

(2009) 09 MAD CK 0204

In the Madras High Court

Case No : Writ Petition (MD) . No's. 10188 and 12319 of 2008 and M.P. (MD) .
No. 1 of 2008

A/M. Badrakaliamman Temple

APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable
Endowment Board, The Joint Commissioner, Hindu Religious
and Charitable Endowment Board and The Assistant
Commissioner, Hindu Religious and Charitable Endowment
Board
Madanraj, Mahendran and Rohini Selvi Vs The
Sub-Registrar and The Assistant Commissioner, Hindu
Religious and Charitable Endowment Department

RESPONDENT

Date of Decision : 03-09-2009

Acts Referred:

Contract Act, 1872 — Section 201

Patta Pass Book Act, 1988 — Section 5(1)

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 21, 34,
63, 69(2)

Tamil Nadu Registration (Amendment) Act, 2009 — Section 22(A), 22(A)(1)

Citation : (2009) 09 MAD CK 0204

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : R.G. Shankar Ganesh, for the Appellant; K.M. Vijayakumar,
Additional Government Pleader and D. Gandhiraj, Government Advocate for 1st
Respondent in W.P. No. 12319/08, for the Respondent

Judgement

T.S. Sivagnanam, J.—By consent, the Writ Petition is taken up for final disposal at the time of admission itself.

2. W.P. No. 10188 of 2008 has been filed by the temple, represented by its Trustee. The prayer in the said Writ Petition is for issuance of the Writ of Certiorarified Mandamus, to quash the proceedings of the third respondent dated 25.09.2008. By virtue of the said proceedings, the Assistant Commissioner, HR & CE had informed the trustee of the temple that they are not entitled to sell the properties standing in the name of the temple without prior permission from the

HR & CE Department.

3. W.P. No. 12319 of 2008 has been filed by one Madanraj, the trustee of the temple and Mahendran and Rohini Selvi said to be the purchaser from the first petitioner. The prayer in the said Writ Petition is for issuance of the Writ of Mandamus to direct the first respondent to complete the registration of the sale deed presented by them on 15.07.2008 and return the document.

4. The case of the petitioner/temple as well as its trustee is that the temple was managed by the first petitioner's father and he had filed an application u/s 63(a) of the Tamilnadu Hindu Religious and Charitable Endowments Act (for short "Act"), for declaration that the temple is not a religious institution. By an order dated 19.06.1982, the Deputy Commissioner, who enquired into the matter, allowed the petition. According to the petitioner, the said order has become final.

5. It is further submitted by the petitioner that in terms of Section 34 of the Act, only if the temple is a religious institution, the question of obtaining prior permission arises. In the instant case, since the temple in question is not a religious institution as defined under the Act, the impugned order is wholly unsustainable and the petitioner cannot be compelled to seek for no objection from the HR & CE Department. On the same grounds, the petitioner also seeks for the direction for registration and release of the document.

6. In both the Writ Petitions, the Assistant Commissioner, HR&CE, has filed separate counter affidavits. In W.P. No. 12319 of 2008, the Sub-Registrar, Tirumangalam, has filed counter affidavit. As per the counter affidavit filed by the HR & CE Department, it is averred that the order passed by the Deputy Commissioner in O.A.No.85 of 1980, has not reach finality, since there is sufficient power vested with the Commissioner of HR & CE, to suo-motu review the proceedings u/s 69(2) of the Act. It is submitted that the property endowed to the deity covered by S. Nos. 60/14, 75/1, 75/2 extending to Hectares 0.42.5, 1.19.00 and 0.24.8, in Melakottai Village and S. No. 6/3 extending to 0.68.5 still stands in the name of the deity represented by the trustee for the time being. It is further submitted that when the properties described in the patta pass book are identical stands in two different names, as trustees of the very same temple and when the Sub-Registrar, Thirumangalam brought to the notice of the third respondent that petitioner herein based on the earlier order made by this Hon"ble Court in W.P.(MD). No. 3467 of 2008 dated 15.04.2008, presented a sale deed for registration of the temple lands for the purpose of renovating the temple, made the third respondent herein to make enquiry in the matter; after receipt of the report of the Inspector HR & CE Department, of the concerned division, the third respondent herein has addressed the first respondent narrating the above facts in Rc. No. 2949/2008 B.1 dated 20.09.2008, requesting the first respondent to initiate Suo-Motu proceedings u/s 69(2) of the Act, against the order passed by the then Deputy Commissioner in O.A. No. 85 of 1980 and similarly issued the impugned order; in response to the report submitted by the third respondent herein, the first respondent herein has also called for the

records in O.A. No. 85/1980 from the second respondent herein in his office Rc. No. 56679/2008 D.4 dated 15.11.2008.

7. Therefore, Mr. K.M. Vijayakumar, the learned Additional Government Pleader appearing for the respondents would contend that the matter is now pending consideration before the first respondent. The learned Counsel relies upon a decision of the Hon''ble Supreme Court in A.A. Gopalakrishnan Vs. Cochin Devaswom Board and Others, , stating that it is the duty of the Court to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

8. The learned Counsel for the HR & CE Department has also placed reliance on the recent amendment to the Registration Act, 1908, by virtue of Tamil Nadu Act 2 of 2009, wherein Section 22(A) came to be substituted and in terms of Section 22(A)(1) (ii), the Registering Officer can refuse to register the property unless no objection certificate is produced.

9. Mr. D. Gandhiraj, the learned Government Advocate appearing for the Sub-Registrar would rely upon the counter affidavit filed and submit that apart from the reasons assigned by the department, the documents cannot be executed for the following reasons:

(i) the executant of the sale deed has no right to act as agent of the principal, who is a dead person on the date of the document as the power given to her itself stands revoked on the death of the principal as per Section 201 of the Indian Contract Act, 1872.

(ii) The Seller has failed to produce computerised patta standing in her name as prescribed u/s 5(1) of the Patta Pass Book Act 1988, which overrides other laws as per Section 21 of the Act.

(iii) Non-receipt of reply from the HR & CE Department about the present state of the temple.

10. Heard Mr. R.G. Shankar Ganesh, the learned Counsel for the petitioners in both the Writ Petitions and Mr. K.M. Vijayakumar, the learned Additional Government Pleader appearing for the HR & CE Department in both the Writ Petitions and Mr. D. Gandhiraj, the learned Government Advocate appearing for the first respondent in W.P. No. 12319 of 2008 and also perused the materials available on record.

11. The short issue arises for consideration in the Writ Petition is as to whether the Registering Authority can refuse to register the document by insisting upon production of no objection certificate from the HR & CE Department. It is not in dispute that the order passed by the Deputy Commissioner, HR & CE Department, is an application filed by the petitioner's father u/s 63 of the Act, had attained finality on 19.06.1982. After the said order, neither the department nor any third parties have questioned the correctness of the said order. By virtue of the order dated 19.06.1982, the temple cannot be construed as religious

institution and therefore, bringing it out the scope of Section 34 of the Act.

12. The learned Counsel for the petitioner would submit that after a long lapse of 27 years, now the respondents have stated that the first respondent has invoked its Suo-Motu powers u/s 69(2) of the Act. The learned Counsel would further point out that the said power u/s 69(2) of the Act has been invoked on 15.11.2008, after filing of the Writ Petition on 10.11.2008. Therefore, the learned Counsel would submit that the entire exercise adopted by the respondents is a clear abuse of process of law and made only with an intention of defeating the petitioner's right. It is further submitted that even assuming without admitting an adverse order is passed by the first respondent, it would be always open to the temple to agitate its claim before the competent forum and merely on the ground of pendency of an application for exercise of Suo-Motu power cannot be a ground to refuse the registration of a document. The learned Counsel for the petitioner would further submit that as on date, the temple in question is not a religious institution and therefore, the provisions of the Act cannot be made applicable and the Sub-Registrar is not justified in insisting upon the no objection certificate from the temple.

13. Per contra, the learned Counsel for the HR & CE Department would reiterate the facts narrated in the counter and would submit that the proceedings u/s 69(2) of the Act has already been initiated and if the document is allowed to be registered, it would be against the interest of the temple. The learned Counsel would further submit that the order dated 19.06.1982 in O.A. No. 85 of 1980 is erroneous and has been passed by the Deputy Commissioner without adverting to the endowment of land properties made to the deity. That apart, he would very strenuously contended that there is a duty cast on this court to protect and safeguard the properties of the religious institution as held by the Hon'ble Supreme Court in A.A. Gopalakrishnan v. Cochin Devaswom Board and Ors. referred supra.

14. The learned Government Advocate appearing for the Sub-Registrar reiterated the submissions made in the counter affidavit and stated that the document in question cannot be registered for more than one reason as stated above and prays for dismissal of both the Writ Petitions.

15. I have carefully considered the rival submissions of both side and also perused the materials available on records.

16. It is not in dispute that as on date, the temple in question is not a religious institution as long as the order passed by the Deputy Commissioner, HR & CE Department, dated 19.06.1982 in O.A. No. 85 of 1980 remains intact without being set aside, modified or annulled and the same is binding upon the Department. Mere statement that the order passed by the Deputy Commissioner is erroneous, came to be passed based on irrelevant consideration would not suffice to deny the rights of the petitioner. The Hon'ble Supreme Court and this Court has consistently held that a mere pendency of an appeal before an

Appellate Forum cannot operate as automatic stay of the order or decree passed by the original Authority or the Court of first instance. Such principle could also be applied to the case on hand. Admittedly, the order passed by the Deputy Commissioner has not been stayed or varied till date. In such circumstances, as rightly contended by the learned Counsel for the petitioner, the temple in question cannot be construed as a religious institution within the ambit of Section 34 of the Act. If that be the case, the question of insisting of no objection certificate from the HR & CE authorities does not arise. It is always open to the Department to initiate appropriate proceedings after a decision is taken by the first respondent in the Suo-Motu revision u/s 69(2) of the Act said to have been initiated on 15.11.2008 to revise the order dated 19.06.1982. The action of the department in having slept over the matter for over 20 years is also to be taken note of. That apart, the Judgment relied on by the learned Counsel for the Department does not advance the case of the Department since the crux of the issue in the present case is that the temple in question is not a religious institution as defined under the Act and as on date it cannot be stated that the claim of the petitioner is a wrongful claim. Therefore, the Judgment of the Hon"ble Supreme Court cannot be fully applied to the facts and circumstances of the case. But however, this Court is conscious of the observations made by the Hon"ble Supreme Court in paragraph No. 10, which reads as follows:

The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by the trustees/archakas/shebait/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

17. Keeping all the above mentioned factors in mine, the following orders are passed.

(i) the impugned order dated 25.09.2008 passed by the third respondent is quashed.

(ii) the Sub-Registrar, Thirumangalam Taluk, is directed to register and release the document in question subject to the petitioner's complying with the other infirmities pointed out by the Sub-Registrar in the counter affidavit.

(iii) on full compliance of the queries pointed by the Sub-Registrar, Thirumanaglam, a sale deed in question shall be released with an endorsement that the same is subject to the outcome of the proceedings and now pending

before the first respondent initiated u/s 69(2) of the Act.

(iv) the vendor as well as the purchasers are also the Writ Petitioners in W.P. No. 12319 of 2008, shall not alienate or encumber the properties in question pending final decision of the application u/s 69(2) of the Act by the first respondent.

(v) the first respondent is directed to commence enquiry in the proceedings, issue notice to the temple, trustee, purchaser of the property, the Assistant Commissioner HR &CE of the Region and any other person who may be interested in the proceedings, conduct a detailed enquiry and pass orders in accordance with law within a period of three months from the date of receipt of a copy of this order.

18. It is to be noted that since the temple in question is not a religious institution coming within the scope to the HR & C Act. Section 22(A) introduced by Amending Act 2 of 2009 cannot be applied to the petitioner institution at this point of time.

19. With the above direction, the Writ Petitions are disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.