific endowment under the provisions of the HR&CE Act. Now the descendants cannot now turn around and contend that it is not a specific

endowment.

20. The Hon'ble Supreme Court in a judgment reported in ***2019 (8) SCC 689 (M.J.Thulasiram and Another Vs. Commissioner, Hindu Religious and Charitable Endowment Administration and Another)*** in paragraph No.24 has held as follows:

> *"24. 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 "Bankers 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."*

21. In view of the judgment of the Hon'ble Supreme Court, it is clear that the descendants of A.G.Velayudha Gounder, who have inherited the hereditary trusteeship from him are estopped from contending that

Chennimalai Tambiran Swamigal Madam is not a specific endowment.

22. The Temple has raised an objection with regard to the maintainability of the petition under Section 34 of the Trust Act. However, the learned Senior Counsel has relied upon the orders of this Court in C.R.P.No.1770 of 1998, dated 27.07.1999 to contend that this Court was pleased to hold that Section 7 of the Charitable and Religious Trust Act, 1920 is similar to that of the provisions of Section 34 of the Indian Trusts Act. A perusal of the petition under the Trust Act would disclose that it has been filed only under Section 34 of the Indian Trusts Act, 1882 and not under Charitable and Religious Trust Act. In fact Section 5 (d) of the Tamil Nadu Hindu Religious and Charitable Act, 1959 clearly points out that the Charitable and Religious Trust Act, 1920 shall cease to apply to Hindu Religious Institutions and Endowments.

23. The Hon'ble Supreme Court in a judgment reported in ***2006 (1) SCC 257 (Joint Commissioner, Hindu Religious and Charitable Endowments, Administration Department Vs. Jayaraman and Others)*** in paragraph No.8 has held as follows:

"8. ....Even if the income therefrom had alone been dedicated to the temples, it would still be a religious trust or endowment and certainly not a private trust to which the Trusts Act, 1882 would apply. Section 1 of the Trusts Act, 1882 itself provides that nothing contained therein applies to public or private religious or charitable endowments. The endowment here was certainly not a private endowment since there is no case that the temples are private. The endowment was for a religious purpose, the conducting of poojas in the temples and the maintenance of the temples. Therefore, endowment was of public property for the benefit of public temples and the poojaris constituted the trustees. They were trustees imposed with the obligation of spending the income from the properties, for the poojas and maintenance of the temple. It was clearly a case of a public religious endowment and by virtue of Section 1 of the Act, the Trusts Act, 1882 would have no application.............."

24. The judgment of the Hon'ble Supreme Court was followed by a learned Single Judge of this Court in a judgment reported in ***2014 (5) L.W 786 (The Idol of Sri Renganathaswamy, Srirengam, Represented by its Executive Office / Joint Commissioner and Another Vs. M.Pandian and***

Another) in paragraph No.29 which is extracted as follows:

> *"29. It is clear case of a public religious endowment by virtue of Section 1 of the Act and the Indian Trusts Act would have no application. Therefore by no stretch of imagination, it was held that it was a private trust coming within the purview of the Trust Act. The District Judge has, therefore, clearly acted without jurisdiction in entertaining the application filed under Section 34 of the Indian Trusts Act. On this short ground, it is to be held that the order passed by the District Judge in the application filed under Section 34 of the Act granting permission to the first respondent to sell the property is one without jurisdiction................"*

25. In view of the judgments of the Hon'ble Supreme Court and the judgment of this Court, it is clear that the present application filed under Section 34 of the Indian Trusts Act, 1882 is not maintainable and the District Court has no jurisdiction whatsoever to entertain an application seeking permission of the Court to alienate a property which has been specifically endowed in favour of Palani Dandayuthapaniswamy Temple.

<u>Conclusion:</u>

26. In view of the above said deliberations, the order of the learned Principal District Judge, dated 28.06.2000 is hereby set aside and the

consequential sale deeds executed by the Court in favour of the purchasers are also set aside. The revenue authorities are directed to restore the patta in the name of the Trust. The purchasers are at liberty to approach the District Court, Dindigul by filing application in Trust O.P.No.7 of 1996 to get back their sale consideration which has been deposited in a fixed deposit at the direction of the Court without resorting to independent proceedings.

27. With the above said observations, this Civil Revision Petition stands allowed. There shall be no order as to costs.

17.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The District Judge,
Dindigul.

2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P.No.29 of 2003

17.11.2023