(1990) 03 KAR CK 0039

In the Karnataka High Court

Case No : Writ Appeal No. 395 of 1990

B.I. Tarali — APPELLANT

Vs

Kenya Ravindranathshetty and Others — RESPONDENT

Date of Decision : 02-03-1990

Acts Referred:

Madras Hindu Religious and Charitable Endowments Act, 1951 — Section 20, 21 A, 23, 26, 27

Citation : AIR 1991 Kar 19 : (1990) ILR (Kar) 1114 : (1990) 1 KarLJ 367

Hon'ble Judges : K.A. Swami, J;D.R. Vithal Rao, J

Bench : Division Bench

Advocate : R.U. Goulay, for the Appellant; Narasimha Murthy, Counsel for H.N. Narayan and Chandrasekhariah, Government Advocate, for the Respondent

Judgement

K. A. Swami, J.—At the stage of preliminary hearing, respondent-1 has entered caveat and Sri Chandrasekharaiah, learned Government Advocate has been directed to take notice for respondents 2 and 3. Thus all the respondents are represented.

2. As this Writ Appeal can be disposed of on a short ground, it is admitted and heard for final disposal.

3. This appeal is preferred against the order dated 22nd February 1990 passed in W.P. No. 1894/1990. The appeal is preferred by the 3rd respondent in the writ petition. The 1st respondent herein is the petitioner in the writ petition. He was one of the trustees of the Board of Trustees of Kukke Subramanya Swamy Temple, Sullia. The term of the Board of Trustees expired on 3-1-1990.

4. In the writ petition, the petitioner has sought for the following reliefs :

a) quash by the issue of writ of certiorari the order No. ADM.8.CR. 172/89-90 dated 23-1-1990 issued by the 1st respondent Annexure-B;

b) Issue a writ in the nature of Mandamus declaring that the 1st respondent has no Powers to appoint an Administrator under the provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951;

c) Issue a writ in the nature of Mandamus declaring that the Council of Trustees for the Kukke Subramanya Swamy Temple appointed on 31-1-1985 are entitled to continue till the new trustees are appointed in accordance with the scheme framed under Annexure-A;

d) Issue an interim order staying the order No. ADM.8CR 172/89-90 dated 23-1-1990 (Annexure-B) passed by the 1st respondent, pending disposal of this writ petition."

5. Annexure-B, impugned in the writ petition is an order dated 23-1-1990 bearing No. ADM 8 CR 172/89-90 passed by the Commissioner for Religious and Charitable Endowments, appointing the appellant as an Administrator of Sri Kukke Subramanyaswamy Temple in question u/s 20 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (hereinafter referred to as the ''Act''). By the interim order dated 31-1-1990, the operation of this order was stayed. An application was filed by the 3rd respondent in the writ petition for vacating the interim order passed on 31-1-1990. The learned single Judge by the order dated 22-2-1990 has restrained the appellant from functioning as Administrator until further orders and has permitted the Board of Trustees whose term has expired on 3-1-1990 to continue to function until further orders. It is the correctness of this order that is challenged in this writ appeal.

6. The learned single Judge has also noticed the fact that the appellant assumed management of the temple as Administrator on 25-1-90 and since then he has been functioning as such. However, the learned single Judge is of the view that a decision of a learned single Judge of this Court in Sri Ananteshwara and Chandra-Mouldeshwara Temple Vs. The Dy. Commissioner for Hindu Religious and Charitable Endowments, D.K. Mangalore and Others, throws doubt on the competency of the Commissioner to appoint an Administrator. Therefore, he has restrained the appellant from functioning as Administrator and has further permitted the erstwhile Board of Trustees, to continue to function under the Scheme.

7. It is submitted by Sri R. U. Goulay, learned counsel for the appellant that the Administrator took charge even prior to the passing of the interim order and functioned as such, therefore, he could not have been prevented from functioning. It is also further submitted that the term of the Board of Trustees expired on 3-1-1990 and there are allegations made against the Trustees involving a large sum as referred to in the order of appointment of the Administrator, therefore, the Commissioner for Religious Endowments is justified in appointing the Administrator.

8. Sri R. N. Narasimha Murthy, learned Senior Counsel, appearing for the 1st respondent submits that Section 20 of the Act, though very widely worded, does not empower the Commissioner to appoint an Administrator which act will

interfere with the right of the Board of Trustees to continue the management pending constitution of new Board of Trustees under the provisions of the Scheme. The learned counsel has placed reliance on para 2 of the Scheme governing the temple in question which is produced as Annexure-A para 2 of the scheme reads as follows :

"The trustees shall be appointed by the Commissioner, Religious and Charitable Endowments, Mysore, hereinafter called the Commissioner or the appropriate authority under law for the time being in force. The trustees shall hold the office for a period of 5 years from the date of their appointment. It shall be lawful for the Board of Trustees to continue in the management of the temple even after the expiry of five years pending the constitution of a new Board."

In addition to this, it is also contended that the 3rd respondent in the writ petition being only an official functioning under the Board of Trustees, has no authority or competency to prefer an appeal.

9. In the light of the aforesaid contentions, the following points arise for consideration :

1) What is the true scope of Section 20 of the Act?

2) In the facts and circumstances of the case, whether the Board of Trustees whose term has expired on 3-1-1990, can be allowed to continue?

3) Whether the appellant is a proper person to be appointed as Administrator?

10. Before taking up the points for consideration, we dispose of the objection raised by the respondents as to the competency of the appellant to prefer an appeal.

11. The appellant is the 3rd respondent in the writ petition. He has been appointed as an Administrator of the temple in question. The order under appeal restrains him from functioning and discharging his functions as an Administrator. Therefore, the appellant being a party to the writ petition and the order under appeal being the one passed against him, is entitled to come up in appeal. Merely because he is an official functioning under the Board of Trustees, as long as he is a party to the writ petition and the order under appeal affects him, it is not possible to hold that he is not an aggrieved person. Therefore, the objection is over-ruled.

Point No. 1.

12. Section 20 of the Act reads thus :

"Subject to the provisions of this Act, the Administration of all religious endowments shall be subject to the general suprientendence 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 purposes for which they were founded or exist."

Section 20 of the Act is very widely worded. In addition to taking in its fold normal conception of superintendence and control, it also further states that the 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 purposes for which they were founded or exist. Therefore, the power of superintendence is not confined to any particular subject or matter relating to administration of religious endowments. It is open to the Commissioner to pass such orders as are necessary to ensure that the endowments are properly administered and their income is duly appropriated for the purpose for which they were founded or exist. Of course we make it clear that the power of superintendence under Sec. 20 of the Act is subject to other provisions of the Act.

13. The scope of this power has also to be appreciated in the light of the provisions contained in Section 21-A, 23, 26, 27, 28 and 45(3) of the Act. Section 21-A of the Act makes it incumbent upon the Commissioner, Deputy Commissioner the Assistant Commissioner and every other person exercising powers of superintendence or control under the Act to observe forms and ceremonies appropriate to the religious institution in respect of which such powers are exercised and in the case of a math, acting in conformity with the usages of he math in his dealing with the head of the math. Section 23 of the Act also directs that the trustees of a religious institution shall obey all lawful orders issued under the provisions of the Act by the Government, the Commissioner, the Deputy Commissioner and the Assistant Commissioner.

Section 26 of the Act makes it incumbent upon the trustee to submit to the Commissioner for his approval directly or through the Assistant Commissioner, as the case may be, a verified statement showing the alterations, omissions of additions required in the register maintained u/s 25 of the Act. Section 27 also further directs the trustee to furnish to the Commissioner such accounts, returns, reports or other information relating to the administration of the institution, its funds, property or income or moneys connected therewith or the appropriation thereof, as the Commissioner may require and at such time and in such form as he may direct.

Section 28 empowers the Commissioner to inspect or depute any officer to inspect all moveable and Immovable property belonging to and all records, correspondence, plans, accounts and other documents relating to, any religious institution. It is incumbent upon the trustees, officers and servants of the religious institution to render all such assistance and facilities as may be necessary or reasonably required for exercising the power of inspection. In addition to this, there are other powers as contained in Section 29, 31 and other provisions which need not be referred to in detail.

Section 45 of the Act empowers the Commissioner, and the Deputy

Commissioner as the case may be to suspend, remove or dismiss any trustees of the religious institution on the grounds stated in clauses (a) to (e) of subsection (1) of Section 45. Sub-section (3) of Section 45 further empowers the Commissioner or the Deputy Commissioner as the ease may be, to place the trustees under suspension pending disposal of the charges framed against the trustee and appoint a fit person in his place to discharge the functions of the trustee.

14. Thus it is clear that vast powers are given to the Commissioner under the various provisions of the Act in addition to the provisions contained in Section 20 of the Act. Therefore, it is not possible to hold that if in a given case, the situation demands that the administration of the religious institution cannot be safely left in the hands of the trustees whose term has expired, and at the same time it is not possible to constitute a new Board of Trustees it is not open to the Commissioner to appoint an Administrator. It is also relevant to notice that unlike the Mathadhipathy of the Math, the trustees of the religious institutions will be performing the temporal part of the affairs of the temple and not the religious part of it. The religious part of the temples such as poojas and other ceremonies and the rituals which are to be performed on the appointed day at the appointed hour by the specified persons will have to be performed by the specified persons and not by the trustees who will be entitled to manage the affairs of the temple and also to ensure that the religious part of the temple are carried on continuously as per the scheme. Therefore, the appointment of an Administrator does not interfere with the religious part of the temple. The Supreme Court while considering the powers conferred upon the Commissioner u/s 20 of the Act, as to whether it interferes or offends any fundamental right of the Mahanth in the case of The Commissioner, Hindu Religious endowments, The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., observed thus (at p. 292) :

"Section 20 of the Ac(describes the powers of the Commissioner in respect to religious endowments and they include power to pass any orders that may be deemed necessary to ensure that such endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded. Having regard to the fact that the Mathadhipathy occupies the position of a trustee with regard to the Math, which is a public institution, some amount of control or supervision over the due administration of endowments and due appropriation of their funds is certainly necessary in the interests of the public and we do not think that the provision of this section by itself offends any fundamental right of the Mahant.

We do not agree with the High Court that the result of this provision would be to reduce the Mahant to the position of a servant. No doubt the Commissioner is invested with the powers to pass orders but orders can be passed only for the purposes specified in the section and not for interference with the rights of the Mahant as are sanctioned by usage or for lowering his position as spiritual head of the institution. The saving provision contained in Section 91 of the Act makes the position quite clear. An apprehension that the powers conferred by this section may be used in individual cases does not make the provision itself bad or invalid in law."

Applying the same interpretation to the religious institutions, other than Malhas, would go to show that the appointment of an Administrator does not interfere with the religious part of the temple.

15. A learned single Judge of this Court in Sri Ananteshwara and Chandra-Mouldeshwara Temple Vs. The Dy. Commissioner for Hindu Religious and Charitable Endowments, D.K. Mangalore and Others, has adverted to the aforesaid The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., . He has also adverted to a decision of the Supreme Court in State of Bihar and Another Vs. J.A.C. Saldanha and Others, . In Saldanna''s case, the Supreme Court considered the scope''1'' of superintendence u/s 3 of the Police Act. Section 3 of the Indian Police Act considered by the Supreme Court in the aforesaid case reads as follows (at p. 332 of AIR) :

"3. The superintendence of the police throughout a general police district shall vest in and, shall be exercised by the State Government to which such district is subordinate: and except as authorised under the provisions of this Act, no person, officer or Court shall be empowered by the State Government to supersede or control any police functionary."

The aforesaid section was interpreted by the Supreme Court as comprehensive enough to include the power to exercise effective control over the actions, performance and discharge of duties by the members of the police force throughout the general District. It also further held that the word ''superintendence'' would imply administrative control enabling the authority enjoying such power to give directions to the subordinate to discharge its administrative duties and functions in the manner indicated in the order. In addition to this, it further held thus (at p. 332 of AIR) :

"But where the subordinate subject to such power of superintendence of the superior is discharging administrative and executive functions, obligations and duties, the power of superintendence would comprehend the authority to give directions to perform the duty in a certain manner, to refrain from performing one or the other duty, to direct some one else to perform the duty and no inhibition or limitation can be read in this power unless the section conferring such power prescribes one. Such is the scope and ambit of power conferred by Section 3 on the State Government of superintendence over the entire police force of the State."

16. After referring to the aforesaid decisions, the learned single Judge of this Court in Sri Ananteshwara and Chandra-Mouldeshwara Temple Vs. The Dy. Commissioner for Hindu Religious and Charitable Endowments, D.K. Mangalore

and Others, has held thus (at p. 60) :

"But this power u/s 20 will not enable the Commissioner to take over the administration himself or through someone else. He cannot nominate the Trustees or Managers. Actual administration will have to be by the denomination concerned, directly or by delegation."

17. Sri Ananteshwara and Chandra-Mouldeshwara Temple Vs. The Dy. Commissioner for Hindu Religious and Charitable Endowments, D.K. Mangalore and Others, was concerned with a letter issued by the 2nd respondent therein to the 1st respondent stating that he was not recognising the present trustees as trustees of the temple because several devotees had complained about the election of the trustees as illegal and that a meeting of the devotees should be called for the purpose of constituting a fresh Board of Trustees. It was the aforesaid direction contained in the aforesaid letter that was challenged in the above case (Anantheswara and Chandramouleshwara Temple case). Therefore, in that decision, whether Section 20 of the Act empowered the Commissioner to appoint an administrator did not directly arise for consideration. In that case, the question that directly arose was to whether in the presence of the elected trustees, the Commissioner or the Deputy Commissioner, as the case may be, in the purported exercise of the power u/s 20 of the Act, could refuse to recognise the elected trustees on the ground that certain devotees had complained about the election of the trustees as illegal. Whether the election of the trustees was illegal or not could form a separate subject for decision. The Commissioner could not have refused to recognise the elected trustees as trustees of the temple merely on the ground that certain devotees complained about the election of trustees as illegal without that complaint being adjudicated in accordance with law. Therefore, the observations made in para 16 of the judgment in Sri Ananteshwara and Chandramouleswara Temple''s case that Section 20 did not empower the Commissioner to take over the administration himself or through some one else and he could not nominate the trustees or managers and that the actual administration of the temple will have to be carried on by the denomination temple concerned directly or by delegation are only Obiter Dicta and do not form the Ratio Decidendi. We are also of the view that those observations are not in conformity with the provisions of Section 20 of the Act and several other provisions of the Act referred to above. Thus we are of the view that the decision in Sri Ananteshwara and Chandra-Mouldeshwara Temple Vs. The Dy. Commissioner for Hindu Religious and Charitable Endowments, D.K. Mangalore and Others, cannot be read as laying down the law that the Commissioner has no power to appoint an Administrator for religious institutions u/s 20 of the Act for carrying on temporal affairs of the temple and also to ensure that the religious functions of the temple are carried on by the specified persons at the specified days and hours. The observations made in the said decision are confined to the facts and circumstances of that case and the same should be read in the context of the letter issued by the 2nd respondent therein calling for the meeting of devotees for electing a new Board of Trustees.

In K. A. Rama Rao v. Commissioner for Religious and Charitable Endowments in Karnataka, Bangalore (W.P. No. 2120/1986 D.D.5-12-1989), the temple concerned was Hosa Marigudi temple situated in Kaup village of Dakshina Kannada District which is also governed by the provisions of the Act and the scheme framed thereunder. Due to the dispute, new Board of Trustees was not constituted even though directions were issued on 29-5-1985 in W.P. No. 19950/1984 filed by one Shekhar Achary against the Commissioner for Hindu Religious and Charitable Endowments in Karnataka, Bangalore and others. On 25-3-1985, the Commissioner appointed the Inspector, Hindu Religious and Charitable Endowments, Udupi. to have effective supervision and control over the functions and activities and be in over all charge of the temple until further orders. He also further directed the Deputy Commissioner to suggest a well-known suitable person to be appointed as an Administrator to the temple. In this context, the power of the Commissioner to appoint an Administrator came up for consideration in that case. One of us (KASJ) held as follows :

"10. The grievance of the petitioner in this writ petition is that the Inspector, H. R. & C. E. Udupi, cannot be appointed by the Commissioner to be in overall charge of the temple and the petitioner cannot further be directed to work under him as per the order dated 10-1-1986 passed by the Commissioner. It is not possible to accept the contention of the petitioner".

11. As already pointed out, the Board of Trustees has not yet been constituted. As per the scheme, the petitioner is only a manager appointed by the previous Board of Trustees. He is a servant of the temple appointed on a salary. Section 20 of the Act specifically provides that subject to the provisions of the Act, the Administration of a Religious Endowments shall be subject to the general superintendence and control of the Commissioner und such ''superintendence and control'' shall include the power to pass an order which he may deem necessary for the purpose for which the Hindu Religious Endowment is founded or existed.

12. From the aforesaid provisions contained in Section 20 of the Act, it is clear that a wide power has been given to the Commissioner to meet all the exigencies and to properly and effectively supervise and exercise control over the religious endowments and also to ensure that such endowments are properly administered and their income is duly appropriated for the purpose for which they were founded or existing.

13. That being so, in a case where the Board of Trustees for reasons beyond the control of the Commissioner, cannot be constituted, the religious institution cannot be allowed to remain only in the hands of a manager without there being anyone on the spot to exercise effective control over the affairs of the institution and to ensure proper accounting and management of the temple. The Commissioner has acted well within his powers in authorising the Inspector, H. R. & C. E. Udupi to exercise effective supervision over the functions and activities and be in overall charge of the temple in question until further orders. Similarly,

the Deputy Commissioner, H. R. & C. H. has also acted well within his power in directing that the Inspector, H. R. & C. E. Udupi shall also exercise control over the petitioner. Therefore, the second relief sought for by the petitioner cannot at all be granted. The whole attempt of the petitioner is to see that no one supervises him by being present on the spot and he should not be subjected to immediate Supervision and control until the Board of Trustees is constituted. Such a situation cannot be allowed to be continued. The Commissioner cannot be made so helpless having regard to the onerous responsibility imposed upon him in supervising and exercising control over the religious endowments."

Thus we are of the view that Section 20 of the Act empowers the Commissioner to appoint an Administrator to manage the temporal affairs of the religious institution and also to ensure that the religious part of the temple are performed as per the traditions of the temple in a case where the term of the Board of Trustees has expired and the Board of Trustees cannot be permitted to continue keeping in view the interest of the religious institution until the new Board of Trustees is constituted. Point No. 1 is accordingly answered in the affirmative.

POINT NO. 2

18, In the instant case, as already pointed out, the term of the Board of Trustees expired on 3-1-1990. There is also no doubt that para 2 of the scheme as reproduced in para 8 of this judgment enables the Board of Trustees whose term has expired, to continue in the management of the temple even after the expiry of their term pending the constitution of a new Board of Trustees. There is no doubt, in the normal course, the Board of Trustees whose term expires will be entitled to continue until a new Board of Trustees is constituted. However, the present case does not fall in the normal category. There are serious allegations made against the Board of Trustees whose term has expired touching their functioning as trustees. There arc allegations of misuse of powers and funds. There is an auclil objection to the extent of Rs. 28,29,956/-. A show cause notice has been issued by the Commissioner to the Board of Trustees, However till 23-1-1990, the Board of Trustees had not given any reply to the said show cause notice. The Deputy Commissioner has also recommended to take further action in the matter. The Commissioner has further observed in the order dated 23-1-1990 that before the action to suspend the Board of Trustees could be taken, its term has expired and it is considered not desirable in the interest of the institution to allow the Committee to continue to function. Therefore, it is neither safe, nor wise to allow the present Board of Trustees whose term has expired on 3-1-1990 to continue to manage the affairs of the religious institution as in the facts and circumstances of this case, the interest of the religious institution cannot be considered to be safe in the hands of the Board of Trustees in question. Therefore, in the facts and circumstances of the case, the Commissioner is justified in not permitting the Board of Trustees to continue to manage the affairs of the temple and appointing an Administrator.

19. In addition to this, the pendency of W. P. No.23181/89 filed by one of the

devotees of the temple by name Sri Nagesh Rai challenging the validity of the Notification issued by the Deputy Commissioner for constituting a fresh Board of Trustees and an interim order passed in that writ petition on 21-12-1989 staying the further proceedings pursuant to the publication dated 27-10-1989 has given rise to another situation. As a result thereof election to constitute a new Board of Trustees cannot take place until either the interim order passed on 21-12-1989 in W.P. No. 23181 / 89 is vacated or the writ petition is decided upholding the publication issued by the Deputy Commissioner for constituting new Board of Trustees. Therefore, it is now not possible to say when the new Board of Trustees would be constituted. The interest of the religious institution will not be safe if the management of the temple in question is left for an indefinite period in the hands of the Board of Trustees, whose term has expired and against whom there are allegations of misuse of power and funds. Therefore, the conclusion reached by the Commissioner for Religious and Charitable Endowments for appointing an Administrator is just and proper. We accordingly answer point No. 2 in the negative.

POINT NO. 3

20. The 3rd respondent who is the appellant in this appeal is the Manager of the religious institution in question. As per the provisions of the scheme he is an Executive Officer of the temple in question. He is required to function under the Board of Trustees. He is also required to carry out the directions issued by the Board of Trustees. Therefore, he cannot be equated or elevated to the status of the Board of Trustees. An Administrator takes the place of Board of Trustees and will be in the management of the temple performing the functions of the Board of Trustees until the new Board of Trustees is constituted. Therefore, we are of the view that the appellant is not a proper person to be appointed as an Administrator. Point No. 3 is answered accordingly.

21. The next question that will arise for consideration is, having regard to the findings recorded on point Nos. 1 and 2, who should be the proper person to be appointed/as an Administrator. We are of the View that the Assistant Commissioner for Hindu Religious and Charitable Endowments or any officer of that grade who is a Hindu can be appointed as Administrator till the new Board of Trustees is constituted to perform the functions and discharge the duties of the Board of Trustees.

22. For the reasons stated above, this writ appeal is allowed, in the following terms :

In modification of the orders dated 31-1-1990 and 22-2-1990 passed in W. P. No. 1894/1990 it is ordered that the Commissioner for Religious and Charitable Endowments shall appoint an Assistant Commissioner for Religious and Charitable Endowments or any other officer of that grade who is a Hindu as Administrator of Sri Kukke Subramanya Swamy Temple Sullia Taluk, Dakshina Kannada District till the new Board of Trustees is constituted, to perform the functions and discharge the duties of the Board of Trustees of the aforesaid temple within two weeks from the date of receipt of this order.

23. Appeal allowed.

