IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
11.09.2024	03.10.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 32937 & 46941 OF 2006
AND
M.P. NOS. 1 OF 2008 & 2 OF 2006 (2 NOS.)

W.P. NO. 32937 OF 2006

1. Ponnambala Chettiar
2. Natarajan Chettiar .. Petitioners

- Vs -

1. The Commissioner
Hindu Religious & Charitable Endowment
(Admn) Department
Nungambakkam High Road
Chennai – 34.

2. The Joint Commissioner
Hindu Religious & Charitable Endowment
(Admn) Department
Nungambakkam High Road
Chennai – 34.

3. Kumar .. Respondent

W.P. NO. 46941 OF 2006

V.Santha .. Petitioner

- Vs -

1. The Commissioner
Hindu Religious & Charitable Endowment
(Admn) Department
Nungambakkam High Road
Chennai – 34.

2. The Joint Commissioner
Hindu Religious & Charitable Endowment
(Admn) Department
Nungambakkam High Road
Chennai – 34.

3. Kumar .. Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records of the 1st respondent herein, the Commissioner, Hindu Religious & Charitable Endowments (Admn) Department, Chennai, issued in R.P. No.251/2005 dated 08.08.2006 confirming the order of the 2nd respondent herein issued in Se.Mu.Na.Ka. No.15213/04/E1 20.05.2005 and quash the same as illegal.

For Appellant : Mr. R.Subramanian in WP No.32937/2006

Mr. T.R.Rajagopalan, SC, for
M/s. S.T.Bharath Gowtham in
WP No.46941/2006

For Respondent : Mr. N.R.R.Arun Natarajan,
Spl. GP, HR & CE for RR-1 & 2
Ms. D.Kalaiselvi for R-3

COMMON ORDER

Assailing the order of the 2nd respondent in and by which the order of the 2nd respondent relating to sale of the properties, which were held to be illegal in the absence of specific sanction and approval of the authorities, as they were Kattalai properties and for appointment of Fit person by the appropriate authority under the provisions of the Hindu Religious & Charitable Endowments Act (for short 'HR & CE Act'), while the seller had filed W.P. No.32937/2006, the buyer had filed W.P. No.46941/2006.

2. The facts in a nutshell, which are relevant for appreciation of the case of the petitioners are as under :-

It is the case of the petitioners that one Pralaya Ramalinga Chettiar Chatram is a private endowment, which was established for the performance of kattalais during certain festivals in particular temples by the family of the petitioners and their ancestors. Thereafter, by means of family partition, the properties in question, which were alleged to be in endowment to the temple, were partitioned in favour of the petitioners in W.P. No.32937/2006 and subsequent to the said partition, a portion of the properties were sold to the petitioner in W.P. No.46941/2006. Alleging that the said sale is illegal and is against the terms of the endowment, as the properties, which are the subject matter of issue, were completely dedicated to the temples, the 3rd respondent filed a petition before the 2nd respondent seeking to retrieve the properties endowed to the temples.

3. In the said petition, the 2nd respondent, after affording opportunity to the parties and perusing the materials placed before him, held that the intention of creation of trust is of paramount consideration and is the main criteria to decide the character of the trust and when the recitals in the document of the year 1923 and 1967 having revealed that the properties are inalienable, the sale of the properties in any manner by the heirs of the executors is null and void unless prior permission of the Commissioner and approval of the Government

have been taken under the provisions of the HR & CE Act. Accordingly, while the 2nd respondent held that the sale is null and void, further directed that Fit person may be appointed by the appropriate authority for realising the properties which were sold without the permission of the 1st respondent and the Government.

4. Aggrieved by the said order, the petitioner in W.P. No.32937/2006, who are the heirs of Namachivayam Chettiar, while filed R.P. No.251/2005, while the petitioner in W.P. No.46941/2006, who is the purchaser of a portion of the said property filed R.P. No.263/2005. The 1st respondent, after due consideration of the materials, held that the properties were endowed for the performance of certain services, charities such as conduct of festival, abishekam, etc., in various Hindu temples and that there is an absolute dedication for performance of the charities which is revealed by the usage of words in the said endowment, which speaks about the intention of the executors and the said dedication being inalienable in view of the restriction imposed on the heirs of the executors of the deed, alienation is not permitted and, accordingly, confirmed the order passed by the 2nd respondent. Aggrieved by the said order, the present writ petitions have been filed before this Court.

5. Learned counsel appearing for the petitioners in W.P. No.32937/2006 submitted that the performance of endowment would not attract Section 6 (119) of the HR & CE Act. To substantiate the aforesaid contention, it is submitted by the learned counsel that the in the rent deed of the year 1923, the property is described as a dwelling house of the family, which was treated as a choultry and that being the case, Section 3 (1) of the HR & CE Act has to be invoked.

6. It is the further submission of the learned counsel that the subsequent partition deed of the year 1967 clearly imposes upon the family members to perform certain charities in the temple, which only contemplates a charge on the property and the said charge on the property will not come within the purview of the HR & CE Act.

7. It is the further submission of the learned counsel that the dedication is not absolute dedication of the property which alone would attract Section 6 (19) of the HR & CE Act. However, erroneously, the 1st respondent had treated the

chatram itself to have been absolutely dedicated for the performance of the kattalais, which is wholly erroneous.

8. It is the further submission of the learned counsel that the charge over the property has been created for the purpose of endowment and, therefore, there can be no bar for selling the property and deposit of the proceeds in a bank and to continue the performance of service in the temple. Therefore, the order of the 1st respondent is erroneous and deserves to be set aisde.

9. Learned senior counsel appearing for the petitioner in W.P. No.46941/06 submitted that the property in dispute was never used as a public trust property since 1923 and that there is no dedication of property to any religious or charitable institution.

10. It is the further submission of the learned senior counsel that the property was purchased by the petitioner in March, 1997 and several persons have been in occupation of the same as owners and since the date of purchase on

27.3.1997, several tenants were occupying the said property including a tenant, who was running a coffee hotel.

11. It is the further submission of the learned counsel that the rent deed of the year 1923 is an unregistered deed wherein it is mentioned that it is a chatiram for certain charities and in the absence of the deed having been registered, the same cannot be treated as dedication of property to any religious charity. It is the further submission of the learned senior counsel that though the proceeds out of the property is sought to be used for performance of certain festivals in different temples, however, there is no dedication of the property for the performance of the said festivals. Therefore, the performance of the said festivals cannot be brought within the ambit of Section 6 (19) of the HR & CE Act.

12. It is the further submission of the learned senior counsel that even if it is to be presumed that the dedication is absolute, it is only with relation to the activities to be performed in the temple and the mere change of hands of the property for monetary consideration, the monetary consideration is invested in the bank and the realisation of the proceeds is being utilised for performing the

kattalais in the temples and, therefore, the endowment activities are being carried on in the temple. The proceeds of the deposit would continue the performance of service in the temple and there being no break in the endowment activities in the temple, the order of the 1st respondent cannot be sustained.

13. It is the further submission of the learned senior counsel that to constitute a valid endowment there must be a transfer of ownership from the donor to the done and the executants should divest himself of the properties and if the same is not satisfied then it could not be inferred that there was a gift to any trust. In the present case, the ownership having not been transferred from the donor to the done, it could not partake the character of gift to any trust and, therefore, the dedication cannot be said to be an absolute dedication.

14. In fine, it is the submission of the learned senior counsel that without adverting to the above, the 1st respondent had erroneously confirmed the order passed by the 2nd respondent and in the absence of any clinching material to prove absolute dedication, the impugned order deserves to be interfered with.

15. In support of the aforesaid submissions, learned senior counsel appearing for the petitioner relied on the following decisions :-

i) *Sahu Madho Das & Ors. – Vs – Mukund Ram & Anr. (AIR 1955 SC 481);*

ii) *Menakuru Dasarathami Reddi & Anr. – Vs – Duddukudru Subbu Rao & Ors. (AIR 1957 SC 797);*

iii) *S.Shanmugam Pillai & Ors. – Vs – K.Shanmugam Pillai & Ors. (1973 (2) SCC 312);*

iv) *Sappani Mohamed Mohideen & Anr. – Vs – R.V.Sethusubramania Pillai & Ors. (1974 (1) SCC 615);*

v) *Commissioner, IT, West Bengal III, Calcutta – Vs – Sri Jaganath Jew (through Shabaits) (AIR 1997 SC 1523);*

vi) *R.M.AR.AR.RM.AR. Ramanathan Chettiar – Vs – The Commissioner for Hindu Religious & Charitable Endowments, Madras & Ors. (91 LW 337);*

vii) *Rajeevalochanchar Mahant of Uthirathi Srivaishnavite Mutt, Sriperumbudur & Anr. – Vs – D.Ramachar, Madras & Anr. (100 LW 672);*

viii) *V.Kannadasan – Vs – K.Swaminatha Pathar & Ors. (2007 (4) LW 435);*

ix) *Ramasamy & Anr. – Vs – Ms.Arulmughu Visweswaraswamy & Anr. (2015 (3) LW 924);*

x) *K.Mayilvel – Vs – The Commissioner, Hindu Religious & Charitable Endowments Department, Chennai & Ors. (2024 SCC OnLine Mad 4015); and*

xi) *IDOL of Sri Renganathaswamy – Vs – P.K.Thoppulan Chettiar, Ramanuja Koodam Anandha Trust & Ors. (2020 (17) SCC 96)*

16. Per contra, placing reliance on the counter filed by the 2nd respondent, learned standing counsel for the 1st and 2nd respondents submit that Pralaya Ramalinga Chettiar was the one who established the Pralaya Ramalinga Chettiar Charity for the purpose of performing certain "Dharma Karyams/Charities" and the family property was given to the charity. It is the further submission of the learned standing counsel that the said fact is evidenced through the partition deed dated 6.5.1893 (Document No.2261 of 1893), which is the only document available now. It is the further submission of the learned standing counsel that vide the aforesaid partition deed dated 6.5.1893, the following charities are to be performed :-

i) *Conducting Water Pandal*

ii) *Imparting Vedas to Brahmin Children*

iii) *Abishegam, Archana, Mandagapadi, Chitrai Mandagapadi in certain temples noted therein*

iv) *Provision of food and cloth to Brahmin children*

v) *Annadhanam on each Dwadasi day for 12 Brahmins*

(Emphasis Supplied)

17. It is the further submission of the learned standing counsel that after the death of the executor, Pralaya Ramalinga Chettiar, his son Pralaya Ponnambala Chettiar @ Chidambaram Chettiar and, thereafter, his son Namasivayam Chettiar were doing the said charities.

18. It is the further submission of the learned standing counsel that using the similarity in names, one Namasivayam Chettiar, who belonged to Rathakottagai Veedu Vagayara, created a forged partition deed dated 5.2.1967 (document No.384 of 1967) in his own name and in the name of his heirs and created a fresh charity with the properties of Pralaya Veedu Vagayara. There was no parent deed to the said forged document dated 5.2.1967 and there is also no proof of any property being owned by Rathakottagai Veedu Vagayara Namasivayam prior to 1967 to create a fresh charity.

19. It is the further submission of the learned standing counsel that with the aid of the forged documents, the property was sold to various persons and which was put on lease to lessees/tenants, as detailed in the counter. It is further submitted that placing reliance on the decision of this Court in the case of ***V.Kannadasan & Ors. – Vs – Sirajinnisa Beevi (2007 (4) LW 435)***, wherein it was held that the grant is personal and there is absolutely no charge over the property, the Court had called upon the standing counsel to get instructions from the 2nd respondent.

20. It is the submission of the learned standing counsel that the judgment of this Court related to rent control proceedings with regard to induction of tenants by Rathakottagai Veedu Vagayara and the point for determination in the revision petition was not whether the demised premises is a public trust. Further, the respondents are not parties in the said rent control proceedings. However, the persons interested, placed the forged document at the disposal of this Court in the Civil Revision Petition and had obtained favourable orders by this Court rendering a finding that the grant was not personal.

21. However, it is the submission of the learned standing counsel that the partition deed of the year 6.5.1893, which is the basis of the properties being given to charities for the performance of the Kattalais clearly mentions that the income derived from the properties should be utilised for the charities and any shortfall in the income from the said properties, the income from the other properties were to be used for carrying out the charities.

22. It is the contention of the learned standing counsel that exploiting the names, viz., Rathakottagai Namasivayam, who worked under Pralaya Namasivayam Chettiar as Clerk, the partition deed dated 5.2.1967 was created which formed the basis for the order passed in the civil revision petition. It is the further submission of the learned standing counsel that on the basis of the forged documents, the properties of the charity were being sold by the petitioners since 2010 and 2012. It is further submitted that the petitioners were not performing the charities of the temples, which were dedicated with the charities vide the partition deed of the year 1893, but it is the descendents of Pralaya Ramalingam Chettiar, who are doing the charities till this day.

23. It is the further submission of the learned standing counsel that the petitioner in W.P. No.46941/06, who is the purchaser of the property belonging to Pralaya Ramalingam Chettiar Charity from the petitioner in W.P. No.32937/06, who does not have any right or title over the said property. The 3rd respondent in both the petitions is a lessee/tenant of the property sold by the petitioner in W.P. No.92937/06. The petitioners in both the writ petitions are trying to defraud the Pralaya Ramalinga Chettiar charity.

24. It is the further submission of the learned standing counsel that to sell the assets of a public religious institution, the prior permission of the 1st respondent u/s 34 of the HR & CE Act needs to be obtained. However, without getting such permission the petitioner in W.P. No.32937/06 had sold a portion of the property illegally to the petitioner in W.P. No.46941/06.

25. The petitioners in W.P. No.32937/06 not being the descendents of Pralaya Ramalinga Chettiar, but belong to Rathakottakai Veedu Vagayara, they do not have any right over the property, which has been endowed with the temples

and they are merely encroachers, who have infringed the property for several years. The present value of the property belonging to the charity is worth more than Rs.1 Crore and the petitioners are trying to usurp the properties of the charity by defrauding the temples and rightly appreciating the materials above, the 2nd respondent had passed the order which has been rightly confirmed by the 1st respondent and, therefore, the same requires no interference at the hands of this Court.

26. In support of the aforesaid submission, more particularly relating to the character of the dedication of the property, learned standing counsel placed reliance on the decision of the apex Court in ***Idol of Sri Renganathaswamy – Vs – P.K.Thoppulan Chettiar & Ors. (2020 (17) SCC) 96)***.

27. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on behalf of the parties.

28. The issue that arises for determination in the present case is –

"Whether the properties that have been dedicated to the temple by Pralaya Ramalinga Chettiar Charity is an absolute dedication, thereby, attracting the provisions of the HR & CE Act."

29. Before deciding the aforesaid issue, certain aspects, which have a bearing on the case requires to be considered. It is the specific case of the respondents that originally the properties belonged to Pralayan Ramalingam Chettiar, who had created a partition deed way back on 5.9.1983 in which certain properties, which are the subject matter of the present *lis* were dedicated for the performance of certain Kattalais in various temples. It is the specific case of the respondents that the partition deed dated 5.2.1967 entered into between the Namasivayam Chettiar and his two sons Ponnambalam Chettiar and Chidambaram Chettiar is a forged document.

30. Though such a contention has been advanced by the learned standing counsel for the respondents, however, it is to be pointed out that the 1st respondent has relied on the said document to hold that the deed of dedication is

absolute which does not permit any alienation. The aspect of forgery, as alleged by the respondents have not been countered by the petitioners in W.P. No.32937/06. However, they have relied on the partition deed dated 5.2.1967 to contend that the dedication is not absolute and, therefore, they are entitled to sell the property and the proceeds could very well be utilised for the purpose of performing the Kattalais.

31. Be that as it may. In the above backdrop of the contentions, it becomes necessary for this Court to ascertain the character of the charity so as to come to a conclusion as to the right of the petitioners to alienate the property.

32. The manner in which the dedication of the property to a trust has to be looked into has been detailed by the Apex Court in *Menakuru Dasaratharami Reddi case (supra)* and the relevant portion of the said decision is quoted hereunder :-

> *"5. The principles of Hindu Law applicable to the consideration of questions of dedication of property to charity are well settled. Dedication to charity need not necessarily be by instrument or grant. It can be established by cogent and satisfactory evidence of*

conduct of the parties and user of the property which show the extinction of the private secular character of the property and its complete dedication to charity. On the other hand, in many cases Courts have to deal with grants or gifts showing dedication of property to charity.

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 use of the word "trust" or "trustee" is no doubt of some help in determining such intention; but the mere use of such words cannot be treated as decisive of the matter.

Is the private title over the property intended to be completely extinguished ? Is the title in regard to the property intended to be completely transferred to the charity ? The answer to these questions can be found not by concentrating on the significance of the use of the word "trustee" or "trust" along but by gathering the *true intent of the document considered as a whole. In some cases where documents purport to dedicate property in favour of public charity, provision is made for the maintenance of the worshipper who may be a member of the family of the original owner of the property himself and in such cases the question often arises whether the provision for the maintenance of the manager or the worshipper from the income of the property indicates an intention that the property should retain its original character and should merely be burdened with an obligation in favour of the charity.*

If the income of the property is substantially intended to be used for the purpose of the 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 public 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.

It is naturally difficult to lay down a general rule for the solution of the problem. Each case must be considered on its facts and the intention of the parties must be determined on reading the document as a whole."

(Emphasis Supplied)

33. The Apex Court, in *Idol of Sri Renganathaswamy case (supra),* through His Lordship D.Y.Chandrachud, J., speaking for the Bench, with regard to the character of the dedication, whether it is public or private, held as under :-

> *"14. During the lifetime of Thoppulan Chettiar, the charitable activities were financed out of the income arising from the suit property. However, the Deed of Settlement makes no mention of the income arising out of the suit property and instead creates an obligation on the settlor's legal heirs to fund the charitable activities out of their own business incomes. Therefore, in the present case, no question arises of any endowment of "money" and we only have to deal with the question of whether the suit property itself was endowed. Accordingly, we now analyse the provisions of the deed and turn to the question of whether the suit property was endowed, and if it was, whether such endowment was in favour of a specific temple or for the performance of "religious charity".*
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> *16. The Deed of Settlement must be examined as a whole to determine the true intention of the settlor. Where the settlor seeks to divest himself of the property entirely for a religious purpose, a public religious charity is created. In the present case, the Deed of Settlement creates an absolute prohibition on the subsequent sale or mortgage of the suit property. The Deed of Settlement provides that, "The settler purchased the punja land*

mentioned in the Schedule of property... for the performance of charity work in reference to Sri Renganathanswamy sanctum". The property outlined in the Schedule of the Deed of Settlement is described as, "Property allotted for charity work". With respect to the legal heirs, the Deed of Settlement creates an obligation on the settlor's legal heirs to continue the charitable activities at the suit property out of their business incomes. The settlor had a clear intent to divest himself and his legal heirs of the property and endow it for the continuation of the charitable activities at the suit property. The purpose of the endowment was to carry on charitable work. The Deed of Settlement obligates the legal heirs to continue the charitable activities at the suit property.

15. Having established that the Deed of Settlement created an endowment for charitable purposes, we now turn to whether the endowment was a "specific endowment" as defined Under Section 6(19) of the Act of 1959. As noted above, a "specific endowment" can be for either a specific charity or service associated with a particular math or temple, or alternatively, can be for the performance of "any other religious charity". Some guidance on how to distinguish an endowment to a particular temple and a "religious charity" generally can be found in the Act of 1959 itself. The term "religious charity" has been defined in Section 6(16) as follows:

> *6. (16) "religious charity" means a public charity associated with a Hindu festival or observance of a*

religious character, whether it be connected with a math or temple or not;

The definition also clarifies that a "religious charity" may be distinct from a charity associated with a particular temple, and for a charity to constitute a "religious charity", there is no requirement for the public charity to be connected with a particular temple or a math. In terms of the statutory definition, for a charity to constitute a "religious charity" under the Act of 1959, two conditions must be met. First, it must be a "public charity" and second, it must be "associated with" a Hindu festival or observance of a religious character. If these two conditions are satisfied, a charity is a "religious charity".

* * * * * * *

19. Where the beneficiaries of a trust or charity are limited to a finite group of identifiable individuals, the trust or charity is of a private character. However, where the beneficiaries are either the public at large or an amorphous and fluctuating body of persons incapable of being specifically identifiable, the trust or charity is of a public character. This test has been consistently followed by subsequent benches of this Court, most recently in a three judge Bench decision of this Court in M J Thulasiraman v. Hindu Religious & Charitable Endowment Admn. In the present case, the Deed of Settlement states that the charity is to be carried for the benefit of the 'devotees' who visit during certain Hindu religious festivals. The charity is one which benefits the public and the beneficial interest is created in an uncertain and fluctuating *body of persons. The "devotees" as a class of beneficiaries are not definitive and therefore, the Respondent trust is a public trust.”*

34. From the aforesaid decision, it clearly transpires that the deed of settlement must be examined as a whole to determine the true intention of the settlor and where the settlor seeks to divest himself of the property entirely for a religious purpose, a public religious charity is created. The specificity of the charity to be a absolute dedication of partial dedication will be determinable on the basis of the deed of settlement for which the charity has been created. When the charity is created for the benefit of the public and to do certain acts, it becomes a public trust.

35. Though very many decisions have been relied on by the learned senior counsel for the petitioner in W.P. No.46941/06, however, this Court is not multiplying the said decisions by extracting the same, as the crux of the issue has been discussed in the decisions referred above and the other decisions relied on, on behalf of the petitioner are not applicable to the facts in the present case.

36. Returning back to the issue in the present case, the recitals in the earliest document, viz., the family partition deed of Pralayan Ramalingam Chettiar, dated 5.9.1983, clearly reveals that the amounts realised through the chatiram were sought to be utilised for the purpose of performing the Kattalais, which had been followed by the ancestors of Ramalingam Chettiar. Not leaving at that point, the deed had prescribed the charities for which the amount realised through the chatiram has to be utilised, which has been detailed in the earlier part of the order. From the above it is clear that there is not only a clear recital about the usage of the amounts realised through the chatiram for the purpose of charity, but what are the charities for which the amount has to be utilised has also been detailed.

37. Though according to the respondent this is the earliest document in and by which the properties have been given to the temples for doing the Kattalais and charities, by the partition deed dated 5.2.1967, the ancestors of the petitioners, as has been alleged, have partitioned the properties. However, in the said partition deed dated 5.2.1967, there is no whisper about the parent document or how and from the properties came to the hands of the petitioners,

though conveniently it has been specified that the properties are ancestral properties.

38. Even without admitting that the said partition deed is valid, though it is contended by the petitioners that the partition deed has the approval of this Court through the order in CRP (NPD) Nos.1360 to 1363/2007 ***(V.Kannadasan & Anr. – Vs – A.Malik & Ors. (2007 (4) LW 435)***, with which this Court is not concerned, as the said revision petition is with respect to rent control proceedings and it does not in any way deal with the dedication of the properties in favour of the temple, a perusal of the partition deed dated 5.2.1967 reveals that there is a categorical assertion between the persons partitioning the property that which has been endowed to the temples for performing the kattalais shall not be alienated in any form, be it on lease, guarantee, sale, etc. In fact, there is a clear stipulation that none of the descendants of the persons, who are partitioning the property have any right to create any lease, guarantee or sell the property. There is a further stipulation in the said partition deed that if the person, who has been given the power to perform the kattalais by utilising the amounts which are realised from the properties, which have been dedicated to

the temple, the other heirs are to perform the kattalais and, thereafter, recover the money from the person conferred with the duty to perform the kattalais by using the amount realised from the properties so dedicated. In fact, the aforesaid categorical stipulation in the partition deed dated 5.2.1967 had been relied upon by the 1st respondent to hold that the dedication to the temple is absolute dedication.

39. In this regard, already this Court has extracted the decisions of the Apex Court as to how the nature and character of the dedication has to be decided. As held by the apex Court in *Idol of Sri Renganathaswamy case (supra),* where the charity is created for the benefit of the public and to be performed during the religious festival days, specified by the executor, then the trust so created would partake the character of public trust.

40. Further, as held by the Apex Court in *Menakuru Dasaratharami Reddi case (supra),* the documents, be it the parent document of the year 1893 or even the alleged forged document of the year 1967, both the documents, in clear and unambiguous terms, have dedicated the property for carrying out the kattalais, as

prescribed in the said documents with clear stipulation that the said kattalais have been performed even by their ancestors and that it has to be continued without the property being alienated either by way of lease, guarantee, sale, etc., and that none of the heirs have been given the right to alienate the property and that the kattalais have to be carried on irrespective of the person, who had been entrusted with the performance of the kattalai, the said terms in the deed clearly portrays that the dedication of the properties, which have been made to the temple for the performance of the kattalais is an absolute dedication and it cannot, by any stretch, be taken to mean that it is a partial dedication.

41. The contention of the learned senior counsel for the petitioner, who is the purchaser, that without transfer of ownership from the donor to the done by the executants divesting himself of the properties, there is no transfer or gift to any trust pales into insignificance in view of the ratio laid down by the Apex Court in *Idol of Renganathaswamy case (supra),* wherein, in crystal clear terms the Apex Court has held that *"The property outlined in the Schedule of the Deed of Settlement is described as, "Property allotted for charity work". With respect to the legal heirs, the Deed of Settlement creates an obligation on the settlor's legal*

heirs to continue the charitable activities at the suit property out of their business incomes. The settlor had a clear intent to divest himself and his legal heirs of the property and endow it for the continuation of the charitable activities at the suit property. The purpose of the endowment was to carry on charitable work. The Deed of Settlement obligates the legal heirs to continue the charitable activities at the suit property." In the same terms, the present deed is also couched and, therefore, the same analogy has to be drawn hereto and merely because there is no transfer of ownership necessarily be not meant to mean that there is no transfer of ownership to any trust. When not only the executants, but also the legal heirs and the descendants of the executants have been prevented from alienating the properties, which have been dedicated for charity work of the temples, an unalienable right stands created on the temple and the petitioners, who are the descendants of the executants of the partition deed cannot get a much better right than the executants of the partition deed and, therefore, they are estopped from alienating the properties, which have been absolutely dedicated to the temples for the performance of charities/kattalais.

42. Once this Court comes to the conclusion that the dedication of the properties is absolute, then Section 6 (19) of the HR & CE Act stands attracted and the endowment being a specific endowment, the same cannot be alienated with the permission of the 1st respondent and the Government. Further, it is also to be pointed out that the charity in the present case would attract Section 6 (16) of the HR & CE Act, wherein *"religious charity"* has been defined which means a public charity associated with a Hindu festival or observance of a religious character, whether it be connected with a math or temple or not. In the present case, all the acts, which have been tabled in the deed of dedication, which is absolute, pertains to act related to religious activity, and is related to a Hindu festival or observance of a religious character and the twin conditions enumerated therein being satisfied, the charity would be a religious charity. Therefore, all acts, which are connected with the religious charity, as it brings within it various temples towards which Kattalais have been specified, the dedication is an absolute dedication and would not be construed to be a partial dedication, as there is no material to infer such a dedication. The above materials in the deeds, be it the 1893 document or the alleged forged document of 1967, both the documents contain a clear stipulation to the effect that it is an

absolute dedication and no alienable right is given to the heirs of the executants to part away with the property, the act of the petitioners in W.P. No.32937/06 selling a portion of the property to the petitioner in W.P. No.46941/06 is wholly impermissible, without there being an permission/approval granted by the 1st respondent and the Government. Therefore, the said alienation made by the petitioners in W.P. No.32937/06 in favour of the petitioner in W.P. No.46941/06 is unsustainable and the same deserves to be interfered with.

43. Though the decision of the learned single Judge of this Court in *Kannadasan case (supra)* is referred to impress upon this Court that already the learned single Judge therein had held that the revision petitioners have not proved their case and that there is no absolute dedication, the same cannot be pressed into service in this case for the reason that the said case pertains to rent control proceedings and before the learned single Judge, neither the heirs of Pralayan Ramaliga Chettiar nor the Hindu Religious & Charitable Endowments Department were parties; rather the tenants had been parties and based on the documents presented by either side, a decision had been arrived at by the

learned single Judge. However, the same would not in any way bind the respondents herein.

44. Likewise, the decision in O.S. No.24/2005 with regard to the plaintiffs therein not proving their descendency of Pralayan Ramalinga Chettiar having not been proved, relief was not granted. In fact, even in the said suit, in relation to Ex.A-3, the partition deed, which has been registered on 18.03.1967, there is a clear mentioning that the properties mentioned in 'A' schedule therein, certain charities shall be performed for the temples and nobody has right to alienate the properties. Therefore, not only the power of alienation of the properties is withdrawn, but a clear stipulation is made that the properties would be utilised for doing certain charities, which as mentioned by this Court are public charities and, therefore, the trust, would inexplicably be a public trust, which is for the benefit of the public. The decision in the aforesaid suit leans very much in favour of the respondents, though in actuality, the suit stood dismissed against the plaintiffs therein.

45. In view of the discussions made above and the reasons aforesaid, there are no merits in the present writ petitions and, therefore, the writ petitions are liable to be dismissed confirming the impugned order passed by the 1st respondent. Accordingly, the writ petitions are dismissed and the order passed by the 1st respondent confirming the order passed by the 2nd respondent is upheld. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

03.10.2024

Index : Yes / No
GLN

To

1. The Commissioner
Hindu Religious & Charitable Endowment
(Admn) Department
Nungambakkam High Road
Chennai – 34.

2. The Joint Commissioner
Hindu Religious & Charitable Endowment
(Admn) Department
Nungambakkam High Road

Chennai – 34.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. NOS.32937-46941 OF 2006

Pronounced on

03.10.2024