(2011) 01 MAD CK 0235

In the Madras High Court

Case No : Writ Petition (MD) No. 528 of 2011 and M.P. (MD) No''s. 2 and 3 of 2011

C.N. Eswara Iyer and Others — APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable Endowment Board and The Executive Officer/Joint Commissioner, Arulmighu Subramania Swamy Thirukkoil — RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Constitution of India, 1950 — Article 25, 26
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 118, 42, 65(4), 70

Citation : (2011) 4 CTC 710

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : S. Meenakshi Sundaram, for the Appellant; S.C. Herold Singh, Government Advocate for Respondent No. 1 and R. Thiagarajan for P.T.S. Narendravasan, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—Challenge in this Writ Petition is to the proceedings of the first Respondent dated 13.03.2010 and the consequential

proceedings issued by the second Respondent dated 31.12.2010, whereby and whereunder the Petitioners were directed to hand over the six

keys of the temple jewellery room.

THE FACTS IN OUTLINE:

2. The Petitioners are the members of Thiriswanthira Sthalathar. They are also called as Mukkani Brahmins. They are functioning as the Sthalathars

in Sri Subramania Swamy Thirukkovil at Thiruchendur. They are service holders entitled to various services other than performance of pooja.

While founding the place at Thiruchendur, Lord Subramania set up 2000 families to attend the services and accordingly, the Petitioners have been

performing their services. The Petitioners are performing the services in Kaiyatchi, Kattiam, Athyanam, Veda Parayanam, Panchangam and

Asirvadam.

3. The jewels of the deity are kept in the Karuvulam. The jewels for adorning the deity during festival days are kept in Peria Seppu. Goldchapram

and silver chapram are kept in vahana room. Parivattams for the deity are kept in Pattupetti. The Sthalathars are responsible for the jewellery and

the keys were in the possession of their predecessors-in-interest and at present, the Petitioners are doing the said service.

4. The Karuvulam has got two doors. The outer door has got one lock and insofar as the inner door is concerned, there are three locks. The keys

of the four locks are in the custody of four Padikarargal. They would keep the keys in turn. There are two locks for Periaseppu. The keys of those

two locks are in the custody of the fourth Padikarar. There is only one lock for Pattupetti and the key of the said lock is in the custody of the first

Padikarargal. The keys were never in the custody of the Executive Officer. The Vahana Arai has got four locks and the keys of those four locks

are in the custody of four Padikarargal.

5. The Sthalathars have been doing the service and for keeping custody of the keys, they would get pongal, sweet pongal, puliyotharai and coconut

surul from the temple. The Petitioners used to receive Sambavanai for adorning the deity with special angi.

6. The Sthalathars are given two keys of the Karuvulam and vahana room and the other two keys are with the Clerks of the temple. The keys of

the locks are put in a bag and after sealing, it would be given to the Petitioners. Similarly, after verifying the seals, the bag containing the keys

would be opened. The Executive Officer has taken a sum of Rs. 1,000/- from the Petitioners as security for keeping the keys. The temple has got

a list of Padikarargal. During the time of taking the jewels, the Sthalathars, Karuvula Kanakkar, Pothi, Bhatter, Mahamandapam Para, Maniakarar,

Watchman at Moolasthanam and Shanmugar Sannadhi and the Peishkar of the temple would be present. They would make entries in the Register

and only after signing the register, jewellery would be taken out.

Similarly, the jewellery would be deposited after making necessary entries.

7. The person, who is in-charge of the double lock room in the Thiriswanthira Sthalathar, is called as Kaiyatchi. The present Petitioners are the

Kaiyatchis and they have been doing this work from 2008 onwards.

8. The Petitioners were doing their religious service and the said custom has been in practice from time immemorial.

9. While the matters stood thus, the second Respondent has sent a communication dated 31.12.2010, directing the Petitioners to hand over the six

keys available with them. The said communication contains a reference about the proceedings dated 13.03.2010 on the file of the first Respondent.

However, the proceedings dated 13.03.2010 was not given to the Petitioners. The second Respondent issued the impugned proceedings, calling

upon the Petitioners to hand over the keys. Feeling aggrieved by the proceedings dated 13.03.2010 and the consequential order passed by the

second Respondent dated 31.12.2010, the Petitioners are before this Court.

THE CASE OF THE DEPARTMENT:

10. The second Respondent has filed a counter. The material portion of which reads thus:

(a) The keys relating to the outer doors and inner doors were originally in the custody of the Sthalathars. There was a complaint of

misappropriation against the Sthalathars, who were incharge of the Treasure during the year 1966. Those four Sthalathars have misappropriated

the jewels and as such, action was taken against them.

(b) Subsequently, in the year 1967, two out of the four keys were taken over by the temple authorities and the other keys meant for outer door

and inner door of the Karuvulam continue to be with the Sthalathar. For every day use, the jewels are taken from the Karuvulam in the presence of

Karuvula Kanakkar, Pothi, Bhattar, Maniakar, Sthalathars and the watchman of Moolavar and Shanmugar, after making necessary entries in the

register. Similarly, at the end of the day, prior to the rakala abishekam, the jewels would again be replaced in the karuvulam in the presence of the

Karuvula Kanakkar and others. The Petitioners were keeping the keys from the year 2008 onwards.

(c) There were complaints about the Sthalathars with respect to misappropriation and mishandling of temple jewels.

(d) The temple authorities have earlier filed a suit in O.S. No. 113 of 1969 before the Sub Court, Tuticorin against the Sthalathars and the said suit

was decreed as per judgment and decree dated 02.08.1977. The decree was confirmed in appeal as per judgment and decree dated 03.07.1986

in A.S. No. 500 of 1980.

(e) The activities of the Petitioners were not conducive for a proper administration of the temple and its properties. Therefore, the Board of

Trustees passed a resolution on 28.11.2009 resolving to recover the keys of Karuvulam from the Sthalathars. The said resolution was forwarded

to the first Respondent for appropriate action. The first Respondent, after considering the report submitted by the Joint Commissioner, approved

the resolution and it was resolved to authorize the Joint Commissioner to break open the Karuvulam in the presence of officers, in case the

Sthalathars failed to hand over the keys to the temple administration. It was only pursuant to the said proceedings dated 13.03.2010, the second

Respondent has issued the impugned communication dated 31.12.2010.

(f) The Petitioners are not performing any essential religious functions or ceremony relating to the religious affairs of the temple. Therefore, their

claim that the service regarding the safe custody of the jewels was essentially a religious practice appears to be incorrect.

THE ARGUMENTS:

11. The learned Counsel for the Petitioners contended thus:

(a) There was a Scheme decree dated 30.09.1930 in O.S. No. 4 of 1929 on the file of the learned District Judge, Tirunelveli. The decree contains

a clear statement indicating that the jewels and other valuables of the Devasthanam shall be kept in the Karuvulam of the Devasthanam under lock

and key and the key shall be in the custody of the Sthalathars. Therefore, the first Respondent was not justified in passing the impugned order

without modifying the Scheme.

(b) It is not possible for the Petitioners to open the jewellery room, unless the other key is made available by the Executive Officer. Therefore, it

cannot be said that the Petitioners have indulged in an act of misappropriation with respect to the temple jewellery.

(c) The Petitioners were doing various religious practices and the safe custody of the temple jewellery is part of their religious practice and as such, it was not open to the Respondents to take away the said right without the authority of law.

(d) Rule 10 of the Religious Institutions Custody of Jewels, Valuables and Documents and Disposal Rules gives an indication that the right of

possession declared by a scheme or a decree has to be given due weight. The civil Court has already framed a Scheme and the said Scheme

provides for keeping the key with the Sthalathars.

Therefore, the order passed by the first Respondent without modifying the Scheme, is liable to be set aside.

12. The learned Senior Counsel for the second Respondent would submit thus:

(a) The Scheme has already been cancelled by the Commissioner, Hindu Religious and Charitable Endowments Department, as per notification in

G.O. Ms. No. 4448. P.H., dated 12.12.1938. Therefore, the Scheme decree is no longer in force.

(b) Section 42 of the Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as ""the Act""] provides that no office holder or

servant of a religious institution or other person shall have the right to possess the jewels, unless there is a direction by the Commissioner.

Therefore, the Petitioners have no right to retain the jewellery and the keys of the jewellery room.

(c) The Commissioner, Hindu Religious and Charitable Endowments Department has already issued the proceedings dated 08.01.1953, whereby

and whereunder the custody of the jewellery was entrusted to the Executive Officer of the temple.

(d) The Petitioners have no connection with the affairs of the temple and as such, they cannot be heard to say that they should be permitted to

retain the keys of the jewellery room.

(e) The proceedings of the Commissioner cancelling the Scheme has not been challenged and as such, no reliance could be placed on the said

Scheme.

ANALYSIS:

13. The only issue, which arises for consideration in the Writ Petition, is as to whether the first Respondent was justified in issuing the proceedings

dated 13.03.2010, directing the Petitioners to hand over the key and the consequential proceedings issued by the second Respondent dated

31.12.2010 to implement the said order.

14. The Petitioners have claimed the custody of the jewellery room and the keys on the basis of the custom. According to the Petitioners, they

have been functioning as Sthalathars and the keys of the temple jewellery box has been in the possession of their predecessors-in-interest and the

said right devolved on them. In short, the Petitioners have claimed the possession of keys as a matter of right. They have placed reliance on the

Scheme decree in O.S. No. 4 of 1929, dated 30.09.1930 on the file of the learned District Judge, Tirunelveli. The Scheme decree provides that

the outer lock of Karuvulam and the keys of the Karuvulam shall be in the custody of the Sthalathars and it should be securely wrapped and sealed

by the trustee or his nominee and the Karuvulam will not be shut or opened without due notice to the trustee or his agent or nominee. Therefore,

the decree contains an indication that the keys would be with the Sthalathars.

15. The question is whether keeping the keys by the Petitioners would amount to an essential religious practice.

16. Section 65 of the Act deals with the power of the Commissioner to settle the Schemes. Section 65(4)(a) of the Act gives power to the

Commissioner to modify the Scheme. The said provision reads thus:

65(4)(a).- The Commissioner may, at any time after consulting the trustee, by order, modify or cancel any scheme in respect of a math or a

specific endowment attached to a math and in force and settled under Sub-section (1) or any scheme in force settled or modified by the Board

under the Tamil Nadu Hindu Religious Endowments Act, 1926 ([Tamil Nadu]

Act II of 1927), or deemed to have been settled under that Act or any scheme in force settled or modified by the Commissioner under this Act or

any Scheme in force settled or modified by the Court in a suit under Sub-section (1) of Section 70 or on an appeal under Sub-section (2) of that

section or any such scheme in force deemed to have been settled or modified by the Court under Clause (a) of Sub-section (2) of Section 118:

Provided that such cancellation or modification of a scheme in force settled or modified by the Court in a suit under Sub-section (1) of Section 70

or of an appeal under Sub-section (2) of that section or of a scheme in force deemed to have been settled or modified by the Court under Clause

(a) of Sub-section (2) of Section 118 shall be made only subject to such conditions and restrictions as may be prescribed.

(b) If the Commissioner is satisfied that any such scheme referred to in Clause (a) is inconsistent with this Act and the rules made thereunder, he

may, at any time, modify it in such manner as may be necessary to bring it into conformity with the provision of this Act and the rules made

thereunder.

17. The Scheme framed by the Court as per judgment and decree dated 30.09.1930 in O.S. No. 4 of 1929 has already been cancelled by the

Commissioner, as per notification in G.O. Ms. No. 4448. P.H., dated 12.12.1938. The Petitioners have not challenged the said order in the

manner known to law.

18. There is no dispute that the power to modify or cancel the Scheme can be exercised by the Commissioner suo motu. The Commissioner has

taken suo motu action and accordingly, the Scheme decree was cancelled. Without challenging the said order, the Petitioners cannot be heard to

say that they should be permitted to get the key on the basis of the decree in O.S. No. 4 of 1929. The proceedings of the Commissioner, Hindu

Religious and Charitable Endowments Department, dated 08.01.1953 and the appendix to the said proceedings contains indication about the

powers of the 16 Executive Officer. The Petitioners have not produced materials to show that keeping the keys of the jewellery room was in the

nature of an essential religious practice. The affidavit filed in support of the Writ Petition does not contain any such material to arrive at a conclusion

that it was only as part of the essential religious practice, they had been keeping the keys of the jewellery room.

19. Section 42 of the Act deals with the custody of the temple jewellery. The said provision reads thus:

42. Office-holders and servants of religious institutions not to be in possession of jewels, etc., except under conditions.-Notwithstanding anything

contained in any scheme settled or deemed to have been settled under this Act or in any decree or order of a Court or any custom or usage to the

contrary, no office-holder or servant of a religious institution or other person shall have the right to be in possession of the jewels or other valuables

belonging to the religious institution except under such conditions and safeguards as the Commissioner may, by general or special order, direct.

20. Section 42 of the Act provides that no office holder or servant of a religious institution shall have the right to be in possession of the jewels or

other valuables belonging to the religious institution, notwithstanding anything contained in any scheme settled or deemed to have been settled under

the Hindu Religious and Charitable Endowments Act or in any decree or order of a Court or any custom or usage to the contrary. Therefore, any

arrangement or Scheme regarding the custody of the jewels, insofar as it is inconsistent with Section 42 has to be ignored. The Petitioners have not

challenged the validity of Section 42 of the Act. Therefore,it is not open to the Petitioners to claim custody of the jewels as a matter of right

notwithstanding Section 42 of the Act.

21. Rule 10 of the Religious Institutions Custody of Jewels, Valuables and Documents and Disposal Rules has to be read along with Section 42 of

the Act. A conjoint reading of Section 42 and Rule 10 would give a clear indication that the keys of the jewellery box have to be in the custody of

the department at all point of time.

22. The second Respondent, in his counter-affidavit and more particularly, in paragraph No. 5, referred about the misappropriation of jewels by

the four Sthalathars. In fact, the suit itself was instituted by the temple as against the Sthalathars in O.S. No. 113 of 1969. The said suit was

decreed and the judgment and decree of the trial Court was confirmed in appeal. The Petitioners were not appointed to any position in the temple.

When there was a complaint preferred against the Sthalathars, with regard to the misappropriation of jewels, it cannot be said that the first

Respondent was not justified in passing the impugned order directing the Sthalathars to hand over the keys of the jewellery room. The Petitioners

have no case that the Respondents have interfered in their performance of religious services. The impugned order was pertaining to the keys of the

jewellery room. It has nothing to do with any other 19 services performed by the Petitioners. In view of Section 42 of the Act and the cancellation

of the Scheme decree by the Commissioner, it was not open to the Petitioners to claim that the keys of jewellery box should be with them at all

point of time.

23. The Petitioners claim protection under Articles 25 and 26 of the Constitution of India to retain their right to keep the keys of the jewellery

room.

24. There is no dispute that the Constitution protects such practices which are essentially in the nature of religious practices. In case those practices

are found to be essential and integral parts of their religion, the Constitution protection would extend even to those practices. Therefore, the term

integral part of the religion

assumes significance. There should be materials placed before the Court to demonstrate that a particular practice has attained the character of an

essential religious practice.

DISPOSITION:

25. The materials produced by the Petitioners does not show that the practice of keeping the keys of the jewellery room was in the nature of an

essential religious practice or ceremony.

Therefore, I do not find any merit in the contentions raised by the Petitioners.

26. In the upshot, I dismiss the Writ Petition.

Consequently, the connected miscellaneous petitions are also dismissed. No costs.

