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18. In view of the discussion made above, the appeal is allowed with costs and the impugned judgment dated 23-7-2002 of the High Court is set aside. The writ petition preferred by U.P. SRTC against the decision of the competent authority and connected writ petitions shall be heard afresh by the High Court in the light of the direction issued by this Court in the case of *Gajraj Singh*⁵ after impleading all such parties who have been granted relief by the competent authority.

Civil Appeals Nos. 6342-43, 6344-45, 6347-48, 6350-51, 6353-54, 8575 of 2002 and 4196 of 2003

19. In view of the decision in Civil Appeal No. 6341 of 2002 (*U.P. SRTC v. State of U.P.*), the appeals are allowed and the impugned judgment dated 23-7-2002 of the High Court is set aside.

Civil Appeal No. 5258 of 2003

20. The appellants were granted permits on 11-2-1991 after the High Court had held on 16-3-1990 that the Scheme had lapsed. In view of our finding that the Scheme had not lapsed, the appellants are not entitled to renewal of their permits. The appeal is accordingly dismissed.

Civil Appeal No. 7679 of 2004 @ SLP (Civil) No. 21557 of 2002 and Civil Appeal No. 7681 of 2004 [@ SLP (Civil) No. 19034 of 2003]

21. Leave granted.

21.1. In view of the decision in Civil Appeal No. 6341 of 2002, the appeals are allowed and the impugned judgment dated 23-7-2002 of the High Court is set aside.

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(BEFORE D.M. DHARMADHIKARI AND H.K. SEMA, JJ.)

THAYARAMMAL (DEAD) BY LR.

Appellant;

Versus

KANAKAMMAL AND OTHERS

Respondents.

Civil Appeals No. 6060 of 1999[†] with No. 6061 of 1999, decided on December 6, 2004

A. Hindu Law — Religious and Charitable Endowments — T.N. Hindu Religious and Charitable Endowments Act, 1959 (22 of 1959) — Ss. 6(5) and (17) — Property dedicated for use as *Dharmachatram* (resting place for travellers and pilgrims) — Nature of — Held, was a “charitable endowment” — Such dedication is neither a “gift” nor a “trust” — Hence, rightly held by the High Court that it could not be claimed by the plaintiff as a trustee or defendant as owner — However, High Court erred in directing that the Administrator General under the Administrators General Act, 1963 (45 of 1963) and the Official Trustee under the Official Trustees Act, 1913 (2 of 1913) should take over the said property for administration

[†] From the Judgment and Order dated 3-12-1998 of the Madras High Court in SA No. 93 of 1985

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— The said two Acts (Act 45 of 1963 and Act 2 of 1913) not applicable to the instant case — Suit property being a charitable endowment directed to be taken control of by the State Government and the Commissioner under the T.N. Hindu Religious and Charitable Endowments Act, 1959 a

B. Hindu Law — Religious and Charitable Endowments — Generally — Held, a dedication by a Hindu for religious or charitable purposes is neither a “gift” nor a “trust” in the strict legal sense — Religious endowment does not create title in respect of the property dedicated in anybody’s favour — Transfer of Property Act, 1882, S. 122 — Trusts Act, 1882, S. 3 b

The contents of the stone inscription on the outer wall of the property in question indicated that the said property was dedicated by its owner for being used by the general public as a *Dharmachatram* i.e. a “choultry” of South India where travellers and pilgrims can take shelter and be provided with refreshment.

The plaintiffs claimed (i) that they were in occupation of a part of the dedicated property described in Schedule ‘A’ of the plaint in the capacity as trustees, and (ii) that a portion of the said property mentioned in Schedule ‘B’ had been wrongly encroached upon by the defendants who were liable to be evicted and injunctioned from entering into the possession of any part of the dedicated property. c

On the other hand, the defendants contended that they had acquired title to the portion of property in their possession on the basis of purchase made by them in court sale which was conducted in the course of execution of a compromise decree reached in respect of the suit property between parties to that suit. d

The trial court and the first appellate court held that the compromise decree was collusive and the property being a public trust, the defendants could claim no ownership to the property on the basis of the alleged purchase of the same in court sale.

The defendants preferred a second appeal to the High Court. The High Court came to the conclusion that the property in question was dedicated for public use. No trustees were appointed by the owner of the property who dedicated the same as *Dharmachatram*. The High Court, therefore, held that the defendants could not acquire any title to Schedule ‘B’ property on the basis of court sale. The plaintiffs also could not claim any right to the property in their assumed status of a trustee. Thus, the High Court modified the decree granted by the courts below and directed that as the property belonged to a public trust with no scheme provided for its management through appointed trustees, the Administrator General under the Administrators General Act, 1963 (45 of 1963) and the Official Trustee of Madras under the Official Trustees Act, 1913 (2 of 1913) should administer the suit properties as properties of the public trust. Aggrieved by the said judgment, both the plaintiffs and defendants approached the Supreme Court by way of the present two cross-appeals. e

Dismissing both the appeals and modifying the judgment of the High Court, the Supreme Court

Held:

The contents of the stone inscription clearly indicate that the owner has dedicated the property for use as “*Dharmachatram*” meaning a resting place for the travellers and pilgrims visiting the Thyagaraja Temple. Such a dedication in the strict legal sense is neither a “gift” as understood in the Transfer of Property f

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Act which requires an acceptance by the donee of the property donated *nor* is it a "trust". (Para 15)

- a Sen, A.C.: *B.K. Mukherjea on Hindu Law of Religious and Charitable Trusts*, 5th Edn., pp. 15, 16, 26, 102 and 103, *relied on*

The High Court was right in coming to the conclusion that the suit property which was a dedication for charitable purposes cannot be claimed by the *plaintiff* as a *trustee* or the *defendant* as *owner*. However, it failed to make a distinction between a "trust" in strict legal sense and a "religious or charitable endowment" as understood in customary Hindu law. It is because of its failure to see this distinction that it committed an error in directing that the Administrator General in accordance with the provisions of the Administrators General Act, 1963 (45 of 1963) and the Official Trustee under the Official Trustees Act, 1913 (2 of 1913) should take over the property for administration. Recourse to Act 45 of 1963 and Act 2 of 1913 was not warranted when the State enactment viz. the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 expressly governs the subject-matter in dispute. (Paras 17 and 18)

- c Hence, the judgment of the High Court is upheld with the modification that instead of the Administrator General under Act 45 of 1963 or the Official Trustee under Act 2 of 1913, the suit property which is a "charitable endowment" shall be taken in control for administration, management and maintenance by the State Government and the Commissioner by invoking their powers under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. (Para 23)

- d [Ed.: See also V.K. Varadachari's *Hindu Religious and Charitable Endowments*, 4th Edn., 2005, Chap. VI on "Charitable Endowments", p. 347.]

C. Hindu Law — Religious and Charitable Endowments — Generally — Property dedicated for religious or charitable purpose for which the owner of the property or the donor has indicated no administrator or manager — Effect — Held, the property becomes *res nullius* i.e. property belonging to nobody — Such a property vests in the property itself as a juristic person (Para 16)

- e Sen, A.C.: *B.K. Mukherjea on Hindu Law of Religious and Charitable Trusts*, 5th Edn., p. 35, *relied on*

Manohar Ganesh Tambekar v. Lakhmiram Govindram, ILR (1888) 12 Bom 247; *Krishna Singh v. Mathura Ahir*, AIR 1972 All 273 : 1972 All LJ 155, *approved*

- f **D. Trusts Act, 1882 — Applicability — Held, applicable only to private trusts and not to public trusts** (Para 15)

W-P-M/Z/30909/C

Advocates who appeared in this case :

- M.N. Rao, Senior Advocate (Y. Ramesh, Ms Sasmita Tripathy and Y. Rajagopal Rao, Advocates, with him) for the Appellant in CA No. 6060 of 1999 and the Respondent in CA No. 6061 of 1999;
g Santosh Paul, Sandeep Chhabra, Rajeev Sharma, Ms Shree Devi and M.J. Paul, Advocates, for the Respondent in CA No. 6060 of 1999 and the Appellant in CA No. 6061 of 1999.

Chronological list of cases cited

- | | | on page(s) |
|---|---|------------|
| | 1. AIR 1972 All 273 : 1972 All LJ 155, <i>Krishna Singh v. Mathura Ahir</i> | 463g |
| h | 2. ILR (1888) 12 Bom 247, <i>Manohar Ganesh Tambekar v. Lakhmiram Govindram</i> | 463e-f |

The Judgment of the Court was delivered by

D.M. DHARMADHIKARI, J.— These two cross-appeals have been filed as both the plaintiffs and defendants feel aggrieved by the judgment of the learned Single Judge of the High Court of Madras passed in second appeal whereby decree granted by the two courts below has been modified with directions to the Administrator General under the Administrators General Act 45 of 1963 and the Official Trustee of Madras under the Official Trustees Act 2 of 1913 (hereinafter referred to as Act 45 of 1963 and Act 2 of 1913) to administer the suit properties as properties of the public trust.

2. The facts relevant to the institution of the suit leading to the present two cross-appeals are as under:

The properties in suit described in Schedules 'A' and 'B' are admittedly properties dedicated for being used by the public as Dharmachatram. The document of dedication is in the nature of a stone inscription on the front wall of the property. The property has been dedicated as a Dharmachatram meaning a "choultry" of South India where travellers and pilgrims can take shelter and be provided with refreshment. The stone inscription is of the year 1805 and has a presumptive evidentiary value under the Evidence Act. The inscription is in Tamil and the contents of it have been explained to us in which the dedicator has clearly described himself as the owner of the property which he dedicated to the general public as a resting place. There is no trustee mentioned therein and the witness to the dedication is no human being but *Lord Thyagaraja Himself*. The inscription translated into English reads as under:

"Srinivas Sagaptam 6729. Kaliyuga Karthan 4905. Panchegam Vattage Dharpitham, 57 years of Ralthase, 3rd day. Ippasi Mar 15 (Tamil) Wednesday. Today, at Chennai Towa belongs to Tadhaval community, Pachaiyammal, wife of Torairallur Sadayappa Pillai, dedicated this property as Dharmachatram, which being boundaries in east side sixteen-pillar Mandapam. South side Nallena Mudaliar Chatram, west side Kammal Chatram, north side Nada Veethi and being 73 feet length towards south and north, 31 feet width, towards west to east. This Dharmachatram along with all the appurtenant rights can be used till the last days of Moon and Sun. No one can sell or mortgage this chatram. Thyagaraja Swamiyal and Vaduvudaiyammal are witnesses. Any person who would create any encumbrance by selling or purchasing would incur a curse like the one, to be incurred by a person who would slaughter a cow on the banks of Holy Ganga in Kasi."

3. The case of the plaintiffs was that they are in occupation of a part of the dedicated property described in Schedule 'A' of the plaint in the capacity as trustees. It is further pleaded that a portion of the said property mentioned in Schedule 'B' has been wrongly encroached upon by the defendants who are liable to be evicted and injuncted from entering into the possession of any part of the dedicated property.

a 4. The suit was contested by the defendants pleading inter alia that they have acquired title to the portion of property in their possession on the basis of purchase made by them in court sale which was conducted in the course of execution of a compromise decree reached in respect of the suit property between parties to that suit.

b 5. The trial court and the first appellate court partly decreed the suit. There is a concurred finding recorded by them that the compromise decree was collusive and the property being of a public trust, the defendant can claim no ownership to the property on the basis of the alleged purchase of the same in court sale.

c 6. The defendants preferred a second appeal to the High Court. The High Court came to the conclusion on the basis of the contents of the stone inscription on the outer wall of the property that it was dedicated for public use. No trustees were appointed by the owner of the property who dedicated the property as Dharmachatra. The High Court, therefore, held that the defendant could not acquire any title to Schedule 'B' property on the basis of court sale. The plaintiffs also cannot claim any right to the property in his assumed status of a trustee.

d 7. The High Court on the above findings and conclusions modified the decree granted by the courts below and directed that as the property belongs to a public trust with no scheme provided for its management through appointed trustees, the Administrator General under Act 45 of 1963 and the Official Trustees Act, 1913 should take over the management of the trust.

e 8. The operative part of the judgment of the High Court in second appeal with the directions contained therein needs verbatim reproduction as the counsel appearing in these two cross-appeals have assailed them in favour of their parties:

f "In the result the second appeal is allowed in part. The judgment and decree of both the courts below in the suit OS No. 21 of 1975 on the file of IInd Additional Subordinate Judge's Court at Chengalpattu dated 29-11-1977 and in the first appeal in AS No. 272 of 1978 on the file of the District Court at Chengalpattu dated 20-12-1983 are modified, and the suit in OS No. 21 of 1975 on the file of IInd Additional Subordinate Judge's Court at Chengalpattu is decreed declaring that the suit property consisting of Plaints A and B schedule properties are 'Dharmachatram' and it is a public trust, and the Administrator General and Official
g Trustee of Madras is directed to take delivery of possession of the suit property consisting of Plaints A and B schedule properties through the process of court before the Subordinate Judge's Court at Chengalpattu, and the Administrator General and Official Trustee of Madras is directed to administer the suit property as a public trust property in accordance with the provisions of the Administrators General Act 45 of 1963 and the
h Official Trustees Act 2 of 1913. In other respects the suit claim of the respondent-plaintiffs for the reliefs of possession and permanent

injunction and also for damages for use and occupation is dismissed. In the circumstances of the case each party is directed to bear their own costs throughout.

The Registry is directed to send a copy of this judgment and decree in the second appeal in SA No. 93 of 1985 immediately to the Administrator General and Official Trustee at Madras and to the Subordinate Judge's Court at Chengalpattu."

9. The principal submission of the learned counsel appearing in these appeals representing legal representative of the deceased plaintiff, is that the High Court wrongly held that the property dedicated was a "trust". According to the learned counsel it was a "charitable endowment" to which the provisions of Act 45 of 1963 and Act 2 of 1913 were not attracted. It is submitted that the property described as Dharmachatram is covered by definition of the words "charitable endowments" in Section 6(5) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter shortly referred to as "the State Act").

10. It is submitted that the endowment is not registered. The family members of the plaintiffs since generations have been occupying a portion of the suit property and putting it to use for providing shelter and refreshment to travellers and pilgrims. It is argued that the High Court ought not to have disturbed the concurrent findings of the subordinate courts and modified the decree in second appeal.

11. On the other side, as respondents and appellants in the cross-appeal, learned counsel argues that the contents of the stone inscription do not amount in law to creation of any trust and the plaintiffs, therefore, can claim no status of a trustee. It is contended that the defendants having purchased the property in a court auction and been placed in possession have better title than the plaintiffs who are mere imposters with a bogus claim as trustees. It is, therefore, prayed that the judgment of the High Court should be set aside and the suit of the plaintiff should be dismissed in toto.

12. After hearing learned counsel appearing for the parties and perusing the relevant record of the case, the main question which according to us needs decision is as to the nature of the property and whether the stone inscription on the outer wall of the property indicates creation of a "trust" or a "charitable endowment".

13. In the contents of the stone inscription affixed on the property in dispute, it is described as "Dharmachatram". In Hinduism, right from the Vedic period, there were institutions like *sarais* and Dharmachattra which are resting places. A hymn addressed to the *Marut* (winds) (*Rigveda Ashtka*, Ch. IV) speaks of refreshments "being ready at the resting places on the road". This hymn indicates the existence of accommodation for the use of travellers.

14. Dharmachatram is "choultry" of South India meaning a place where pilgrims or travellers may find rest and other provisions. Hindus in India

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- consider the establishment of temples, mutts and other forms of religious institutions or excavation and consecration of tanks, wells and other
- a reservoirs of water, planting of shady trees for the benefit of travellers, establishment of choultries, sarais or almshouses and dharamshalas for the benefit of mendicants and wayfarers and pilgrims as pious deeds which would bring heavenly bliss and happiness to a Hindu. The PROPATHA of the Vedas is the same thing as *chuntry* or *sarai* and sometimes it is described as "PRATISHREYAGRAH". (See *B.K. Mukherjea on Hindu Law of Religious and Charitable Trusts*, 5th Edn. by A.C. Sen, pp. 15, 16 and 26.)
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15. The contents of the stone inscription clearly indicate that the owner has dedicated the property for use as "Dharamchatra" meaning a resting place for the travellers and pilgrims visiting the Thyagaraja Temple. Such a dedication in the strict legal sense is neither a "gift" as understood in the Transfer of Property Act which requires an acceptance by the donee of the property donated nor is it a "trust". The Indian Trusts Act as clear by its preamble and contents is applicable only to private trusts and not to public trusts. A dedication by a Hindu for religious or charitable purposes is neither a "gift" nor a "trust" in the strict legal sense. (See *B.K. Mukherjea on Hindu Law of Religious and Charitable Trusts*, 5th Edn. by A.C. Sen, pp. 102-03.)
- c

16. A religious endowment does not create title in respect of the property dedicated in anybody's favour. A property dedicated for religious or charitable purpose for which the owner of the property or the donor has indicated no administrator or manager becomes *res nullius* which the learned author in the book (*supra*) explains as property belonging to nobody. Such a property dedicated for general public use is itself raised to the category of a juristic person. Learned author at p. 35 of his commentary explains how such a property vests in the property itself as a juristic person. In *Manohar Ganesh Tambekar v. Lakhmiram Govindram*¹ it is held that: (ILR p. 263)
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- "The Hindu law, like the Roman law and those derived from it, recognises, not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called *foundations*." (emphasis supplied)
- f

- The religious institutions like mutts and other establishments obviously answer to the description of *foundations* in Roman law. The idea is the same, namely, when property is dedicated for a particular purpose, the property itself upon which the purpose is impressed, is raised to the category of a juristic person so that the property which is dedicated would vest in the person so created. And so it has been held in *Krishna Singh v. Mathura Ahir*² that a mutt is under the Hindu law a juristic person in the same manner as a temple where an idol is installed.
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17. The learned Judge of the High Court was right in coming to the conclusion that the property in suit which was a dedication for charitable
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¹ ILR (1888) 12 Bom 247

² AIR 1972 All 273 : 1972 All LJ 155

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purposes cannot be claimed by the *plaintiff* as a *trustee* or the *defendant* as *owner*. Having thus come to the conclusion, the High Court failed to make a distinction between a “trust” in strict legal sense and a “religious or charitable endowment” as understood in customary Hindu law. It is because of its failure to see this distinction that it committed an error in directing that the Administrator General in accordance with the provisions of the Administrators General Act 45 of 1963 and an Official Trustee under the Official Trustees Act 2 of 1913 should take over the property for administration.

18. We have looked into the provisions of the two Acts, Act 45 of 1963 and Act 2 of 1913 and we find that recourse to them was not warranted when the State enactment viz. the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 expressly governs the subject-matter in dispute.

19. Section 10 of the Official Trustees Act from its contents shows that it is applicable only in relation to a property subject to a trust for which there is no trustee available within the local limits of the jurisdiction of the High Court. It is only in such cases that the High Court can appoint an Official Trustee to take over the property for management. Such is not the case here.

20. Similarly, the High Court can appoint an Administrator General under the Administrators General Act of 1963 only in case there is none to whom letters of administration in exercise of its powers of grant of probate and letters of administration under the Indian Succession Act can be granted. The Act of 1963 can have no application to a charitable endowment to which the provisions of the State Act are directly applicable.

21. Sections 6(5) and 6(17) of the State Act define “charitable endowment” and “religious endowment” respectively to include amongst other religious institutions and charitable institutions, “*choultries*” endowed for the benefit of the public. The definition clauses read as under;

“6. (5) ‘charitable endowment’ means all property given or endowed for the benefit of, or used as of right by, the Hindu or the Jain community or any section thereof, for the support or maintenance of objects of utility to the said community or section, such as rest houses, *choultries*, patasalas, schools and colleges, houses for feeding the poor and institutions for the advancement of education, medical relief and public health or other objects of a like nature; and includes the institution concerned;

* * *

(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.” (emphasis supplied)

22. The Commissioner appointed under Section 9 of the State Act and other authorities under him like Joint, Deputy and Assistant Commissioner as

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his delegates have been conferred with ample powers under Chapter III particularly, Sections 23 and 24 to take necessary steps for maintenance and management of all “religious endowments” within the State to which the provisions of the State Act are applicable. The State Government is empowered under Section 3 of the State Act to extend the provisions of the Act to “religious endowments”.

23. For the reasons aforesaid both the appeals are dismissed and the judgment of the High Court is upheld with the modification that instead of the Administrator General under Act 45 of 1963 or Official Trustee under Act 2 of 1913, the suit property which is a “charitable endowment” shall be taken in control for administration, management and maintenance by the State Government and the Commissioner by invoking their powers under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

24. Copies of this judgment be sent to the State Government of Tamil Nadu and the Commissioner for Hindu Religious and Charitable Endowments in the State of Tamil Nadu for taking necessary actions as required in law for proper maintenance and administration of the property in suit.

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(BEFORE S.N. VARIAVA, DR. AR. LAKSHMANAN AND S.H. KAPADIA, JJ.)

ICHALKARANJI MACHINE CENTRE (P) LTD.

Appellant;

Versus

e COLLECTOR OF CENTRAL EXCISE, PUNE

Respondent.

Civil Appeal No. 2431 of 1999†, decided on December 10, 2004

A. Excise — Limitation — Misdeclaration — Extended limitation period under S. 11-A(1) proviso of Central Excise Act — Applicability — MODVAT Scheme — Misutilisation of, for the benefit of sister concern — AY 1988-89 — Exemption notification in respect of SSI unit providing for partial exemption for those taking MODVAT credit and total exemption up to a specified limit for others with the stipulation that concession would not be available where MODVAT credit was not availed or was not admissible — Assessee SSI manufacturing components of machinery falling under Sub-Heading 9024.90, Central Excise Tariff Act, 1985 and gearboxes and gearbox covers falling under Sub-Heading 8483.00 and using iron and steel products falling under Sub-Headings 7209, 7203 and 7204.20 as inputs — Assessee opting for MODVAT Scheme in 1986-87 and continuing to avail MODVAT facility in 1987-88 — In 1988-89, without opting out of MODVAT Scheme, the assessee clearing its final products at concessional rate of duty without entitlement to do so as in respect of cast iron and castings MODVAT

h † From the Judgment and Order dated 17-9-1998 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in FO No. E/1863 of 1998-B1 in A. No. E/829 of 1992-B1 : (2002) 148 ELT 527