

Gopinathan Vs. Raman

Gopinathan Vs. Raman

SooperKanoon Citation : sooperkanoon.com/720935

Court : Kerala

Decided On : Apr-02-2004

Reported in : 2004(2)KLT511

Judge : K.S. Radhakrishnan and; Pius C. Kuriakose, JJ.

Acts : [Religious and Charitable Endowments Act, 1951](#) - Sections 6(17), 57, 61, 62, 62(1) and 62(2)

Appeal No. : M.F.A Nos. 572 and 593 of 2003 and O.P. No. 27381 of 1999

Appellant : Gopinathan

Respondent : Raman

Advocate for Def. : T.K. Venugopalan and; V. Devan, Advs. and; Mohan C. Meno

Advocate for Pet/Ap. : P.N.K. Achan, Sr. Adv.,; K. Mohana Kannan,; T. Sethumadh

Judgement :

K.S. Radhakrishnan, J.

1. Whether the suit filed under Section 62(2) of the Madras Hindu [Religious and Charitable Endowments Act, 1951](#), Act 19 of 1951 (for short 'the Act') would tantamount to an appeal filed against the order passed by the Commissioner

under Section 61 of the Act is inter alia the question that has come up for consideration in this case

2. Appellants herein were defendants 1 to 5 in O.S. No.107 of 1999. They filed O.S, No. 1 of 1990 before the Deputy Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, filed application for a declaration that Sree Kannenkavu Bhagavathy temple is a public religious institution within the meaning of Section 57(a) of the Act and also for framing scheme for administration of the temple. The Deputy Commissioner by his order dated 5.1.1993 allowed the application on the following reasoning.

'Sree Kannenkavu Bhagavathy temple is an ancient temple and its trusteeship vest with Azhuvancherry Mana. It is true that properties were given out to the temple and this property does not yield any income. The temple is one run on mainly on donations received from the public and the poojas and festivals are mainly performed through public participation and donation. The public used to attend various duties in connection with the festivals of the temple. Moreover the plaintiff in O.S. 67/82 of the Sub Court, Tirur, viz. the trustee of the temple has stated in that original suit that the public's right is only limited to worship the deity. So as admitted the public has -got right to worship the deity. The evidences given by the witnesses also prove that the public has a right to worship in the temple and as a matter of right they attend certain duties in connection with the festival of the temple. All this show that this temple has got all the characteristics of a temple having public nature'.

On the above reasoning the Deputy Commissioner declared that the temple is a public religious institution.

3. First respondent preferred an appeal to the Commissioner under Section 61 of the Act. The Commissioner rejected the appeal and held as follows:

'There is no dispute over the ownership and Oorayama right of this temple which are vested with the Azhavancherry Mana. The temple is seen to have no income of its own and hence it is managed with the income received from the worshippers of the temple, by way of vazhipad offerings, contribution etc. Though the temple

has some properties, no income is derived from it. One well, one Kalyanamandapam, one Kalivilakku, one Aalthara etc. were constructed for the temple solely with the contributed money of the worshippers of the temple and the public. The Devaswom has no direct role in these construction works. The public and the worshippers have done these constructions and handed them over to the temple as presentation on behalf of the worshippers of the temple. These facts are seen to have been admitted by Sri .K.T.Raghavan Nair, who is the power of attorney of the appellant and first witness; before; the Deputy Commissioner in O. A. 1/90. This evidence adduced by the power of attorney of the appellant points to the fact that this temple is a public religious institution as has been declared by the Deputy Commissioner'.

Aggrieved by the said order first respondent filed O.S. No.107 of 1999 under Section 62 of the Act in the Court of the Subordinate Judge, Tirur. The Sub Court decreed the suit and the orders passed by the Deputy Commissioner and the Commissioner were set aside. The Sub Court while holding so took the view that it cannot exercise the jurisdiction of a Court of appeal against the order of the Commissioner and cannot appreciate the evidence adduced before the Deputy Commissioner and enter into a finding regarding the character of the temple on the basis of that evidence. The Court took the view that it has to independently appreciate the evidence adduced in the suit and to decide the issue whether the temple is a private or a public temple.

4. Senior Counsel appearing for the appellants Sri. P.N.K. Achan submitted that the court below was in error in taking the view that it cannot exercise the jurisdiction as a court of appeal but has to independently appreciate the evidence adduced in the suit to decide the issue whether the temple is a private or public temple. Counsel submitted that the first respondent has filed the present suit under Section 62 of the Act against the order passed by the Deputy Commissioner as confirmed by the Commissioner under the Act. Consequently it is not a regular suit under Section 9 of the Code of Civil Procedure but a suit filed under Section 62 against the order passed by the Commissioner. Counsel also submitted that the Court below has committed an error in giving a declaration that the temple is a private temple. Counsel also submitted that the matter may be remanded back to

the trial court for fresh consideration.

5. We will first examine the above issue before considering the facts. First respondent has admittedly filed the suit under Section 62(1)(ii) of the Act, which enables aggrieved person to institute a suit against the order passed by the Deputy Commissioner or the Commissioner. The reliefs sought for in the suit is to set aside the order of the Commissioner, Hindu Religious and Charitable Endowment (Administration) Department, in A.P. 6/1996 dated 25.10.1999, and also for other consequential reliefs. Section 62(1) enables an aggrieved person to institute a suit under Sub-section(2) against the order of the Commissioner and the Courts have got the power to stay the order of the Commissioner pending suit. The Civil Court may not be exercising an appellate power while entertaining a suit under Section 62(2), but the parties could always attack the order passed by the Commissioner. Though the Civil Court could independently examine the question on the basis of the oral and documentary evidence adduced before it, the evidence adduced before the Deputy Commissioner or Commissioner cannot be eschewed because the suit is instituted against the order passed by the Commissioner. The word 'suit' is an ordinary comprehensive term and would apply to any proceedings in a court by which a person pursues a remedy provided to him. Generally a suit does not include an appeal or an application. When the Section of a statute deals with both suits and appeals, it cannot be said that the word 'suit' has been used in the same sense as appeal. Reference may be made to the decision reported in *Sathya Nidhan Banerji v. Muhammed Hazubben Alikhan* (AIR 1931 A11.533). So far as Section 62(2) of the Act is concerned the word 'suit' means not an appeal, but a regular suit where the parties could independently adduce evidence including the evidence adduced before the Commissioner.

6. We will however consider the larger question as to whether the Deputy Commissioner has got jurisdiction to decide whether the temple is a public religious institution or a private religious institution. The object of the Act is to amend and consolidate the law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Madras. Section 2 of the Act says that it extends to the whole of the State of

Madras and applies to all Hindu public religious institutions and endowments, including the Tirumalai Tirupati Devasthanams and the endowments thereof. The Act has been made applicable to erstwhile Malabar area in the State of Kerala as well. The Deputy Commissioner is given the following powers under Section 57 of the Act, which reads as follows:

57. Deputy Commissioner to decide certain duties and matters;-- Subject to the rights of suitor appeal hereinafter provided, the Deputy Commissioner shall have power to inquire into and decide the following disputes and matters--

(a) whether an institution is a religious institution;

(b) whether a trustee holds or held office as a hereditary trustee;

(c) whether any property or money is a religious endowment;

(d) whether any property or money is a specific endowment;

(e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what the established usage of a religious institution is in regard to any other matter;

(f) whether any institution or endowment is wholly or partly of a religious or secular character; and whether any property or money has been given wholly or partly for religious or secular uses; and

(g) where any property or money has been given for the support an institution which is partly of a religious and partly of a secular character of the performance of any service or charity connected with such an institution or the performance of a charity which is partly of a religious and partly of a secular character or where any property or money given is appropriated partly to religious and partly to secular uses, as to what portion of such property or money shall be allocated to religious uses.

Section 58 also empowers the Deputy Commissioner to frame schemes if he has reason to believe that in the interests of the proper administration of a religious institution. Section 57 therefore states that the Deputy Commissioner shall have

the power to enquire into and decide as to whether an institution is a religious institution. 'Religious Institution' has been defined under Section 6(15) of the Act to mean a math, temple or specific endowment. The term 'temple' is also defined in Section 6(17) to mean a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit or used as of right by the Hindu community or any section thereof, as a place of religious worship. Chapter III of the Act deals with religious institutions, which says that subject to the provisions of the Act, the administration of all religious endowments shall be subject to the general superintendence and control of the Commissioner and such superintendence and control shall include the power to pass any orders which may be deemed necessary to ensure that such endowments are properly administered and that their income is duly appropriated for the purpose for which they were founded or exist. The term public religious institution has not been defined in the Act. There are religious institutions under the Act, either managed by the Commissioner directly or by hereditary trustees independently.

7. The trustees could manage private religious as well as public religious institution. Religious institutions managed by the Commissioner would invariably be public religious institutions. Mere fact that public are allowed for worship would not make a private religious institution a public religious institution. Section 6(17) states that temple means a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of or used as of right by the Hindu community or any section thereof, as a place of public religious worship. Private temple owned by a family can also be a place for public worship but do not make such a private religious institution into a public religious institution. Going by the Act, Deputy Commissioner has got the power to decide whether the institution is a private religious institution or public religious institution but only subject to the rights of suit or appeal provided under Sections 61 and 62. We may in this connection refer to some of the decisions which have got some relevance. The Privy Council in *Babu Bhagwan Dinv. Har Saroon*, AIR 1940 P.C. 7, held as follows:

'In these circumstances it is not enough in their Lordships opinion, to deprive of the family of their private property to show that Hindus willing to worship have never

been turned away or even that the deity has acquired considerable popularity among Hindus of the locality or among persons resorting to annual mela. Worshippers are naturally welcome at a temple because of the offerings they bring and the repute they give to idol; they do not have to be turned away on pain of forfeiture of the temple property as having become property belonging to a public trust. Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple, must be considered in their historical setting in such a case as the present and the dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family. Such an inference if made from the fact of user by the public is hazardous, since it would not be in general be consonant with Hindu sentiments or practice that worshippers would be turned away; and as worship generally implies offering of some kind it is not to be expected that the managers of a private temple should in all circumstances desire to discourage popularity'.

In *Deoki Nandan v. Muralidhar*, AIR 1957 S.C. 13, the Apex Court held as follows:

'The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory; it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers'.

In *Shri Govindlalji v. State of Rajasthan*, AIR 1963 SC 1638, the Apex Court held as follows:

'The question as to whether a Hindu temple is private or public has often been considered by judicial decisions. A temple belonging to a family which is a private temple is not unknown to Hindu law. In the case of a private temple it is also not unlikely that the religious reputation of the founder may be of such a high order that the private temple founded by him may attract devotees in large numbers and

the mere fact that a large number of devotees are allowed to worship in the temple would not necessarily make the private temple a public temple. On the other hand, a public temple can be built by the subscriptions raised by the public and a deity installed to enable all the members of the public to offer worship. In such a case, the temple would clearly be a public temple. 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 Darshan 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 member of the public in the Darshan 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 *Radhakanta Deb v. The Commissioner, Hindu Religious Endowments, Orissa*, AIR 1981 SC 798, it was held as follows:

'It may thus be noticed that this court has invariably held that the mere fact that the members of the public used to visit the temple for the purpose of worship without any hindrance or freely admitted therein would not be a clear indication of the nature of the endowment. It is manifest that whenever a dedication is made for religious purposes and a deity installed in a temple, the worship of the deity is a necessary concomitant of the installation of the deity, and therefore, the mere factum of worship would not determine the nature of the endowment. Indeed if it is proved that the worship by the members of the public is as of right that may be a circumstance which may in some cases conclusively establish that the endowment was of a public nature'.

In *Kunhunni Namboodiripad v. Cochin Devaswom Board*, 1964 KLT 1034, learned Single Judge of this Court held that the prevailing impression in Kerala would seem to have been that Namboodiri temples were private. It was held that granting

that worshippers have attended or that they used to attend the temple and were not turned out by the Illom, no presumption can be made that such worship or user was as of right, once the temple is proved to belong to the Illom. Another learned Judge of this Court in Thiruvachira S.K.P. Committee v. Commissioner, H.R.C. Endowments, 1992 (2) KLT 590, held that the Deputy Commissioner has got no power to decide whether a temple is a public or private temple. A Bench of this Court in Appukutty v. Kuniyil Achuthan, 1989 (1) ILR 218, held that mere fact that public are freely allowed to worship in the temple does not make the temple a public temple.

8. We notice, as far as this case is concerned, the temple belongs to Azhuvancherry Mana. Further, Civil Court in O.S.No.67 of 1982 as confirmed by the decision in A.S.No.211 of 1988 held that plaintiff- first respondent herein is the owner and Ooralan of the temple and that the management and administration of the temple is vested in them. Tenth defendant in the present suit was the third defendant in the said suit. However, there is a judicial declaration by the Court that the temple is managed by the first, respondent herein. Defendants themselves have admitted that the property of the temple belonged to the family of the plaintiff. In the wake of the above admission and also in the wake of the judgment in A.S.No.211 of 1988 it is clearly established that the temple belongs to Azhuvaneheri mana, a private family. In such circumstances, we are of the view that the Deputy Commissioner was not justified in holding that Sree Kannekkavu Bhagavathi temple is a public religious institution. On merits also we are of the view that the reason adopted by the Deputy Commissioner and the Commissioner is faulty and the Civil Court has rightly given the declaration. It is well settled that mere fact that public were allowed to worship in the temple will not make a private temple a public temple. In such circumstances, we find no reason to upset the finding rendered by the Civil Court.

9. O.P.No.27381 of 1999 has been preferred seeking a writ of certiorari to quash Exts. P2 and P3 orders passed by the Assistant Commissioner and Commissioner respectively and appointing respondents 3 to 6 as non hereditary trustees of the temple. Writ of mandamus was also sought for directing the respondents not to assume hereditary trustees of the temple. We have gone through' the impugned

orders. The impugned orders are not sustainable in the light of the principles laid down earlier in this judgment and also on the basis of the decision of this Court in Raman Namboothiri v. Chief Commissioner, H.R. and C.E., 2004 (1) KLT 945. In other words, appointment of non hereditary trustees is only exception. Since the principle laid down have not been followed in this case, we are inclined to set aside the impugned orders. They are accordingly set aside.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com