

(2002) 09 MAD CK 0191
In the Madras High Court
Case No : L.P.A. No. 228 of 2001

C.A. Jagannathan

APPELLANT

Vs

T.E. Srinivasan, Arulmighu Devarajaswamy Devasthanam

RESPONDENT

Date of Decision : 27-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1
Constitution of India, 1950 — Article 226
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 21, 63, 69(2), 7, 70

Citation : (2002) 4 LW 259 : (2001) 3 LW 459 : (2001) 3 MLJ 691

Hon'ble Judges : K. Gnanaprakasam, J; A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : R. Alagar, for T. Srinivasa Raghavan, for the Appellant; S. Parthasarathy and Sarvabhauman Associates for Respondent No. 1, R. Subramanian and M.C. Swamy, Special Govt. Pleader for Respondent Nos. 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

A.S. Venkatachalamoorthy, J.—The appellant is a "Ulthurai Sthanikam" service holder in Arulmigu Devarajaswamy temple in Kancheepuram. Though he is not permitted to touch the Idol in the Shrine and Sadari, he can light lamp and other deepams at the time of poojas and festivals and hand over them to the archaka. The other duties carried out by him are keeping the Garbagraha clean, cleaning the pooja vessals and receiving of jewels and assisting in the conduct of poojas and singing Tamil songs before the God when alights in steps (Kattiyam).

2. The appellant has a daughter in United States of America. On 7.6.1991 he applied to the Assistant Commissioner/Administrative Trustee seeking permission to go abroad to see his daughter, that is to say, purely on a personal visit and not for any religious purpose. By an order dated 25.7.1991, the Assistant Commissioner/ Adminsitrative Trustee permitted him to go abroad as requested. After visiting his daughter, he returned on 22.10.1991. On 25.10.1991 he sent a

communication to the Assistant Commissioner seeking permission to resume his duties. Thereafter, the Assistant Commissioner addressed a letter to Thiru.A.V.Narasimhachari, who is the Ahama Pandithar and who fixes time for the temple festivals like Brahmotsavam in order to know as to whether the appellant, since went abroad and stayed for three months, can resume his duties. The said Narasimhachari sent a reply dated 1.11.1991 that the appellant can resume his work and duties after doing atonement (prayachitham) and also indicated what all Prayachithams to be done. He also pointed out that in a similar instance at Srirangam temple, a person was allowed to resume his duties. The Local Sthaniga hereditary Mirasidars Association President in his letter dated 4.11.1991 wrote that since the appellant has done the atonement (prayachitham), he can be permitted to resume his duties. Following the instance of similar nature in Srirangam temple, where the Assistant Commissioner by an order dated 29.9.1988 permitted such a person to resume duty, the Deputy Commissioner in his order dated 10.1.1992 mentioned that if the appellant has performed the necessary atonements (prayachithams), the Assistant Commissioner himself pass an appropriate orders and made it clear that henceforth such permission will not be granted.

3. One Thiru N.R.Thathachariyar and others sent telegrams to the Commissioner against granting permission to the appellant while Thiru Renganathan and others requested the Commissioner by their telegrams to permit the appellant to resume duties. It was resolved that a general enquiry may be conducted and a decision can be taken and following this, it was made known by beat of tom-tom in that area that an enquiry would be conducted on 28.2.1992 in the office of the Arulmigu Devarajaswamy Thirukkcoil, Kancheepuram and permitted persons to convey their respective pleas/views in this regard.

4. On 28.2.1992 about 16 persons gave their statements to the effect that there is nothing in appellant resuming duty, while 27 persons opposed granting permission to the appellant. The Deputy Commissioner, who conducted the enquiry came to the conclusion that as far as the present temple is concerned, the poojas are being done as per the Panjarathra Agamam and on an earlier occasion, one person by name Raghava Battar, who took a trip to Rangoon when came back, was not permitted to resume his duties as a Priest and that the incident at Srirangam temple where one N.Rengaraja Battar was permitted to resume duty cannot be taken as a precedent as far as the present temple is concerned, held that the appellant cannot be permitted to resume his duty.

5. Being aggrieved by this order, the appellant filed a revision petition u/s 21 of the HR & CE Act before the Commissioner of HR & CE Administration and the said revision was taken on file as R.P.No.47 of 1992. The Commissioner pointed out that the Agama with which the suit temple is governed is Pancharathram and took the view that a trip to abroad can never be a bar to resume duty in the temple as Priest of any category. In that view of the matter, the Commissioner held that the appellant has not violated any of the norms as laid down by the

Custom of the temple and that the appellant can be reinstated to the temple service.

6. Being aggrieved by the said order, first respondent herein filed a suit under Order VII Rule 1 CPC and Section 7 of HR & CE Act. In the plaint he has contended that the 4th respondent Commissioner of HR&CE has erred in allowing the revision u/s 21, as Section 21 does not apply for an order passed by the Deputy Commissioner since the Deputy Commissioner passed the order as per the delegated power of the Commissioner. It is further pleaded that if the Deputy Commissioner passed the order on his own powers, then appeal alone will lie and no revision will lie as Section 21 applies only in case of an administrative orders passed by the Deputy Commissioner and not in case of Judicial orders passed by the Deputy Commissioner and that the very fact that the Commissioner taken on file the revision itself is illegal and opposed to law. In the Plaint, first respondent has set out certain reasons as to why the order of the 4th respondent is liable to be set aside. In fact, it is the case of the plaintiff that the question whether the appellant acted contrary to the custom and usage of the temple does not arise as the Commissioner has not discussed any custom and usage relating to the temple and therefore, the order of the Commissioner is fundamentally opposed to law. It is also claimed therein by the first respondent that he has no other option except to file the suit praying to set aside the order of the Commissioner in R.P.47 of 1992 dated 3.2.1993.

7. We are not referring to various other averments in the plaint since the appellant in this appeal made it clear to this Court that he is advancing arguments only with reference to maintainability of the suit as against the Commissioner's order in revision and nothing more.

8. The appellant as the second defendant resisted the suit mainly contending that the suit u/s 70 can not be filed to set aside the order passed by the Commissioner in exercise of the power of revision. If the order is appealable and no appeal has been filed, any order passed by the Commissioner in suo-motu revision, then alone suit will lie. The order of the Deputy Commissioner is not appealable because it is not an order passed under any of the sections in Chapter V of the Tamilnadu Act 22 of 1959 and admittedly the revision is not suo-motu one. According to the appellant/second respondent, the remedy is misconceived and when particularly section 108 of the Act bars Civil Court jurisdiction. The second defendant disputed the claim that the 4th defendant delegated power to the Deputy Commissioner since the order is an original order passed by the Deputy Commissioner on the application of the Executive Trustee. When any order is passed by the Deputy Commissioner in exercise of the powers under Chapter V, then alone the order is quasi-judicial. But however, the order of the Deputy Commissioner is not one u/s 63 since whether a person ceased to be a Brahmin on account of Foreign travel is not the matter relating to the ritual or custom or usage. According to the appellant/second defendant, it must be noted that the question involved is not the custom and usage of the temple, but is the

personal status and that has nothing to do with temple custom.

9. The learned Subordinate Judge, after elaborately considering the oral and documentary evidence, decreed the suit by his Judgment dated 7.2.2001. The learned Subordinate Judge framed many issues and it is unnecessary to refer to them except to say that the third additional issue is, "Whether the suit as framed is not maintainable in law?". The learned Subordinate Judge without considering the specific plea in the written statement of the appellant/second defendant that Section 108 of the Act bars jurisdiction of the Civil Court and that the order of the Deputy Commissioner is not appealable and only a revision would lie and that the order of the Deputy Commissioner is not one u/s 63, simply ruled that the suit is maintainable in law. In fact, in the grounds of appeal in A.S.324 of 2001, on the file of this Court, again it is specifically contended that the suit u/s 70 of the Act will not lie against the order of the Commissioner and the remedy against the order of the respondent in such case is by way of appeal to the Government.

10. A learned single Judge of this Court by a Judgment dated 31.8.2001 confirmed the judgment and decree of the trial Court and dismissed the appeal. Before the learned single Judge also the learned counsel for the appellant made it clear even at the outset that he would not be arguing on merits and would rather restrict his arguments only with regard to maintainability of the suit and in view of that the learned single Judge rightly considered only that issue.

11. The learned single Judge, after elaborately considering the matter, came to the conclusion that the authorities below considered as to what the established usage of the temple and that being so, the dispute would clearly fall u/s 63(e) of the Act. As against an order u/s 63, a right of appeal is provided. Therefore, even if the Commissioner exercised his powers of revision, it cannot be u/s 21 and the same can only be u/s 69(2) of the act and it has to be so treated by a legal fiction. The learned single Judge held that in those circumstances only a suit is maintainable.

12. The learned counsel for the appellant at the outset made it clear that he is confining his submissions only on the maintainability of the suit O.S.156 of 1993 on the file of Sub Court, Kancheepuram, wherein the first respondent prayed for grant of a decree setting aside the order of the Commissioner viz., 4th respondent herein passed in R.P.No.47 of 1992 dated 3.2.1993 and the order of the superintendent dated 16.6.1993 and to restore the order of the Deputy Commissioner, HR & CE passed in Na. Ka. No. 1053 of 1992/A4 dated 25.8.1992, or in other words the learned counsel for the appellant made it clear that he is not advancing his arguments on the merits of the case.

13. The learned counsel for the appellant contended that the plea of the plaintiff is that the Deputy Commissioner passed Ex. A-2 order in exercise of the powers delegated to him by the Commissioner and Section 13 of the Act authorises the Commissioner to delegate some of his powers under the Act and since the claim of the plaintiff that the Deputy Commissioner acted in exercise of the delegated

power and the same has not been disputed by the respondents 3 and 4 viz., Deputy Commissioner and Commissioner, it has to be taken that they are accepting his plea of delegation as correct and that being so the Court has to proceed on the basis that Ex.A-2 order was passed as delegatee of the Commissioner. According to the learned counsel, the only remedy provided under the Act for challenging the order passed by the Deputy Commissioner as a delegatee of the Commissioner is by way of revision u/s 21 of the Act. The contention of the plaintiff that the order passed under Ex. A-2 is to be deemed to be one passed by the Commissioner himself and he cannot exercise the power of revision because it amounts to review of his own order is not correct since the same is against statutory rule and that any order passed by the delegatee of the Commissioner is subject to the revision by the Commissioner. It is further contended that when the Deputy Commissioner is directed to act as delegatee of the Commissioner, the delegator cannot ask the delegatee to do what he himself cannot do because power u/s 63(e) of the Act cannot be exercised by the Commissioner and consequently he cannot delegate a power which he himself does not possess.

As regards the enquiry as such it is contended that the Act and rules framed prescribe the procedures. According to Section 110 of the Act, enquiry is to be conducted as per the provisions of CPC so also Evidence Act and Indian Oaths Act. Section 63 gives power only to initiate proceedings on an application. Hence proceedings u/s 63(e) can be initiated only on an application and that Section 110(3) clearly lays down that the Deputy Commissioner, Joint Commissioner or Commissioner can conduct an enquiry or hear an appeal and for which the "Civil Procedure Code, The Indian Evidence Act and The Indian Oaths Act" would apply and the Deputy Commissioner shall be deemed to be a person acting judicially within the meaning of Judicial Officers Protection Act, 1850. All these would show that the enquiry contemplated u/s 63 shall be a quasi-judicial proceeding. But the enquiry that was conducted by the Deputy Commissioner was only a general public enquiry and nothing more than that. In the enquiry in the present case, conducted by the Deputy Commissioner, witnesses were not examined under Oath and the aggrieved parties were not permitted to cross examine. What was done at the enquiry was only to record the statements of those who were present at the time of the enquiry wherein they expressed their views. That being so, they are not legal evidence and the order that was passed by the Deputy Commissioner is only an administrative order and cannot be equated with a judicial order. When the order passed by the Deputy Commissioner is not the one contemplated under Chapter V or VI of the Act, Section 69, which provides for an appeal would not apply. According to the learned counsel, the learned single Judge is not correct in raising a legal fiction and construing the order of the Commissioner as one passed u/s 69(2) of the Act, since Section 69(2) would apply only to the suo-motu revision and not to the revision u/s 21 of the Act. That being so, when the order of the Commissioner is only an order in revision by virtue of powers conferred on him u/s 21 of the Act, a suit u/s 70 would not

lie. Sections 108 and 111 of the Act bar instituting a suit.

A contention is also raised to the effect that Ex. A-2 holds that the appellant is not now qualified to hold the post as the custom and usage of the temple do not permit such persons to work. According to the counsel, the order is one of disqualification and custom and usage are only the reasons. Reasons given for an order are not themselves order and the learned Judge has not correctly considered Ex. A-2 as one deciding custom and usage when it really holds that the appellant herein is disqualified on account of the alleged custom and usage. According to the learned counsel, the relief granted determines nature of the remedy and not the reason and in the present case, third respondent has held that the appellant is disqualified on account of custom and usage. The reasons for passing the order cannot be looked into to decide the remedy of the aggrieved person. As otherwise, it will lead to an anomalous situation and even go contra to the scheme of the Act. The learned counsel strongly contended that the plea of the plaintiff/first respondent that the suit is the only remedy is not correct and would point out that he can as well invoke Section 114 of the Act or Article 226 of the Constitution. According to the learned counsel the suit is not maintainable and consequently the appeal is to be allowed.

14. The learned counsel appearing for the first respondent submitted that the order dated 25.8.1992 is based only upon the religious usage of the temple and the Deputy Commissioner has taken into consideration the prior instance when an Archaka of the temple had gone to Rangoon, was not permitted to rejoin the duty and as far as matters relating to foreign travel by Paricharaka and Archaka, this one instance was sufficient to hold that there was no religious sanction for the rejoining of duty after a journey crossing the sea. Hence the order passed by the third respondent is only u/s 63 Sub Clause (e) of the HR & CE Act

According to the learned counsel, u/s 63 the Deputy Commissioner is the only authority, who is empowered to decide as to what is the established usage of a religious Institution in regard to any other matter. The learned counsel also pointed out that in the revision filed before the 4th respondent viz., the Commissioner of HR & CE, the appellant failed to implead the first respondent as a party and the order came to be passed without hearing him. According to the learned counsel, the order of the 4th respondent would clearly show that he had decided the issue only u/s 63 of the Act and not u/s 21. The learned counsel for the first respondent then contended that the plea of the appellant that the order of the Deputy Commissioner is only an administrative Order is purely a technical plea and does not take note of the fact that the Deputy Commissioner is the only authority who is authorised to decide the question relating to custom and usage of the religious institutions. When there is no lack of jurisdiction, it will not be open to the appellant to contend that the procedure prescribed has not been valid. He has not decided the question u/s 63 of the Act on the basis of settled principle of law, "where source of power exist the exercise of such power is referable only to that source and not to some other source under which where

the power exercised, the exercise of such power would be invalid and without jurisdiction."

Referring to the argument of the appellant that the Deputy Commissioner acted only as a delegatee, it is pointed out that the same would go contra to the contention raised in the written statement wherein the appellant has specifically stated that there was no delegation by the Commissioner to the Deputy Commissioner. With reference to the legal fiction, the learned counsel contended that having regard to the fact that the established usage of the temple relating to the right of Archaka or Paricharaka to resume duty after their return from foreign travel was decided and such a decision can be made only u/s 63(e) and the Commissioner had also exercised his jurisdiction u/s 69(2) of the Act as any order u/s 63(e) can be corrected only by taking recourse to Section 69 and thereafter by filing a suit u/s 70 of the Act, as a rule of interpretation. The construction of the learned Judge is only proper and even necessary in the facts and circumstances of the case.

The learned counsel then contended that the appellant having taken part in the enquiry conducted by the Deputy Commissioner, cannot now plead that he failed to follow the procedure prescribed under the Act. This is nothing but a hyper technicality and that will not take away the jurisdiction of the Deputy Commissioner to decide the established usage of the temple in regard to the permitting Ulthurai Servant to resume office on his return from a trip abroad. As far as the contention of the appellant that no petition was before the Deputy Commissioner for him to invoke Section 63, it is contended that it was Executive trustee, who had invoked jurisdiction of the Deputy Commissioner. A further contention is raised to the effect that if the authority has jurisdiction to decide, he is entitled to take decision, may be his decision on merits may suffer from lack of evidence or an error in adopting the right procedure, but the procedure by themselves cannot dictate or override the jurisdiction exercised by the Deputy Commissioner. On the question of maintainability of the suit, learned counsel contended that even if finality is attached to the orders passed by the authorities under the Act, the Civil Court jurisdiction would stand excluded only if there is remedy to do what the Civil Court would normally do in a suit. Section 111 of the Act would not stand in the way of instituting a suit as there is no machinery provided in the Act to agitate further and it is well established that in such a situation the Civil Court jurisdiction is not ousted. That apart, the order passed by the Commissioner which has affected the religious usage of the temple is without jurisdiction and is not one in accordance with the HR & CE Act and Section 105 clearly stipulates that the Act does not authorise any interference with the religious and established usage of the temple. Custom and established usage have the force of law and any order passed in derogation of established usage is an order passed against the law and therefore it is illegal. Therefore the regular Civil Suit is maintainable to correct the order passed by the Commissioner. Referring to State of Madhya Pradesh Vs. Bhailal Bhai and Others, learned counsel contended where special remedy provided under Article 226 of

the Constitution of India is not intended to supercede completely the modes of obtaining by an action in a civil Court or to deny itself legitimate defences in such actions and that the parties have to be left to seek their remedy by the ordinary mode by an action in Civil Court and so far as the present case is concerned, it is hardly a case where the jurisdiction under Article 226 could have been effectively invoked. Finally it is contended if the Judgment of the learned Subordinate Judge is set aside on the ground of lack of jurisdiction it would result in revival of an illegal order and in that event, Courts may not do so as held by the Supreme Court in Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others, .

15. The appellant is a Paricharaka in the second respondent temple. His daughter is in United States of America and in 1991 he desired to visit her. He sought for permission from the Administrative Officer to go abroad and the same was granted on 25.7.1991. The appellant after visiting U.S.A., returned to India and on 22.10.1991 sought permission to rejoin duty. The Administrative Trustee in order to know whether he can be permitted to rejoin duty since he went abroad, crossing the sea, sought information/opinion from the Ahama Pandit Sri A.V.Narasimhachari. The said Pandit replied to the effect that if some atonements (prayachithams) are done, he can be permitted to rejoin duty and he also referred to one such instance in the temple at Srirangam. The Local Sthanika Hereditary Mirasdar Association President in his letter dated 4.11.1991 addressed to the Administrative Trustee, sought necessary orders to permit the appellant to resume duty. In this connection, the Deputy Commissioner in his letter dated 10.1.1992 wrote that the Assistant Commissioner/Administrative Trustee himself could pass appropriate orders and further made it clear that henceforth such permission will not be granted. At this juncture, some of the local people sent telegrams to the Commissioner of H.R. & C.E., Madras both for and against granting permission to rejoin duty. A Public enquiry was held on 21.2.1992 in the office of the temple when 16 persons gave statements in support of the appellant while 27 against the appellant. The first respondent is one amongst those opposed granting permission. The Deputy Commissioner in the enquiry held against the permission being granted to the appellant to rejoin duty, by his order dated 25.8.1992 and being aggrieved by that, the appellant filed a revision u/s 21 of the HR & CE Act before the Commissioner in R.P. 47 of 1992. The Commissioner set aside the order of the Deputy Commissioner and held that he can be reinstated into the temple service by his order dated 3rd February, 1993. The aggrieved first respondent filed a suit in O.S. 156 of 1993 on the file of Sub Court, Kancheepuram praying the Court for setting aside the order of Commissioner in R.P. 47 of 1992 dated 3.2.1993 and thereby restoring the order of the Deputy Commissioner dated 25.8.1992. The suit was decreed and the appeal filed by the appellant in A.S. 324 of 2001 was dismissed by the learned single Judge of this Court by Judgment dated 31.8.2001.

16. The first and foremost issue that arises for consideration is as to whether the 4th respondent viz., the Commissioner of HR & CE delegated the power to the

Deputy Commissioner and whether the order passed by the Deputy Commissioner is to be treated as one passed by the Commissioner himself.

17. The first respondent in his plaint has taken a specific plea in paragraph 11 of the plaint as under:

"... The Deputy Commissioner passed an order as per the delegated power of the Commissioner and when the Deputy Commissioner, who has been delegated the power of the Commissioner and passed an order such an order cannot be revised by the Commissioner. If the Deputy Commissioner has passed an order on his own powers then the appeal alone will be maintainable and no revision will lie. Section 21 applies only in cases of administration orders passed by the Deputy Commissioner and not in case of Judicial Orders passed by the Deputy Commissioner. ..."

The plaintiff as PW-1 deposed before the Court to the same effect. From the above, according to the first respondent, (a) the Deputy Commissioner acted only as delegatee, and (b) Revision u/s 21 of the Act would not lie against "Judicial Orders" passed by the Commissioner, but not so in respect of administrative orders.

18. When this is the specific pleading, during the course of the argument, the learned counsel for the first respondent contended as under (extracted from the written submissions of first respondent),

"The next argument of the learned counsel for the appellant is that the question relating to disqualification of the "Paricharaka" cannot be decided by the Commissioner as he has no power to decide a question u/s 63(e) of the Act. This itself clearly shows that the Deputy Commissioner did not decide the issue as a delegatee of the Commissioner."

Thus, it could be seen the first respondent/plaintiff has no clear and consistent stand as to whether the Deputy Commissioner acted as a delegatee.

19. Coming to the written statement filed by the appellant, in paragraph 10 what has been stated by the appellant herein is as under,

"... It is not correct to say that the 4th defendant delegated any power to the Deputy Commissioner. ..."

But however, in the course of argument before this Court, the appellant took a different stand viz., the Deputy Commissioner acted as a delegatee. Let us quote the exact submission made on behalf of the appellant hereunder (extracted from the written submission filed by the appellant),

"The plaintiff pleads that the Deputy Commissioner passed Ex. A-2 order in exercise of the power delegated to him by the Commissioner. Sec. 13 of the Act authorises the Commissioner to delegate some of his powers under the Act. The plaintiff as PW-1 says that the Deputy Commissioner passed the order Ex. A-2 in exercise of the power delegated to him. This statement in chief examination is

not challenged by the defendants 3 and 4 i.e, the Deputy Commissioner and the Commissioner the delegatee and the delegator. That means they accept this as correct (vide Therefore the Court has to proceed on the basis that Ex. A-2 order was passed by D-3 the Deputy Commissioner as delegatee of the Commissioner."

Just like the first respondent, the appellant also has no consistent stand as to whether the Deputy Commissioner acted as a delegatee or on his own.

20. Coming to the respondents 3 and 4, they have filed a common written statement before the Trial Court. Referring to the allegations made in paragraph 9 to 11 in the plaint, they have stated as under,

"... This defendant submits that the allegation contained in paras 9 to 11 of the plaint are denied. This defendant further denies the allegations with regard to the revisional powers of the Commissioner and the delegation power of the Deputy Commissioner. ..."

Thereafter in paragraph 6 it is stated as under,

"This defendant submits that the present question is only an administrative matter and which cannot be interfered with by outsiders like the plaintiff. ..."

Thus, the claim of the plaintiff in paragraph 11 of the plaint that the Commissioner delegated the power to the Deputy Commissioner has been denied by the 3rd and 4th defendant generally and no attempts have been made by them to further clarify the position or their stand. In fact, the learned Government Pleader appearing for the respondents contended that there was no delegation of power by the Commissioner to the Deputy Commissioner.

21. From the materials available on record, this Court has to find out as to whether the Deputy Commissioner conducted the enquiry on behalf of the Commissioner (i.e.) as a delegatee. We have pointed out supra that there is no consistency in the stand of respective parties. We have already set out the necessary facts and it is not necessary to repeat them over again here. Suffice to mention, on a request made by the first respondent, Local Sthanika Hereditary Mirasdar Association President sought necessary orders from the Administrative Trustee. The Deputy Commissioner by his communication dated 10.1.1992 made it clear that the Assistant Manager/Administrative Trustee can himself pass necessary orders permitting the appellant to rejoin duty. Thereafter some telegrams were sent to the Commissioner, H.R. & C.E. by the local people both for and against granting permission. According to the order of the Deputy Commissioner dated 25.8.1992, the Department considered those telegrams and decided to conduct a public enquiry and in this regard the public were informed by tom-tom by the Deputy Commissioner about the enquiry to be conducted on 28.2.1992 in the office of the temple. The said order of the Deputy Commissioner reads the telegram from the Commissioner dated 28.2.1992. No materials have been placed before this Court about the contents of the telegram or any other evidence let in by any of the parties to show the nature of direction given by the

Commissioner to the Deputy Commissioner. In such a situation, merely because in the order of the deputy Commissioner dated 25.8.1992 in page 2 it is stated,

"jpU. rp.V.b\$fd;dhjid kPz;Lk; if";fh;ag; gzpapy; mkh;j;Jtjw;F vjph;g;g[fSk;. Mjut[fSk; jpUf;nfhapypYk;. jpUf;nfhapy; gf;jh;fSplKk; vGe;Js;sJ ,j;Jiwapd; ftdj;jpw;F bfhz;Ltug;gl;jdhhy; ..."

cannot be taken to mean that the Commissioner should have directed the Deputy Commissioner to conduct enquiry on his behalf. The possibility of Commissioner forwarding those telegrams received by him to the Deputy Commissioner asking him to take appropriate action or even suggesting that a Public enquiry can be conducted in that regard cannot be considered to mean that there was a delegation of power by the Commissioner to the Deputy Commissioner in and by which alone the Deputy Commissioner conducted the enquiry. We hold that the Deputy Commissioner did not act under the delegated power and hence it cannot be construed that the order was passed by the Commissioner.

22. The next vital question that arises for consideration is what is the nature of enquiry that was conducted by the Deputy Commissioner on 28.2.1992. Regarding the enquiry as could be seen from the records, the Public were informed by tom-tom that all those who are willing to participate in the enquiry can come to the office of the temple on the said date i.e., on 28.2.1992. Persons desired to express their opinion did appear on that day and gave their statements. On the basis of such statements the Deputy Commissioner passed the order on 25.8.1992. The question is whether this is just a general enquiry by the Deputy Commissioner on some complaint or is it an enquiry as contemplated u/s 63(e) of the Act. Chapter V of the Act deals with enquiries and Chapter VI deals with notified religious institutions. Section 63, which is in Chapter V is to the effect that the Joint Commissioner or Deputy Commissioner shall have power to enquire into and decide the disputes enumerated therein. One such dispute they have power is to consider the question as to whether any person entitled to by custom or otherwise to any honour, emolument or perquisite in any religious institution; and what the established usage of a religious institution is in regard to any other matter. Section 110 of the Act lays down procedures and powers at inquiries under Chapter V and VI. There are three sub sections in the said section. Sub-section (1) is to the effect that the Inquiry must be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 and the same must be done as nearly as may be. Sub-section (2) is to the effect that the provisions of Indian Evidence Act and Indian Oaths Act shall apply to such inquiries. Sub-Section (3) lays down that the Officer holding inquiry shall be deemed to be a person acting judiciously within the meaning of Judicial Officers Protection Act, 1850. From the above provisions of the Act, it is very clear that if a Deputy Commissioner wants to hold an inquiry u/s 63(e), the same must be in conformity with Section 110 of the Act which lays down the procedure and powers of Inquiries.

23. Section 110(1) of the Act is to the effect that the inquiry must be in

accordance with the procedure applicable under CPC at the trial of suits as nearly as may be. What has to be noted is that the words employed by the Legislature with regard to the applicability of Code of Civil Procedure. In many enactments it could be seen that the words employed while indicating the applicability of CPC are "as far as possible". But in this case, we find the law making authority has employed the words "as nearly as may be". The words "as far as possible" have to be understood as "wherever it is possible". But in this case, the words employed viz., "as nearly as may be" to be understood in the background that the law making authority thought it necessary that the provisions of Indian Evidence Act and Indian Oaths Act should apply in all forces. No ruling has been cited as to how these words "as nearly as may be" should be understood. Equally, no book on Idioms and Phrases has been placed before this Court in this regard and in fact no books are available in the Court's Library.

The Black's Law Dictionary, 7th Edition would give the meaning of the term "near" as "close to, almost".

The Webster's Third International Dictionary, Vol. No. 1, 1993 Edition explains the word "near" as "almost, nearly, closely".

If we turn to Collins English Dictionary, the meaning that is given is "closely connected or intimate, almost being a thing specified, to draw close".

Encarta World English Dictionary - Macmillan would also give a similar meaning, that is to say "close, almost".

The Chambers 21st Century Dictionary would explain the term near as "close to something."

Meaning of the term near as could be seen from Ramanatha Aiyer's Law Lexicon, II Edition is "close to or at no great distance, not distant from, not remote, but of reasonably easy and convenient access".

Reader's Digest Illustrated Reverse Dictionary published by The Reader's Digest Association Limited, 1989 Edition would clarify the term near as "very like, approaching, almost equivalent".

Then the question would arise as the word "may" also finds place, whether it has to be construed as "may" or, in the context it will have the effect of "shall". This Court is of the view that the word "may" has to be taken as "shall". This is because section 110(2) proviso clearly lays down that the Indian Evidence Act and Indian Oaths Act shall apply and it is evident, the legislators while enacting these provisions should have thought it necessary that the provisions of CPC has to be applied as nearly as possible. In our view, in view of the fact that when the words "as nearly as may be" is employed, what is expected is, close/almost compliance of the procedures laid down under the Code of Civil Procedure. Or in other words, the Legislators, by employing those words intended adherence of the procedure laid down should be something more than what is in the normal course possible.

24. Next, sub-section 110(2) clearly lays down that the provisions of Indian Evidence Act 1872 and Indian Oaths Act, 1850 shall be applied to such inquiries. What is to be taken note of is, the Officer holding inquiry can have no escape except to apply the provisions of these two acts in view of the fact the word "shall" has been applied and not as in the previous sub-section "as nearly as may be". Or in other words, the Legislature was conscious of the fact that while CPC should be applied as nearly as may be, coming to the Indian Evidence Act and Indian Oaths Act, the provisions of those acts should be followed. As otherwise, there is no need to have a separate sub-section. Again, to put it differently, the wordings are not to the effect that the provisions of code of Civil Procedure, Indian Evidence Act and Indian Oaths Act shall as nearly as may be applied in the conduct of the inquiry.

25. Sub-section (3) of Section 110 extends the protection given to Judicial Officers who act bona fide to the authorities who conduct inquiry u/s 63 so also to the Commissioner.

26. The learned counsel for the appellant contended that in view of Section 110(1) of the Act referred supra, for an inquiry to be one u/s 63(e) of the Act, the Deputy Commissioner should have insisted for a proper petition or application from the objectors and that has not having been done, it has to be only held that the Deputy Commissioner has not followed the procedure. Per contra, learned counsel for the first respondent contended that as the whole thing emanated from Local Sthanika Hereditary Mirasdar Association President's communication, it cannot be said that the Deputy Commissioner suo-motu started the inquiry. We are unable to accept the submission of the learned counsel for the first respondent. As rightly pointed out by the learned counsel for the appellant, the Deputy Commissioner ought to have, if really he intended to conduct an inquiry contemplated u/s 63(e) of the Act, insisted for an application or petition from the Objectors. In fact on that day there was no petition pending for consideration. Secondly, the Evidence Act contemplates certain procedure viz., examination of the witnesses and cross examination by the opposite party and before examination of a witness, he must be called upon to take oath that he will speak truth and nothing but truth in view of the applicability of the Indian Oaths Act. Admittedly these provisions/procedures were not adhered to. At this juncture, it has to be pointed out that the plaintiff himself has deposed in the cross examination as under,

"mth; nfhapypnyna bghJ tprhuizaj;jhd; elj;jpdhh;. ehd; mjpy; fye;J bfhz;nld;."

As rightly pointed out by the learned counsel for the appellant, the mandatory procedure prescribed under various Acts was not followed by the Deputy Commissioner in conducting the inquiry. Again, it has to be pointed out, only because of the fact that the Deputy Commissioner was discharging a quasi judicial function and to extend proper protection for him, Section 110(3) has been enacted extending protection to Deputy Commissioner and others as well. From the above, we come to the conclusion that even though an inquiry was

conducted by the Deputy Commissioner on 25.2.1992, it cannot be said that the inquiry is one as contemplated under Chapter V of the Act.

27. The learned counsel for the first respondent contended that if the authority has the jurisdiction to decide he is entitled to take the decision, may be his decision on merits may suffer from lack of evidence or an error in adopting the right procedure, but the procedure by themselves cannot dictate or override the jurisdiction exercised by the Deputy Commissioner and the rules or procedure cannot decide exercise of jurisdiction of the authority concerned.

28. When there is complete violation of the provisions of various Acts, in each and every possible way and when the enquiry was conducted without a proper pleading (i.e.) even without a petition from the aggrieved person, it will not be open to the first respondent to turn around and contend that here is an officer who has got power to pass order and hence whatever be the type or nature of enquiry conducted by him and whatever be the procedure he had followed, the enquiry should be construed as one u/s 63 of the Act.

29. In view of the above discussion, we hold that the inquiry conducted by the Deputy Commissioner was not an inquiry as contemplated u/s 63(e) of the Act but only in the nature of general public enquiry and the Deputy Commissioner passed only an administrative order.

30. The learned counsel for the respondent of course contended that the appellant having taken part in the inquiry, cannot turn around and say that the inquiry was not conducted properly and not as contemplated u/s 63(e) of the Act. It is not the case of the first respondent/plaintiff that the Deputy Commissioner made it known to everyone that he intends to conduct inquiry u/s 63(e) of the Act. There was only tom-tom in the village/town and on the appointed date, some people gathered and gave statements. In fact the plaintiff himself has deposed in the cross examination as under,

"mth; nfhapypnyna bghJ tprhuizaj;jhd; elj;jpdhh;. ehd; mjpy; fye;J bfhz;nld;."

Certainly at that time, none would have known that it was intended to be one u/s 63 of the Act. That being so, the question of appellant protesting then itself or seeking recourse to some other relief would not arise.

31. Once this Court comes to the conclusion that the inquiry was only public inquiry and not the one contemplated u/s 63 of the Act, Section 69 would not apply and no appeal would lie against the order of the Deputy Commissioner. We do not agree with the learned single Judge that the revision filed by the appellant before the Commissioner should be treated as one u/s 69(2) of the act by a legal fiction and that a suit is maintainable. We also do not agree with the learned single Judge in holding that both the Deputy Commissioner and Commissioner dealt with the matter as one u/s 63 of the Act, the reason being as we have already pointed out the inquiry held by the Deputy Commissioner was only a general public enquiry and by no stretch of imagination and for the reasons

which we have already pointed out earlier, it can be said that the inquiry was held u/s 63 of the Act.

32. The learned counsel for the 1st respondent of course would contend that inasmuch as the revision was heard and disposed of without due notice to the first respondent, the same should be held to be one passed without hearing the aggrieved parties and in those circumstances the suit is maintainable. It has to be remembered the first respondent did not send telegram like others to the Commissioner, objecting for grant of permission to the appellant to rejoin duty. He only participated in the enquiry by giving a statement and nothing more and at best it can be said he was a witness. That being so, there was no necessity to implead him as a party in the revision petition. Nothing prevented him from impleading himself in the proceeding before the Commissioner just like some others did, if he so desired.

33. The learned counsel for the appellant contended that in view of the provisions of the Act viz., Sections 108 and 111 of the Act, first respondent is prevented from filing a suit and consequently the suit is not maintainable.

34. The learned counsel for the respondent contended that Section 111 of the Act merely states that any order passed by the authorities under the Act shall not be liable to be questioned in any Court of law, but however, no special machinery is provided except in cases where the issues are decided u/s 63 to file a suit u/s 70 of the Act and that with reference to other adjudication there is no machinery and only a finality is attached to the order and it is well established that in such a situation the Civil Court jurisdiction is not ousted.

35. Section 114(1) of the Act confers powers on the Government to call for and examine records of Commissioner, Joint Commissioner or Deputy Commissioner not being a proceeding in respect of which a suit or an appeal or application to a court is provided by the Act to satisfy themselves as to regularity or correctness of such procedure, etc. In fact, under sub-section (2) of Section 114, the Government has power to stay the execution of an order pending exercise of their powers under sub-section(1). Even that apart, it is always open to the person aggrieved to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

36. In fact, the proper and effective remedy is to file a petition u/s 63 of the HR & CE Act and in such an event, the authority empowered shall hold an enquiry applying the provisions of the Act, in particular applying Section 110 and pass appropriate orders and it will be an adequate remedy to do what the Civil Court would normally do. Till such an order is passed, the administrative order (dt. 3.2.1993) already passed by the Commissioner has to be in force.

Of course, if he fails before that authority, he can file an appeal before the Commissioner u/s 69 of the Act and further remedy by way of suit is also available.

37. It has also to be noted that the relief that is sought for in the suit is to set aside the order of the Commissioner, HR & CE and to restore the order of the Deputy Commissioner HR & CE passed in Na. Ka. No. 1053 of 1992/A4 dated 25.8.1992 and there is no prayer to declare the established usage of the religious institution, in this case the temple in the suit. In the facts and circumstances of the case, this Court is of the considered view that the rulings relied on by the respondent viz., Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , State of Tamil Nadu Vs. Ramalinga Samigal Madam, and Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, would not apply to the facts of this case since this Court has found that the first respondent has an effective remedy adequate enough to do what the Civil Court would normally do.

38. To sum up, we hold that the order passed by the Deputy Commissioner dated 25.8.1992 is only an administrative order on the basis of a general public enquiry and he passed that order not as per the delegated power and that the order is not the one u/s 63 of the Act and a revision u/s 21 would lie and against the order in revision no suit is maintainable since there are effective and appropriate remedies and more so when the prayer is only to set aside the order of the Commissioner. In this view of the matter the suit is liable to be dismissed as not maintainable.

39. In the result, the appeal is allowed. The decree and judgment of the learned single Judge in A.S. 324 of 2001 dated 31.8.2001 and O.S. 156 of 1993 on the file of Sub Court, Kancheepuram are set aside. No costs.