
(2002) 06 MAD CK 0136

In the Madras High Court

Case No : Writ Petition No. 10820 of 1993 and W.M.P. No. 16556/93

Chandra Rao S. Khataukar (Deceased), Hamsa Bai,
Kailashnath, Shanthi Narayan, K. and Shyam Sundar

APPELLANT

Vs

The Commissioner, H.R and C.E. Administration Department,
Madras, Dhanakoti Ammal Charities and Vijayalakshmi
Kalpana

RESPONDENT

Date of Decision : 25-06-2002

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 21,
21(2), 21(7), 21A, 68

Citation : (2002) 06 MAD CK 0136

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Hema Sampath, for the Appellant; G. Sukumaran, Special Govt.
Pleader (HR and CE) and Agni, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Questioning the proposed enquiry in suo motu Revision 1/93 of the Commissioner, Hindu Religious and Charitable Endowment Administration Department, Madras-34, the petitioner has filed the above writ petition to forbear him from proceeding with the said enquiry.

2. The case of the petitioner is briefly stated hereunder: The petitioner is the owner of superstructures bearing Door Nos. 358-361, Rasappa Chetty Street, Madras-3. The site belongs to the second respondent. The petitioner built the superstructure on the land measuring an extent of 305 sq.ft. in R.S.No. 10338/1, Block No.84, G.T. Madras. He was originally paying Rs.225/- as ground rent to the second respondent herein. The rent was revised and refixed at Rs.300/- per mensem by the Deputy Commissioner, H.R and C.E. Madras. The proceedings of the Deputy Commissioner, H.R and C.E. dated 16-8-83 would show that the petitioner was the owner of the superstructure. The said order was forwarded to the then Commissioner, H.R and C.E by the Deputy Commissioner, in terms of

Section 68 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the Act"). The Commissioner examined the order of the Deputy Commissioner and finding that there was no illegality or irregularity or impropriety in the order passed, lodged the matter stating that no further action was necessary. While so, all of a sudden, the first respondent has sought to re-open the matter by initiating a suo motu revision 1/93. He was served with a notice dated 6-1-1993, calling upon him (petitioner) to appear before him. Since powers u/s 69 (2) of the Act had already been exercised by the first respondent herein, it is not open to him, without any change in the circumstances, to seek to re-open the very same orders of the Deputy Commissioner in his purported exercise of the powers u/s 69 (2) of the Act, hence the present writ petition.

3. The first respondent-Commissioner, H.R and C.E. filed a counter affidavit disputing the various averments made by the petitioner. It is stated that Dhanakoti Ammal Charities was originally created by one Dhanakoti Ammal by her Will dated 2-2-1878 endowing certain properties which include the ground, building and premises bearing Door Nos. 200 to 203 (Old Nos. 358 to 361) at Rasappa Chetty Street, Madras-3 absolutely to the suit institution. The administration of the suit institution is governed by a Scheme framed by this Court in A.S. 736/63. The petitioner herein was recognised to be the tenant of the suit properties for building rent. The petitioner as tenant has sub-let the property to three persons. This has come to light during the spot inspection by the Rent Fixation Committee on 26-6-77. At the instance of the petitioner/tenant, the then Deputy Commissioner without studying the case in depth passed orders in his Rc.No. 9937/83 A3 dated 16-8-1983 in K.Dis. 15552/83 dated 10-11-83 for mutation of tenancy from building rent into ground rent. The said order was passed on the wrong information given by the then Executive Officer. The first respondent on perusal of the records considered that it is fit and proper to initiate action u/s 21 of the Act and accordingly issued notice on the petitioner dated 6-1-93 calling upon him to appear either in person or through counsel and to represent his case. It is the said notice that is being challenged in the writ petition.

4. Though the second respondent has also filed a counter affidavit, it is unnecessary to refer the same.

5. In the light of the above pleadings, I have heard the learned counsel for the petitioner as well as respondents.

6. The only question to be considered is whether the first respondent is well within his powers in issuing the impugned notice to re-open the case?

7. In order to appreciate the question, it is useful to refer the relevant provisions of the Act.

"Section 21. Powers of Commissioner to call for records and pass orders:- (1) The Commissioner may call for and examine the record of any Joint or Deputy or

Assistant Commissioner, or of any trustee of a religious institution other than a math or a specific endowment attached to a math in respect of any proceeding under this Act not being a proceeding in respect of which a suit or an appeal to a Court is provided by this Act or in respect of which an application for revision has been passed u/s 21-A to the Joint Commissioner or Deputy Commissioner and is pending Disposal by him. (....)to satisfy himself as to the regularity of such proceeding or the correctness legality or propriety of any decision or order passed therein.

(2) If any such decision or order has been passed by any Joint or Deputy or Assistant Commissioner, or by the trustee of any religious institution other than a math or a specific endowment attached to a math and other than one included in the list published u/s 46, and it appears to the Commissioner that the decision or order should be modified, annulled, reversed or remitted for reconsideration he may pass orders accordingly.

(3) xx xx (4) xx xx (5) xx xx (6) xx xx (7) Every application to the Commissioner for the exercise of his powers under this section shall be preferred within three months from the date on which the order or proceeding to which the application relates was communicated to the applicant.

69. Appeal to the Commissioner.- (1) Any person aggrieved by any order passed by the Joint Commissioner or Deputy Commissioner under any of the foregoing sections of this chapter, may within sixty days from the date of the publication of the order or of the receipt thereof by him as the case may be, appeal to the Commissioner and the Commissioner may pass such order thereon as he thinks fit.

(2) Any order passed by the Joint Commissioner or Deputy Commissioner in respect of which no appeal has been preferred within the period specified in sub-section (1) may be revised by the Commissioner suo motu and the Commissioner may call for and examine the records of the proceedings to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed by the Joint Commissioner or Deputy Commissioner. Any such order passed by the Commissioner in respect of an order passed by the Joint Commissioner or Deputy Commissioner shall be deemed to have been passed by the Commissioner on an appeal preferred to him under sub-section (1)."

In the impugned notice that is suo motu Revision 1/93, the Commissioner, H.R and C.E. Administration Department/first respondent herein, has stated that in the matter of Arulmighu Dhanakodiammal Trust at Arulmighu Ekambareswarar temple, Madras-3, he has taken Suo Motu Revision u/s 21 (2)of the Tamil Nadu H.R. and C.E. Act, 1959 (Tamil Nadu Act 22/1959) against the order dated 10-11-1983 of the Deputy Commissioner, H.R and C.E. Administrative Department, Madras. By pointing out the fact that inasmuch as the Deputy Commissioner had passed an order on 10-11-83 and the second respondent

herein has not filed appeal u/s 69 (1) of the Act to the Commissioner, in the light of sub-section (7) of Section 21, the present notice issued by the first respondent cannot be sustained. I am unable to accept the said contention for the following reasons. Though in the notice there is a reference to sub-section (2) of Section 21, learned Special Government Pleader would contend that since the Commissioner wants to exercise suo motu power in respect of the order of the Deputy Commissioner dated 10-11-83, he is ample power under sub-section (2) of Section 69 of the Act. A reading of sub-section (1) of Section 21 would show that in respect of any proceedings under the Act not being a proceeding in respect of which a suit or an appeal to a Court is provided by the Act, the Commissioner may call for and examine the records/proceedings of Joint or Deputy or Assistant Commissioner. I have already referred to the fact that against the order of the Deputy Commissioner dated 10-11-83, the aggrieved person can very well file an appeal to the Commissioner under sub-section (1) of Section 69 of the Act. Sub-section (2) of Section 69 enables the Commissioner to exercise suo motu revision and examine the records or proceedings of the Joint Commissioner or Deputy Commissioner in which no appeal has been preferred within the period specified in sub-section (1). I have also referred to the fact that the second respondent did not prefer an appeal to the Commissioner under sub-section (1) of Section 69 against the order of the Deputy Commissioner dated 10-11-1983. In such a circumstance, sub-section (2) enables the Commissioner to revise the orders of the Joint Commissioner or Deputy Commissioner at any time by exercising suo motu power. With regard to the contention that since the three months" period prescribed under sub-section (7) of Section 21 have elapsed, the same cannot be considered by the Commissioner is applicable only to persons who make an application to the Commissioner. In other words, the limitation prescribed under sub-section (7) of section 21 cannot be applied to the suo motu power conferred on the Commissioner. Though in the affidavit it is stated that the proceedings of the Deputy Commissioner in NA.KA.No. 9937/83-A3 dated 16-8-1983 was forwarded to the then Commissioner, H.R and C.E. by the Deputy Commissioner, in terms of section 68 of the Act and the Commissioner, after examining the order of the Deputy Commissioner and after finding that there was no illegality or irregularity or impropriety in the order passed, lodged the matter stating that no further action was necessary, the said factual aspect has been specifically denied in the counter affidavit of the first respondent. In para 7 of the counter affidavit of the first respondent, after denying the statement of fact made in para 3 of the affidavit, it is specifically stated that the copy of the order dated 16-8-1983 was not sent to the Commissioner as alleged by the petitioner. It is also stated that there is nothing to prove that the matter was already examined by the Commissioner u/s 21 of the Act. In the light of the specific reply by the Commissioner disputing the fact that the order of the Deputy Commissioner was considered by the Commissioner, the said contention is liable to be rejected. No doubt, in *R. Velayuthaswami v. The Commissioner for Hindu Religious and Charitable Endowments Administrative Department, Madras*, reported in 1989 T.L.N.J. 68 S. Ramalingam, J. after noting

that the order of the Deputy Commissioner was considered by the Commissioner and approved by him, the same cannot be re-opened by exercising suo motu power after expiry of the prescribed period. Inasmuch as it is specifically stated by the Commissioner that the order of the Deputy Commissioner was not considered nor placed before him and no decision was taken, the said decision relied on by the learned counsel for the petitioner is not helpful to their case.

8. In the light of the said factual position, even though the first respondent has referred to Section 21 (2) of the Act, as rightly stated by the Special Government Pleader, by virtue of sub-section (2) of Section 69 of the Act, the Commissioner-first respondent herein is well within his powers to issue notice to revise the order of the Deputy Commissioner. Since the petitioner has approached this Court even at the Notice stage, it is unnecessary for this Court to go into the merits of the claim made by either parties. In view of the fact that during the pendency of the writ petition, consequent to the death of the sole petitioner, petitioners 2 to 5 were brought on record, the first respondent is directed to issue Notice to petitioners 2 to 5 and proceed with the suo motu Revision 1 of 1993 in accordance with law expeditiously. Writ Petition is dismissed with the above observation. No costs. Consequently, W.M.P.No. 16556 of 93 is closed.