(1964) 09 MAD CK 0033

Madras High Court

Case No: Appeal No''s. 272 and 357 of 1961

Sri Chidambareswara Sivagami Ambigai Temple		APPELLANT
	Vs	
Commissioner, Hindu Religious and Charitable Endowments, Madras		RESPONDENT

Date of Decision: Sept. 29, 1964

Acts Referred:

- Constitution of India, 1950 - Article 226
- Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 - Section 6(17)

Citation: AIR 1966 Mad 99 : (1965) ILR (Mad) 404

Hon'ble Judges: Ramamurti, J; Ramakrishnan, J

Bench: Division Bench

Judgement

Ramakrishnan, J.

(1) These appeals were heard together, because the points of law that arise in them are substantially similar. They are directed against the

judgments and decrees of the learned Subordinate Judge, Pudukottai in O. S. 7 of 1960 and O. S. 48 of 1959 respectively. The plaintiff is the

appellant.

(2) App. No. 272 of 1961: In the suit O. S. No. 7 of 1960 to which this appeal relates the managing trustee of a Siva temple at Nachandupatti in

the former Pudukottai State is the plaintiff and his prayer is to set aside the order of the respondent, the Commissioner, Hindu Religious and

Charitable Endowments, Madras, declaring the suit temple to be a public temple. There is also a prayer in the alternative for declaring the

Karaikars of seven Karais as the hereditary trustees of the suit temple. The contentions of the plaintiff were briefly the following:

Certain Nattukottai Chettiar families, 50 in number, who were Saivites by faith, founded the suit temple and brought a Sivalingam from

Chidambaram and installed it therein. Subsequently, they renovated the temple at great cost. The temple is the exclusive private temple of these

Nattukottai Chettiar families residing in Nachandupatti, and the members of other communities do not worship in the temple as of right. They could

worship only with the consent of the aforesaid families. The said families belong to 5 out of 9 temple clans into which the Nattukottai Chettiar

community are divided. The defendant Board denied the allegations. It contended that in any event, Nattukottai Chettiars of the Nachandupatti

formed a section of the Hindu community, and therefore, a temple founded for their benefit, would fall within the definition of ""Public temple"" in S.

6(17) of Act XIX of 1951 (hereinafter called the Act) which corresponds to S. 6(25) of Act XXII of 1959.

(3) The learned Subordinate Judge found that there was no proper evidence to show that the 50 families of Nattukottai Chettiars founded the suit

temple. The evidence before the learned Subordinate Judge showed that not merely Nattukottai Chettiars belonging to 5 out of the 9 temple clans

residing in Nachandupatti had a right to worship, but Nattukottai Chettiars of the aforesaid 5 temple clans even from outside the village could

worship in the temple as of right. That would suffice, in the view of the learned Subordinate Judge, the conclusion that the temple is a public one.

There was also oral evidence that members of the Brahmin community also were allowed to worship in the temple without any let or hindrance,

and according to the lower court they would go against the plaintiff''s contention about the temple being private. The learned Subordinate Judge,

thereafter found that the temple was a public temple. He also rejected the contention put forward by the plaintiff that the Nattukottai Chettiars of

Nachandupatti formed a religious denomination and as such they could invoke Art. 26 of the Constitution in their favour. The suit was dismissed

with costs. The plaintiff appeals from the above decision.

(4) The point for determination in this appeal is whether the suit temple is a private one as claimed by the plaintiff.

(5) The principles for decision in such cases have been well established by several decisions of this court as well as of the Supreme Court. In the

first place, unlike the temples in Malabar and in Kerala, there is a presumption in the case of temples in South India, that they are public, and the

onus is on the party, who asserts their private nature, to prove it-- Ramaswami Jadaya Gounder Vs. Commissioner, Hindu Religious and

Charitable Endowments Administration and Another, . This principle has been laid down many years ago in the Privy Council decision in AIR

1934 230 (Privy Council) , and has been followed thereafter in the decisions of this High Court. Next, a temple dedicated for the user of a

particular section of the Hindu community can be a public temple, as defined in the Hindu Religious and Charitable Endowments Act (S. 6(17)).

An early decision on this subject is reported in Muthiah Chetti v. Perianan Chetti, 4 Mad LW 228: AIR 1917 Mad 426 . It dealt with a temple

called Ilavathakudi temple which was claimed by certain families of Nattukottai Chettiars as their private temple. Sir John Wallis C. J. delivering the

judgment of the Bench, observed--

There is, therefore, in our opinion, no case for holding that the temple is the private property of the Ilayathakudi Kovil Nagarathars. Even if it had

been shown that the temple was founded for the use of this particular section of the caste, which consists of several families not shown to be

otherwise than very distantly related to one another, we should as at present advised, be inclined to hold that they are a section of the public.....

This decision has been followed by another Bench of this court in N.C. Ramanatha Iyer, President, Nurani Grama Jana Sabha Nurani Village Vs.

Board of Commrs. for Hindu Religious Endowments, Madras, . It dealt with a temple in Palghat in Malabar, which was claimed by the Tamil

brahmins residing in Nurani village as their private temple. The principle laid down in 4 Mad LW 228 : AIR 1917 Mad 426 was adopted by

Govinda Menon J., who delivered the opinion of the Bench. This principle has also been applied in two recent judgments relating to temples in

villages in Pudukottai State claimed by Nattukottai Chettiar community in those villages as their private temple. In A. S. No. 12 of 1958 (Mad),

such a claim was put forward before a Bench of this court by members of that community for a temple in Kuruvaikkondanpatti village. The learned

Judges observed--

A place of public religious worship dedicated to the benefit of any section of the Hindu community or used as or right by any section of such

community is a temple within the meaning of its definition under the Act. There cannot be any doubt that the Nagarathar community of the

Kuruvikkondanpatti village is a section of the Hindu community. If the members of this community admittedly founded the temple for their benefit

and were carrying on worship at that temple the statutory requirement is certainly complied with.

(6) This view was followed in A. S. No. 13 of 1958 (Mad), to which one of us was a party, a case which related to a temple which was claimed

by the Nagarathars in Vendanpatti village as their private temple. The decision in A. S. No. 13 of 1958 (Mad) was confirmed by a Bench in L. P.

A. No. 98 of 1961 (Mad).

(7) In Deoki Nandan Vs. Murlidhar, , a question arose before the Supreme Court for decision whether the Thakurdwara of Sri Radhakrishnaji in

the village of Bhadesia in the District of Sitapur was a private temple or a public one. Venkatarama Aiyar, J. giving the decision of the Supreme

Court observed--

It will be convenient first to consider the principles of law applicable to a determination of the question whether an endowment is a public or

private, and then to examine, in the light of those principles the facts found or established. The distinction between a private and a public trust is

that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former

the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of

ascertainment. The position is thus stated in Lewin on Trusts, 15th Edn., pages 15 and 16.

''By public must be understood such as are constituted for the benefit either of the public at large or some considerable portion of it answering a

particular description. To this class belong all trusts for charitable purposes, and indeed public trusts and charitable trusts may be considered in

general as synonymous expressions. In private trusts the beneficial interest is vested absolutely in one or more individuals who are, or within a

certain time may be, definitely ascertained''.

It will be clear from these decisions that even if there is a temple founded by a section of the Hindu community and they claim exclusive right of

worship in that temple, still the definition is S. 6(17) of Act XIX of 1961 will apply as long as that particular section of the community is clearly

marked and constitutes a considerable section of the Hindu public. In the present case, it was alleged that originally there were 50 families of

Nagarathars, but at present there are 300 pullis (a pulli representing a unit of husband, wife and children) of the community living in Nachandupatti

village. But if we take the evidence of P. W. 2 also into consideration, this section of the Hindu public is widened further and will include among the

beneficiaries Nattukottai Chettiars belonging to 5 out of 9 temple clans in that village and also outside. This will form a group of the Hindu

community adequate in number and sufficiently distinctive to constitute a section of the community for whose benefit the dedication of the temple

are necessarily to be inferred. Though a claim was put forward in the lower court, there was no proof, of actual dedication. Only continued user as

of right by the section of the Hindu community as aforesaid has been urged. Of course, there is a reference in the judgment of the lower court, to

members of the other communities like brahmin community being allowed to worship in the temple.

(8) The learned Government Pleader referred to the decision of Varadachariar J. in Bhavanam Nagireddi and Others Vs. The Board of

Commissioner for Hindu Religious Endowments, where at page 488 the learned Judge observed--

So long as there was no intention to exclude the right of worship--on the other hand, as I have endeavoured to show, it was expected that

outsiders may worship in the temple and even perform kainkaryams--the restriction of the right of outsiders to interfere in the management of the

temple is not a determining act for the present purpose.

In the present case, there is no evidence of any intention of exclude the right of worship by outsiders in the temple and this circumstance has been

relied upon by the learned Government Pleader.

(9) The decision in Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others, , dealt with the temple at Nathdwara in Rajasthan.

Gajendragadkar J. (as he then was), who delivered the opinion of the Bench, observed:

Where evidence in regard to the foundation of the temple is not clearly available, sometimes judicial decisions rely on certain other facts which are

treated as relevant. Is the temple built in such an imposing manner that it may prima facie appear to be a public temple? The appearance of the

temple of course cannot be a decisive factor; at best, it may be a relevant factor. Are the members of the public entitled to an entry in the temple?

Are they entitled to take part in offering service and taking Darsan in the temple? Are the members of the public entitled to take part in the festivals

and ceremonies arranged in the temple? Are their offerings accepted as a matter of right? The participation of the members of the public in the

Darsan in the temple and in the daily acts of worship or in the celebrations of festival occasions may be a very important factor to consider in

determining the character of the temple. In the present proceedings, no such evidence has been led and it is, therefore, not shown that admission to

the temple is controlled or regulated or that there are other factors present which indicate clearly that the temple is a private temple. Therefore, the

case for the Tilakayat cannot rest on any such considerations which, if proved, may have helped to establish either that the temple is private or is

public.

Applying the above principles to the present case, it is clear that in regard to the temple in Nachandupatti, even if it was founded exclusively for the

benefit of the members of the Nattukottai Chettiar community belonging to 5 temple clans, the dedication of the temple to the community and the

worship by the members of the community as of right in the temple, would still have make it a public temple, as the members constitute a section of

the Hindu community as contemplated in the definition in S. 6(17) of the Act.

(10) Learned counsel Sri Sundaram Iyer, appearing for the appellant, has submitted that even though contentions were raised in the lower court

regarding a hereditary right in the Kariyakars to manage the temple, and regarding the temple being a denominational one within the meaning of

Art. 26 of the Constitution, these questions are not really necessary for a decision about the public or private nature of the temple, and that the

decision on these two points may be left open. The learned Government Pleader has no objection to this course. Accordingly, we affirm the

decision of the lower court that the suit temple is a public temple, and dismiss A. S. 272 of 1961; but the question about the hereditary right of

management by the Kariyakars and the question of the applicability of Art. 26 of the Constitution will be left open. If no occasion arises for dealing

with the hereditary right, the Endowments Board will bear in mind the principles stated by Varadachariar J. in Bhavanam Nagireddi and Others Vs.

The Board of Commissioner for Hindu Religious Endowments, :

I quite sympathise with the apprehensions of the petitioners, who have undoubtedly spend their property in founding this institution and interested

themselves in its maintenance, that the declaration made by the Board under S. 84 may at same time prejudice their rights in the institution. I can

only express the hope that the Board will respect their sentiments and may not find any necessity or occasion to interfere with their customary rights

or rights of management.

(11) App. No. 357 of 1961: This appeal deals with a temple in Andakudi village, in which a claim similar to the one in the first appeal is put

forward by the Nagarathars residing in the village of Andakkudi, in Pudukottai State. Here also the claim was put forward that the temple was

founded by the Andakudi Nagarathars, that they improved it at considerable cost and that only the members of the families of the Andakkudi

Nagarathars had a right to worship in the temple and therefore it was a private temple. At the present moment, Nagarathars of Andakudi village

comprise, according to the evidence, of 137 pullis, a pulli representing a unit of husband, wife and children. The same principles, which we have

just now adverted to while disposing of A. S. 272 of 1961, will apply to this case also.

Learned counsel for the appellant, however, urged that in the present case, there were certain other circumstances to distinguish this temple from

the Nachandupatti temple. Reference was made to the fact that in a list prepared by the Pudukottai Darbar (Ex. A-1) at the time when the village

was in the former Pudukottai State in 1914, this temple was shown among private temples. Reference was also made to the correspondence by

the Peishkar of the Pudukottai State, marked as Ex. A-28 in which the Peishkar had stated that from the Tahsildar''s report it would be seen that

the suit temple was a private temple, of Nattukottai Chettiars. The learned Government Pleader submits that this list was prepared only to

distinguish the temples owned by the State of Pudukottai from other temples not so owned, and that the entry in the list would only establish that

the temple, was not State-owned but it would not have any bearing on the present question of its public or private nature within the definition in S.

6(17) of the Act. We accept this submission as valid. Reference was made by the learned counsel for the appellant to certain prior statements

made by a number of people belonging to certain communities other than Nattukottai Chettiars and these have been marked as Exs. A-11 to A-

16. There is no evidence as to whether the deponents are alive or dead. Strictly speaking, one could hold that there had been no proper proof of

these statements in the absence of the examination of the deponents or in the absence of evidence that they are dead besides the circumstances

which would make them admissible, under S. 32 of the Evidence Act. Apart from this, even in these statements, the deponents say that the temple

is a private temple of the Nagarathars. But that would not be inconsistent with the temple being used as of right by a section of the Hindu

community comprised of all the Nagarathars of a particular village. The learned Government Pleader also draws our attention to some of these

statements, where the deponents admitted that they would not press their claim to ""temple honours"". According to learned Government Pleader,

from a reading of these statements, it would appear that the deponents were only giving up their right to receive the temple honours in favour of the

Nagarathars of Andakudi, but by implication, they continued to retain the right of worship. This would, according to the learned Government

Pleader, go against the claim of the plaintiff that only Nagarathars of Andakudi had exclusive right of worship. Though we do not wish to rest our

decision in this case on such an implied admission by the deponents in these statements, we still are of the opinion that there is some force in the

point thus urged by the learned Government Pleader. We confirm the decision of the trial court in this case and dismiss the appeal. As in A.S. 272

of 1961, in this appeal too the question about the right of hereditary trusteeship will be left open for decision in appropriate proceedings, bearing in

mind the observations of Varadachariar J. In Bhavanam Nagireddi and Others Vs. The Board of Commissioner for Hindu Religious Endowments,

to which we have adverted to earlier. In the circumstances, there will be no order as to costs in both the appeals.

(12) Appeals dismissed.