

(2015) 09 MAD CK 0055

In the Madras High Court

Case No : W.P. (MD) Nos. 2198, 3034 to 3036 of 2015 and M.P. (MD) Nos. 1 to 3 of 2015

A. Chidambaram

APPELLANT

Vs

Joint Commissioner, Tamil Nadu Hindu Religious and
Charitable Endowment Board

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 53,
53(2), 53(3), 53(4), 53(5)

Citation : (2015) 8 MLJ 468

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : M. Vallinayagam and D. Nallathambi, Advocates, for the Appellant; J. Gunaseelan Muthiah and M. Muthugeethayan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R. Mahadevan, J.—Since the issues involved in all these Writ Petitions are one and the same, they are taken up together, heard and disposed of by a common order. The above writ petitions in W.P. (MD). Nos. 2198, 3034 and 3035 of 2015 have been filed for issuance of a Writ of Certiorari to call for the records of the impugned order passed by the first respondent herein in proceedings vide Se.Mu.Na.Ka. 15251/2014-1/A2 dated 05.02.2015 and quash the portion of the order suspending the Petitioners from the post of hereditary trusteeship and also the consequential order of appointing "Fit person" passed by the first respondent herein in proceedings vide in Se.Mu.Na.Ka. 15251/2014-2/A2 dated 05.02.2015.

2. Similarly, C. Andiappan son of A. Chidambaram, who is the petitioner in W.P. (MD). No. 2198 of 2015, has filed a Writ Petition in W.P. (MD). No. 3036 of 2015 to quash the order of the first respondent dated 05.02.2015 and further direct the respondents herein to permit him to administer and manage the Kattalai Properties, being the next in the line of succession.

3. Since the facts projected in all these writ petitions are one and the same, the facts in W.P. (MD). No. 2198 of 2015 are taken up for the purpose of better understanding.

4. The petitioners predecessors entered into a partition deed, dated 07.09.1921 and a charge was created over the properties to perform Avani and Masi festivals of Arulmigu Subramaniaswamy Thirukovil, Tiruchendur. Accordingly, the petitioner along with his brothers, namely K. Chidambaram (W.P. (MD). No. 3034 of 2015) and G. Gomathinayagam (W.P. (MD). No. 3035 of 2015) were performing the rituals.

5. While so, in the year 1991, the second respondent herein had filed a suit in O.S. No. 291 of 1991 before the Sub-Court, Tuticorin District against the family members of the petitioners, in respect of the kattalai properties given by their ancestors of the petitioners and the Sub-Court, Tuticorin District, by its judgment and decree dated 14.09.1995 declared the above said properties as "kattalai properties" dedicated to the second respondent herein. The said findings were confirmed in the appeal in A.S. No. 193 of 1996 by the District Court, Tuticorin District, on 03.10.1997.

6. Again in the year 2001, the second respondent herein, filed another suit in O.S. No. 11 of 2001 for recovery of possession from the petitioners herein. The said suit was transferred to the Additional District Court, Tuticorin District and renumbered as O.S. No. 59 of 2004 and by the judgment and decree dated 20.03.2008, the suit for recovery of possession was dismissed.

7. The second respondent has again filed another suit in O.S. No. 12 of 2001 on the file of the Sub Court, Thoothukudi, which was decreed, by judgment, dated 31.3.2010. Though the suit in O.S. No. 68 of 2004 was decreed in favour of the temple in respect of certain properties in question, it is pending at the stage of execution.

8. It is the case of the petitioners that having failed in all their attempts, the present impugned order was passed on 5.2.2015. Before passing the impugned order and appointing a fit person, the petitioners were not heard by the respondents. Hence, the above writ petitions.

9. A detailed common counter affidavit has been filed by the 4th respondent in which it is stated that the Writ Petitioners in W.P. Nos. 2198 and 3034 of 2015 namely A. Chidambaram, son of C. Andiappapillai and K. Chidamabram, son of C. Kumaraiah Pillai respectively are cousin brothers and the Writ Petitioner in W.P. No. 3035 of 2015 namely C. Gomathinayagam is the paternal uncle of the above said Writ Petitioners. The Writ Petitioner in W.P. No. 3036 of 2015 is the son of A. Chidambaram namely the Writ Petitioner in W.P. No. 2198 of 2015. Since the pleadings made by the Writ Petitioners in the above said Writ Petitions and the relief sought for therein are similar in nature, a common counter affidavit has been filed and a common reply affidavit has also been filed.

10. Heard both sides.

11. The learned Senior Counsel appearing for the petitioners has summed up his arguments in the following manner:

a. While suspending the hereditary trustees and appointing a Fit Person, the first respondent herein has a mandatory obligation to issue a notice to the petitioners, for the simple reason that it is of civil consequences in nature.

b. The next in the line of succession has not at all been taken into consideration by the respondents. The fit person will come into play only when there is no suitable person in the next line of succession to fill up the temporary vacancy which arose due to the suspension of hereditary trustee. Further, pending charges against the petitioners, the son of A. Chidambaram, namely, C. Andiappan is entitled to be appointed as hereditary Trustee as he was next in the line of succession as per explanation to Section 54(3) of Act 22 of 1959.

c. In order to circumvent the decree passed by the trial Court in O.S. No. 59 of 2004 as well as the appellate court in A.S. No. 17 of 2010, the present impugned order has been passed.

d. Though the alternative remedy is available, since there is violation of principles of natural justice, the petitioners have approached this Court by invoking the jurisdiction under Article 226 of the Constitution of India.

12. Countering the arguments, the learned Standing Counsel appearing for the fourth respondent has advanced his arguments as under:

a. Though the power is conferred under section 53(4) of Act on the 1st Respondent to pass the order of suspension pending disposal of the charges against the trustee and to appoint a fit person to discharge duties and perform the functions of the trustee, no notice is contemplated under section of 53(4) of HR&CE Act, before passing the order of suspension as well as appointing the fit person. Therefore, the issuance of notice to the petitioners will not arise in the case on hand.

b. The provisions of Section 54(2) and an explanation to Section 54(3) of the Hindu Religious and Charitable Endowment Act are not applicable to the case of the petitioners herein as no vacancy, either permanent or temporary, had arisen. Therefore, the claim of the Writ Petitioners to manage and administer the Kattalai properties cannot be considered.

c. In the suit in O.S. No. 59 of. 2004, the Court below had decreed that it is a kattalai property and only with regard to the recovery of possession, the relief was turned down. Here is the case that the Kattalai property has been misused by the petitioners herein. Therefore, the petitioners cannot take advantage of the said suit to say that the plea of the temple was negated. Further, the alienation of the property is very much accepted by the petitioners in the common reply affidavit filed by the Writ Petitioners in Paragraph No. 9. and therefore, on this

ground alone, these Writ Petitions are liable to be dismissed.

d. The Writ Petitions are not at all maintainable for the reason that as against the order passed by the 1st Respondent by invoking Section 53(4) of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959, an effective alternative remedy is available under Section 53(5) H.R. & C.E. Act.

13. I have considered the aforesaid submissions made on either side and perused the materials available on record.

14. The core issue involved in these Writ Petitions is whether the hereditary trustees can be suspended without notice and a fit person can be appointed without appointing the petitioner, in W.P. (MD) No. 3036 of 2015, who is the next in the line of succession.

15. The first respondent based on the charges of alienation of the Kattalai properties by the petitioners, failed to prevent such alienation, cheating of such sale proceeds and misappropriation of funds, by his proceedings, dated 5.2.2015, suspended the petitioners and appointed the fourth respondent as fit person under Section 53(4) of the H.R. & C.E. Act.

16. Before that, it is pertinent to see whether the petitioners can alienate the Kattalai Properties or not.

17. As per the partition deed, dated 7.9.1921, the petitioners cannot alienate the Kattalai properties to anybody, which is evident from the following recitals of the partition deed and even if they alienated the Kattalai properties, it is held to be invalid:

18. Since the petitioners are not having any right to alienate the Kattalai properties to anybody, on finding that the Kattalai properties have been alienated, the first respondent had passed the order impugned in these writ petitions, as aforesaid.

19. Now coming to the question of issuance of notice to the petitioners before their suspension and appointing of a fit person.

20. At this juncture, it is more relevant to refer to the provisions of H.R. & C.E. Act. Section 53 deals with,

"Power to suspend, remove or dismiss trustees and Section 54 contemplates, "Filling up of vacancies in the offices of hereditary trustee."

21. Sub-section 2 of Section 53 provides that the appropriate authority may suspend, remove or dismiss any trustee, if he-

(e) misappropriates or deals improperly with the properties of the institution.

22. As per sub-clause (e) of sub-section 2 to Section 53, the first respondent has suspended the petitioners and therefore, no fault can be found with the action of the first respondent. Further, there is no provision for issuing notice to

the petitioners before suspending them as per the afore said provisions.

23. Further, the first respondent has appointed the fourth respondent as fit person as per Section 53(4) of the H.R. & C.E. Act.

24. Sub-Section (4) of Section 53 reads as under:

"(4) Pending the disposal of the charges framed against the trustee, the appropriate authority may place the trustee under suspension and appoint a fit person to discharge the duties and perform the functions of the trustee."

25. From the above provision, it is clear that since the charges have been framed against the petitioners and pending disposal of such charges, the Joint Commissioner, who is the appropriate authority, can place them under suspension and appoint a fit person to discharge and perform the functions of the trustee.

26. Nowhere, it is stated that notice shall be issued either before suspending the trustees or before appointing the fit person. As per the provisions, the first respondent has passed the impugned order.

27. The contention of the petitioner is that as per Section 54(3) of the H.R. & C.E. Act, the petitioner in W.P. (MD). No. 3036 of 2015, who is in the next in line of succession, should have been appointed as fit person but in violation of the above said provision, the first respondent has appointed the fourth respondent as fit person.

28. As afore stated, Section 54 deals with, "Filling up of vacancies in the offices of hereditary trustee", whereas Section 53 deals with, "Power to suspend, remove or dismiss trustees."

29. Since the petitioners were suspended by the first respondent because of their misappropriation of funds and improper dealing with the property, it cannot be construed that there was a vacancy as has been enshrined in Section 54 of the H.R. & C.E. Act and on such misconception, the learned Senior Counsel has claimed that as per Section 54(2) and 54(3) , the person, who is in the next in line of succession, should have been appointed as fit person in the temporary vacancy.

30. To clarify this position, it would be better to have the assistance from the decision of this Court in M.C. Karthikeyan Vs. The Joint Commissioner Hindu Religious and Charitable Endowment (Admn.) Department and Another, .

31. In the said decision, the learned Single Judge of this Court, while interpreting Sections 53 and 54 of the H.R. & C.E. Act, has observed as under:

"7. Identical claim had been considered by S. RAMAUNGAM, J. in K. Manikanda Mudaliar v. Deputy Commissioner. H.R. & C.E. Department, Salem, W.P. No. 12810 of 1990. In the said case, the learned Judge has considered the scope of Sections 53 and 54 of the Act and has held thus:

4. On a consideration of these rival submissions, it is seen that while Section 53(2) deals with the power of the appropriate authority to impose punishment on a trustee any order of suspension as a substantive punishment is imposed, it will disable the hereditary trustee to discharge his duties by reason of that disability by way of suspension and hence there is a duty cast upon the prescribed authority to consider the claims of the next line of succession to succeed to the office of that disabled hereditary trustee to perform the functions of the trustee until his disability ceases.

5. In a case where pending enquiry into certain charges if a trustee is placed under suspension, then, that ad interim suspension is governed by the provisions of Section 53(4) of the Act which enables the competent authority to appoint a fit person to discharge the duties of that trustee who is under ad interim suspension.

6. Here is a case where the petitioner who was a hereditary trustee was placed under ad interim suspension pending enquiry into certain charges and therefore Section 53(4) alone would be attracted and not Section 53(2) of the Act. Under Section 53(4) of the Act, a fit person could be appointed pending enquiry into the charges framed against the hereditary trustee and the claim of the next in line of succession need not be considered at that stage. Hence the writ petition is dismissed.

8. Independent of the said decision of RAMALINGAM, J. I had also occasion to consider an identical question in W.P. No. 4893 of 1997 as well as W.P. No. 10951 of 1995 and I had also taken the same view as that of RAMALINGAM, J.

In W.P. No. 10951 of 1995, this Court has held thus:

6. Mr. K. Alagiriswami, learned senior Counsel placed reliance on the observation of the Division Bench which passage has already been set out above and contends that when the petitioner had made a request, it is incumbent on the part of the 1st respondent to consider the request and this should not be ignored. The law laid down by the Division Bench in W.A. No. 277 of 1962, K. SRINIVASAN, J. in P.K. Sundararaja Mudaliar v. Deputy Commissioner, H.R. & C.E., Madras and the Division Bench in Pandian Jamindarini v. Deputy Commissioner, Hindu Religious and Charitable Endowment, Madras (1966) 1 M.L.J. 288, made it clear that the petitioner is not entitled to be appointed as a fit person when the 3rd respondent has been placed under suspension under Sub-section (4) of Section 53. The statutory provisions of Sub-section (4) of Section 53 provides for appointment of a fit person. Section 54 which provides for filling up of vacancies in the office of hereditary trustee, when a vacancy arises either permanent or temporary. This provision cannot be read into Sub-section (4) of Section 53 nor a right is conferred on the petitioner for being appointed as a fit person. The Division Bench in (1966) 1 M.L.J. 288 has observed that although Sub-section (4) does not provide for it, the claims of the members of the family has to be considered and on the facts of case of that case, the Division Bench had held so. The learned Special Government Pleader pointed out that the writ

petitioner had joined hands with the 3rd respondent in alienating the properties and assets of the temple and as such, he cannot be considered suitable for being appointed as a fit person. In the order passed by the 1st respondent, no such reasonings have been assigned and in fact, the writ petitioner's request had not been considered.

7. When Sub-section (4) of Section 53 provides for appointment of a fit person, as already held above, the provisions of Section 54(1) and (2) cannot be relied upon nor it could be pressed into service. In my considered view, as no vacancy had arisen, it is not for the 1st respondent to pass order under Sub-section (4) or (2) of Section 54. As of present the writ petitioner has no right at all. When it is found that the statute provides that a particular thing has to be done in a particular manner it has to be done in that manner and no other manner is permissible. In this case, Section 53 provides for filling up vacancy either temporary or permanent in the office of the Hereditary Trustee and such a contingency provided for in Section 53 cannot be read into Section 54. It has been held in *Martin Burn Limited v. Calcutta Corporation* A.I.R. 1996 S.C. 529 : (1996) 1 S.C.R. 543 as follows: "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect."

32. Further, the learned Judge of this Court in *V. Vadivelu v. Joint Commissioner, H.R. & C.E. Department, Villupuram* (2010 (1) CWC 881), while dealing with the identical claim, has observed as under:

"From a perusal of Section 53(4) of the Act, it is evident that pending disposal of the charges framed against the trustee, the Appropriate Authority may himself could suspend and appoint a fit person to discharge the duties and perform the functions of the Trust. Though under Section 53(4) of the Act, the Appropriate Authority is given power to frame charges under Section 53(3) of the Act against the trustee and give him an opportunity of meeting such charges of testing the evidence adduced against him and of adducing evidence in his favour, the suspension order having been passed in this case as an interim measure, pending enquiry into the charges by invoking power under Section 53(4) of the Act, I am of the view that before placing the petitioner under interim suspension, no notice is contemplated in the said provision. Only if a final order is passed suspending the petitioner as a punishment, notice as contemplated under Section 53(3) of the Act has to be issued and opportunity should be given. In this case, the interim suspension order having been passed, the submission of the learned counsel for the petitioner is sustainable. Further, if the petitioner is aggrieved over the order of suspension, he can very well file Appeal under Section 54(5) of the Act before the Competent Authority."

33. From the above two decisions, two things are clear. One is, before placing the petitioners under interim suspension, no notice is contemplated in the said provision. Only if a final order is passed suspending the petitioners as a

punishment, notice as contemplated under Section 53(3) of the Act has to be issued and an opportunity should be given and therefore, the contention of the learned Senior Counsel that before suspending the petitioners and appointing the fit person, since no notice was issued, the impugned order is liable to be set aside cannot be accepted and also, there is no violation of principles of natural justice and therefore, when the alternative remedy is available under Section 53(5) of the H.R. & C.E. Act, the petitioners should not have invoked the jurisdiction of this Court and hence, these writ petitions are liable to be dismissed.

34. Another thing is, since the petitioners, who were the hereditary trustee were placed under ad interim suspension pending enquiry into certain charges, Section 53(4) alone would be attracted and not Section 54(2) of the Act. Under Section 53(4) of the Act, a fit person could be appointed pending enquiry into the charges framed against the hereditary trustee and the claim of the next in line of succession need not be considered at that stage.

35. Further, the petitioner in W.P. (MD) No. 3036 of 2015 is not entitled to be appointed as a fit person as the petitioners have been placed under suspension under Sub-section (4) of Section 53 . The statutory provisions of Sub-section (4) of Section 53 provides for appointment of a fit person. Section 54 which provides for filling up of vacancies in the office of hereditary trustee, when a vacancy arises either permanent or temporary. This provision cannot be read into Sub-section (4) of Section 53 nor a right is conferred on the said petitioner for being appointed as a fit person.

36. When the first respondent had suspended the petitioners on the aforesaid charges and appointed the fourth respondent as fit person, the question of vacancy, either permanent or temporary does not arise. In other words, in view of sub-section (2) of Section 53 , if any trustee is suspended and invoking the provision under Section 53(4) a fit person is appointed, it cannot be construed that the place of suspension is lying vacant. Further, when the Section 53 of the H.R. & C.E. Act itself says for the suspension of the trustee and for the appointment of a fit person, it is improper to go and search to suit the need of the petitioners in Section 54 of the H.R. & C.E. Act. 38. If the vacancy arises other than for the reasons stated in Section 53(2) of the H.R. & C.E. Act, then such kind of vacancy would fall under Section 54 of the H.R. & C.E. Act and in that event, the contention of the learned Senior Counsel that Section 54(3) would have a role to play can be accepted. The very intention of the legislature is that when a trustee is committing any act against the religious institution as provided under Section 53(2) of the H.R. & C.E. Act and to curtail such activities, Section 53(4) of the H.R. & C.E. Act is provided and not the provision under Section 54(3) of the H.R. & C.E. Act, otherwise, the very intention of the legislature would be defeated. To catch and curtail the activities of a rat, a cat should be placed and not an another rat, otherwise, either agricultural commodities or household things will be damaged and one fine morning,

everything will be vanished. This could have not been the intention of the legislature and therefore, to catch a rat, cat only be placed, that is what the Section 53 of the H.R. & C.E. Act says in another way.

37. When it is found that the statute provides that a particular thing has to be done in a particular manner it has to be done in that manner and no other manner is permissible.

38. In the light of the above, all the contentions raised by the learned Senior Counsel have no leg to stand in the eye of law and there is no violation of principles of natural justice for invoking the jurisdiction of this Court. The order of the first respondent does not suffer from any infirmity. Further, if the petitioners are aggrieved over the order of suspension, they can very well file an Appeal under Section 54(5) of the Act before the Competent Authority.

For the foregoing reasons, all the above writ petitions are liable to be dismissed and accordingly, they are dismissed with liberty to the petitioners to file an appeal under Section 53(5) of the H.R. & C.E. Act before the competent Authority. However, there will be no order as to costs. Connected M.Ps. are also dismissed.