
(1986) 02 MAD CK 0051
In the Madras High Court

D. Ramachar

APPELLANT

Vs

The Deputy Commr., H.R. and C.E. Admn. Dept. and Others

RESPONDENT

Date of Decision : 28-02-1986

Acts Referred:

Citation : (1987) 2 MLJ 63

Hon'ble Judges : K. Shanmukham, J;K. Shanmugham, J

Bench : Division Bench

Judgement

K. Shanmukham, J.—The petitioner claims to be a hereditary trustee of Uthiradi Srivaishnava Ramanuja Koodam, Triplicane, Madras which is declared to be a temple within the meaning of Section 9(12) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, Act XIX of 1951, hereinafter referred to as the Act, by the Supreme Court of India. He challenges the charges that are framed against him by the 1st respondent, Deputy Commissioner, H.R & C.E. Admn. Department, in his proceedings Na.Ka. No. 12894/-83-A-1 dated 19.9.1983 and asks for issue of a writ of certiorari or any other appropriate writ to quash the said proceedings in so far as it related to the charges.

2. At the outset, it is essential to notice that the Writ Petitioner filed W.P. No. 9076 of 1983, D. Ramachander v. The Commissioner H.R. & C.E., Nungambakkam, Madras-34 and Anr. on the file of this Court wherein he challenged the proceedings of the 1st respondent in Na.Ka. 12894/83-A1, dated 19.9,1983 in so far as it related to the order of suspension and the appointment of a fit person u/s 53(4) of the Act in respect of Uthiradi Srivaishnav Ramanuja Koodam. It is here, it is relevant to notice the facts which led to the institution of W.P. No. 9076 of 1983. On receipt of complaint from Psihu Jahatmal Kirpalani and Satramadas Salt, the 1st respondent directed his subordinate, the Assistant Commissioner (2nd respondent) to make a preliminary inquiry about the complaint and to submit a report to him. It transpires that the 2nd respondent submitted a report stating that prima facie, there is truth in the complaints made by the said two individuals. This resulted in the 1st respondent passing the

impugned order, whereby he framed as many as 12 charges u/s 53(2) of the Act and suspended the petitioner from the Office of Trusteeship and also appointing the Executive Officer of Sri Parthasarathiswami Temple as a fit person in respect of this temple. As already stated, the petitioner challenged his suspension and the appointment of fit person made in the very same proceeding Na.Ka. 12894/83-A1, dt. 19.9.1983 in W.P. No. 9076 of 1983. On hearing both sides, Mr. Justice Venkataswami dismissed the said petition. It is common ground that the order in W.P. No. 9076 of 1983 is now under appeal which is still pending.

3. The immediate question is whether the present proceeding is barred under the principle of constructive res judicata. According to Mr. U.N.R. Rao, learned senior counsel for the petitioner, res judicata is not applicable to the writ proceedings. He referred to Section 141, the Code of Civil Procedure, 1908 in this context.

The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of Civil "jurisdiction.

The Explanation attached to Section 141 states that the expression "Proceedings" includes proceedings under Order 9, but does not include any proceeding under Article 226 "of the Constitution. While Section 141 provided that the procedure provided in the Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction, Section 11 in the Code deals with res judicata. Thus according to Section 141, the Code of Civil Procedure, Section 11 as such will not be made applicable to the proceeding initiated under Article 226. Nevertheless, the law is well-settled that the principle of res judicata or constructive res judicata is applied to all other proceedings including proceedings under Article 226 of the Constitution of India so that there is no unnecessary multiplicity of proceedings and so that a finality is reached in a controversy. It is very useful to quote in this context paragraph No. 3 in State of U.P. Vs. Nawab Hussain, .

The principle of estoppel per res judicata is a rule of evidence. As has been stated in *Marginson v. Blackburn Borough Council* (1939) 2 K.B. 426 , it may be said to be broader rule of evidence which prohibits the reassertion of cause of action. This doctrine is based on two theories: (i) The finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment or give

rise to another cause of action on the same, facts. This is what is known as the general principle of res judicata.

Thus, I am of the firm conviction that the principle of res judicata is applicable to all other proceedings of civil nature] including the one instituted under Article 226 of the Constitution of India. In fact, in *Southern Rly. Employees Co-op. Credit Society rep. by its Secretary v. Rajabather and Anr.* 1985 W.L.R. 496, the above principle is laid down.

4. Yet another contention advanced by the learned senior counsel for the petitioner is, though he had challenged his suspension and appointment of a fit person in W.P. No. 9076 of 1983 he had not challenged the validity of charges in that proceeding, that the present proceeding is based on a new cause of action which has nothing to do with the other two causes of action, viz., the order of suspension as also of appointment of a fit person and that therefore, the dismissal of W.P. No. 9076 of 1983 will not operate as res judicata. In this context, the learned Counsel relied upon *State of U.P. Vs. Nawab Hussain*, , but following the passage in *Greenhalgh v. Mallard* (1947) 2 A. E.R. 255 , the Supreme Court held,

This is therefore another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably constructing the general principle of subduing a contumacious litigant. That is why this other rule has sometimes been referred to as constructive res judicata which in reality, is an aspect of amplification of the general principle.

Further, in the same judgment, in paragraph No. 8, the law is succinctly stated thus. In the meanwhile, the short facts on the basis of which the above observation came to be made, require to be noticed : The respondent before the Supreme Court challenged his dismissal from Police Service in an earlier writ petition, but that was dismissed. Thereafter, he filed a suit in which he challenged the very order of dismissal, but on a new ground that he had been appointed by the Inspector General of Police and therefore, the Deputy Inspector General of Police was not competent to dismiss him by virtue of Article 311(1) of the Constitution. It is on the above facts, the Supreme Court held,

It is not in controversy before us that the respondent did not raise the plea in the writ petition which had been filed in the High Court that by virtue of Clause (1) of Article 311 of the Constitution he could not be dismissed by the Deputy Inspector General of Police as he had been appointed by the Inspector General of Police. It is also not in controversy that was an important plea which was within the knowledge of the respondent and could well have been taken in the writ petition, but he contented himself by raising the other plea's that he was not afforded a reasonable opportunity to meet the case against him in the departmental inquiry and that the action taken against him was mala fide. It was therefore not permissible for him to challenge his dismissal in the subsequent suit, on the other ground that he had been dismissed by an authority subordinate to that by

which he was appointed. That was clearly barred by the principle of constructive res judicata, and the High Court erred in taking a contrary view.

In my view, the present case is more appropriate than the one that was considered by the Supreme Court to apply the principle of constructive res judicata. For, both the suspension and appointment of a fit person would not have been necessitated but for the issue of a show cause notice by the 1st respondent. According to Section 53(2) of the Act, the appropriate authority may suspend, remove or dismiss any trustee of a religious institution if he is found to be guilty of charges enumerated in Sub-section 2(a) to (k). According to Sub-section (3), when it is proposed to take action under Sub-section (2), the appropriate authority shall frame charges against the trustee concerned and give him an opportunity of meeting such charges, of testing the evidence adduced against him and of adducing evidence in his favour, and the order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge with the reasons therefor. Sub-section (4) of Section 53 enables the appropriate authority to place the trustee under suspension and also to appoint a fit person to discharge the duties and perform the functions of the trustee, pending disposal of the charges framed against the trustee; in other words pending final orders under Sub-section (3). Thus, unless the charges are framed, the appropriate authority has no jurisdiction to place the trustee under suspension and also to appoint a fit person in his place; to put it differently, the framing of charges is the sine qua non for passing an order of suspension and appointing a fit person. Therefore, when the petitioner challenged both suspension and the appointment of a fit person, it would mean that even the very base on which, such orders were passed, was the subject-matter of attack, though the petitioner failed to challenge the very charges themselves as is now specifically done in this case. Therefore, the present proceeding is undoubtedly barred by principle of constructive res judicata, because the petitioner ought to have raised the objection as regards the validity of charges which alone vested the power with the 1st respondent herein to pass the order of interim suspension and also of appointment of a fit person. For instance, if this petition were to be accepted, then the very foundation on which the orders of suspension and appointment of a fit person were made, would fall to the ground. The consequence will be that the order of suspension and appointment of a fit person shall also cease. The effect will be that which could not be obtained in this proceeding. This is what is forbidden by the principle of constructive res judicata.

5. As I had the binding principle both of the Supreme Court and of a Division Bench of this Court, I do not propose to examine the catena of cases cited by the learned Counsel for the petitioner in this context, viz., Parshottam Veribhai Patel and Others Vs. State of Gujarat and Another, , Luvar Popat Kala Vs. Luvar Bachu Rugnath and Others, , AIR 1949 143 (Privy Council) . The other decisions are of the Supreme Court and of this Court and they are, T.C. Basappa Vs. T. Nagappa and Another, , K.M. Kokila and Another Vs. K.M. Rajabather and Another, and A.

Balasundara Mudaliar Vs. Area Committee, Hindu Religious and Charitable Endowments, by Chairman and Others, . Let me now point out that none of these decisions does in any way support the argument as put forward by the learned senior counsel for the petitioner. In T.C. Basappa Vs. T. Nagappa and Another, , one of the ratios laid down by the Supreme Court is that,

A writ of certiorari is available in those cases where a Tribunal though competent to enter upon an enquiry acts in flagrant disregard of the rules of procedure or violates the principles of natural justice where no particular procedure is prescribed.

In K.M. Kokila and Another Vs. K.M. Rajabather and Another, , a Division Bench of this Court held that a subsequent suit based on a different cause of action will not be barred under res judicata. In that original side appeal, the respondent claimed partition on the allegation that he was the illegitimate son of the common ancestor. But the earlier suit filed by him for the Very same relief on the basis that he was the legitimate son of the common ancestor, was dismissed on the ground that he had failed to establish that his mother was married to the said common ancestor. The Division Bench held that the subsequent suit for partition was not barred, because the cause of action in the subsequent suit is entirely different from the one that was claimed in the previous suit. I am at a loss to understand as to how the above principle can be applied to the facts in this case. On the other hand, this is a case where the cause of action is the same both in this proceeding and in the former proceeding, viz., W.P. No. 9076 of 1983. The proceeding challenged in both the writ petitions is the same. As already pointed out by me, the framing of the charges is the foundation for the consequential orders passed by the 1st respondent in suspending the petitioner and in appointing a fit person.

6.The other decision of this Court in A. Balasundara Mudaliar Vs. Area Committee, Hindu Religious and Charitable Endowments, by Chairman and Others, , only pointed out that when an Area Committee made the appointment merely on the dictation of the Deputy Commissioner, H.R. & C.E., such an order is liable to be set aside, because the same cannot be treated as one passed by the Area Committee as contemplated by Sections 41 and 39(2) of the Act. It is needless to state that the above ratio has no relevance to the facts in this case. Thus, there is no doubt in my anxious consideration that the present proceeding is barred under principle of constructive res judicata. This will be enough to dismiss the writ petition.

7. Even the other ground of attack carries no merit. One of the contentions is that the charges have to fail because of the mala fides. This contention is founded on the allegation that there is inconsistency in charge No. 1. Charge No. 1 accuses the petitioner of having made a permanent residence for himself and the members of his family in the rear portion of premises 47, T.P. Koil Street, wherein the sanctum sanctorum is located It also contained a charge that if the portion in the petitioner's occupation were to be let out, it would have fetched an

income of about Rs. 500 per month. According to the learned senior counsel for the petitioner, if the petitioner's stay in the temple premises is irreligious and is in derogation of the sanctity of the temple, it would also follow that no other person can reside in that premises. If so, the other charge that because of the petitioner's occupation, the temple had to suffer income, is baseless. I find myself unable to be persuaded by the above argument. For assuming that there is inconsistency, it would not ipso facto project mala fides. Mala fides is a very serious charge and the present inconsistency will not in my considered view support such a charge. Thus, the ground of attack on the basis of mala fides fails.

8. Even as regards the other contention that charge No. 4 amounted to contempt of Court, I find that there are other charges levelled against the petitioner. All that the learned senior counsel for the petitioner submits is that as the other charges are not correlated to (a) to (k) in Sub-section (2) of Section 53, the entire proceeding is vitiated. The further connected submission is that this will also indicate that the 1st respondent did not apply his mind and that therefore, the charges shall fail for non-application of mind. There is no provision in the Act that when the charges are framed, they should be correlated to (a) to (k) in Sub-section (2) of Section 53. On the other hand, what is relevant in my view is that the charges framed shall fall under any one of the categories, viz., (a) to (k) in Sub-section (2) of Section 53. The learned Counsel attempted to draw an analogy in the provisions contained in the Indian Penal Code, but there, the statute mandates that the charges should be correlated to the particular section in the Indian Penal Code. Therefore, the analogy will have no application to the instant case, because there is nothing in the Act which requires that the charges should be correlated to any of the clauses, viz., (a) to (k). Then, I do not find any substance in the argument that because the impugned charges are not correlated to the said clauses, they are non-est in the eye of law and are liable to be quashed. Above all, it is not advisable to express any opinion on the validity or otherwise of the charges, particularly, when the proceedings before the 1st respondent are only in primitive stage of show cause notice and when therefore the petitioner has every right to defend himself and to exonerate himself from all the charges.

9. Viewed from another angle, the same result will follow. The relief claimed here is to quash the charges. In such a case, the Court is not called upon to test the truth or otherwise of the charges; on the other hand, the petitioner who comes forward for such a relief, can only succeed, unless, he establishes that on the charges as framed no proceeding can be initiated as visualised u/s 53(2) of the Act. Admittedly, this is not one such. Then, it is not worth while to entertain this petition.

10. Equally is the argument based on estoppel not tenable. The learned Counsel referred to the petitioner's letter dated 1.6.1970 wherein the petitioner has asked for payment of allowance of Rs. 75 per month from the Assistant Commissioner, H.R. & C.E., Dept., along with that letter, the trust deed dated

1.1.1933 was enclosed. There is a clause in the trust deed which enables the trustee to live in the temple premises in the back portion of the temple premises. This letter was acknowledged by the Assistant Commissioner, H.R. & C.E., in his reply dated 30.6.1970. By the proceedings in D. Dis. No. 3683/70 of Assistant Commissioner, sanction was accorded for payment of allowance of Rs. 75 to the petitioner himself as sought for by him in his letter dated 1.6.1970. It is therefore very seriously contended by the learned senior counsel that even as early as 1970, the Department was put on notice of the fact that he and his family members are residing in the back portion of the temple premises, that notwithstanding the same, the sanction was accorded and that this demonstrates that the Department acquiesced in the petitioner's possession and enjoyment of the back portion of the temple. According to the learned Counsel therefore on the above facts, the 1st respondent is estopped from complaining that because of the petitioner's occupation of a part of the temple building, it is highly irreligious or the temple is put to loss. I had already pointed out that the other charges do not fall within any of the categories, viz., (a) to (k) of Sub-section (2) of Section 53. Then, as already pointed out by me, it would not be sagacious on my part to render any finding when the matter is still at large before the Deputy Commissioner. It is equally important to notice that as against the final order to be passed by the 1st respondent under Sub-section (2) of Section 53, a right of appeal is provided to the Commissioner.

11. In the result, the writ petition fails and is dismissed, but without costs.