

(2009) 07 MAD CK 0501
In the Madras High Court
Case No : Writ Appeal No. 76 of 2009

Dharma Paripalana Sabha

APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable
Endowments (Admn.) Dept.

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 114,
6(11), 6(20), 6(22), 63

Citation : (2010) 2 MLJ 272

Hon'ble Judges : Prabha Sridevan, J; C.T. Selvam, J

Bench : Division Bench

Advocate : K. Doraisami for Muthumani Doraisami, for the Appellant; P.
Chandrasekar, Special Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Prabha Sridevan, J

1. The writ appeal is preferred against the order passed by a learned single Judge of this Court dated 19.12.2008 made in W.P. No. 30115 of 2008.

2. The appellant/petitioner was declared as the hereditary trustee of Sri Ananthapadmanabhaswami Temple, Gandhinagar, Madras, by the order of the Deputy Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Madras-34, in O.A. No. 101 of 1963 dated 21.3.1964 in an application filed u/s 63(b) of the Madras Act 22 of 1959. The appellant/petitioner is aggrieved by the notice seeking to review the order dated 21.3.1964 and the so-called notice of suo motu revision issued by the Commissioner, HR & CE. The learned single Judge dismissed the writ petition on the ground that it is not the case of the petitioner that the impugned notice is issued either without jurisdiction or contrary to the provisions of the Act, and therefore, this writ appeal has been filed.

3. The learned Senior Counsel appearing for the appellant/petitioner submitted that it was precisely their case that a suo motu revision is not sustainable either on law or on facts and the invocation of the power of suo motu revision after 44 years cannot be sustained, and therefore, the learned Senior Counsel submitted that when the show cause notice itself is arbitrary on the face of it, it is not necessary for the appellant to respond to it. The learned Senior Counsel also submitted that it strictly cannot be called a show cause notice because the impugned notice clearly shows that the Commissioner had decided that the appellant Sabha cannot claim to be the hereditary trustee and therefore, the notice calling upon the appellant to be present for an enquiry was an empty formality since the matter had been prejudged. The learned Senior Counsel has produced all that led to the filing of petition u/s 63(b) by which the appellant was declared as the hereditary trustee. It is also their case that it is not as if that the respondent had issued notice on their own. But, it was instigated by persons, who are inimically disposed of towards the persons, right now in administration of the Sabha.

4. The learned Special Government Pleader submitted that the show cause notice was issued u/s 69(2) of the Act and Section 69(2) clearly shows that this power of suo motu revision can be exercised at any time, and therefore, the lapse of 44 years will not in any way affect the jurisdiction of the notice. Learned Special Government Pleader also referred to the decision reported in Commissioner, Hindu Religious and Charitable Endowment (Admn.), Madras and Another Vs. Vedantha Sthapna Sabha, , which was ostensibly the reason for the invocation of the suo motu power of the revision.

5. Normally interference at the show cause notice stage is not done. But the grievance in this case is that the issue is already prejudged and the notice lacks jurisdiction. In 1996 1 SCC 327, it has been held that it should be shown that the authority has no power or jurisdiction to issue the show cause notice to warrant interference at that stage.

6. The documents relating to the formation of the Adyar Temple Society, and the application to declare itself as the hereditary trustee have been enclosed in the typed set of papers and they are as follows:

The first General Body Meeting relating to the Adyar Temple Society was held on 12.12.1956 and the body known as "The Adyar Hindu Religious Society" was formed. There are documents to show that the residents of the two colonies of Gandhinagar and Kasturbanagar expressing their desire to have a place of worship had approached His Highness the Maharaja of Travancore to allot a convenient place near the Bus Stand for constructing a temple. An area covering 6.8 grounds was bid for the temple and it is thereupon on 12.12.1956, the Adyar Hindu Religious Society was formed. It was registered on 31.12.1956 with the help of contribution from donors, a temple was constructed. The objects of the Adyar Hindu Religious Society inter alia included a construction and maintenance of temples, mandapams, matams, etc. and also maintenance of Library of

Spiritual, Philosophical and Religious books. The Annexure to the Minutes of the Meeting related to Adyar Hindu Religious Society and the names of the original signatories of the Managing Committee. Thereafter, on 28.1.1962, it was decided that this Society should be dissolved and the Society's assets and liabilities should be taken over by the Dharmaparipalana Sabha, Madras. On the same day, the First General Body meeting of the appellant Sabha was held. This Sabha was registered as a Society in the Societies Registration Act and it had similar objects to that of the erstwhile Society. There was a memorandum of objects as well as byelaws. On 16.4.1962 at the Managing Committee Meeting, it was decided inter alia that the Anantha Padmanabha Temple would be demonstrated by the Committee of management. This shows that a notice had been received by the Adyar Hindu Religious Society as it then was, which called upon the Secretary to explain as to why a Board of Trustees should not be appointed for the Temple inasmuch as it come u/s 6(20) of the Madras H.R. & C.E. Act 22 of 1959. Then on 24.8.1963, the Commissioner, H.R. & C.E. Board was addressed by the appellant Sabha enclosing the Memorandum of Association and Byelaws wherein it was stated that the Sabha is the parent body, which constructed the Temple and attends the day-to-day running of the Temple administration and the rights and duties of the erstwhile Society had vested in the appellant Sabha, and in the said circumstances, they requested the Commissioner to consider the Dharma Paripalana Sabha as the founder and hereditary Trustees invested with rights and duties of such hereditary Trustees.

7. This was returned on 31.8.1962 by the Commissioner requiring the Secretary that he may file an application u/s 63(b) of the H.R. & C.E. Act 1959 before the Deputy Commissioner, H.R. & C.E., Madras. So, this is what they did and they filed O.A. No. 101 of 1963. In the petition filed u/s 63(b) of the Act, they have stated that the Temple and its affairs are under the sole and exclusive management of the petitioner-Sabha and that the petitioner, as the founder of the Temple prayed to declare that the petitioner Sabha is the hereditary Trustee.

8. On 21.3.1964, in a detailed order and after considering Exs.A.1 to A.3, which are the documents marked by the appellant and the Court Exhibit, which is the report of the Inspector, H.R. & C.E., Madras Circle III, and on hearing the evidence of P.W.1, who was the then Secretary of the Sabha and the Court witness, viz., the Inspector, H.R. & C.E., the Deputy Commissioner was satisfied that the appellant Sabha was the founder of the Temple and that the members of the Managing Committee were the Trustees of the temple, who are in management of the temple at present and therefore, he declared that the Dharmaparipalana Sabha, Adyar, represented by its Secretary, is holding the office of the trusteeship hereditarily. On 20.9.2008, the Member Secretary issued an order referring to the earlier order dated 21.3.1964 by which the hereditary Trustee to the temple was declared, and since the present Secretary was elected as the Secretary in the Annual General Meeting held on 18.5.2008, the Department recorded his name as the hereditary Trustee and therefore, the Deputy Commissioner/Executive Officer of Arulmigu Parthasarathy Swamy

Temple, Thiruvallikkeni, who was then administering the Affairs of the Temple as Ex-Officio Fit Person, was directed to hand over all the charges of the said temple to the Hereditary Trustee and report the same. This was duly done. Therefore, the earlier order in 1964 was in effect confirmed by the Commissioner.

9. Within two months thereafter, the impugned order was issued, wherein the respondents have stated that in view of the judgment in the case of Vedantha Sthapna Sabha, unless the succession and devolution is by any one of the three modes of succession, a legitimate claim as hereditary trustee cannot be made. Therefore, since in the case of the temple in question, such mode of succession is not governed by any of the three modes, the Sabha cannot claim to be the hereditary trustee. So the present "Sabha" cannot claim to be the founder of the Temple and much less to be declared as hereditary Trustee and in view of the above legal position, Dharma Paripalana Sabha, Adyar, cannot claim to be the founder of the temple exclusively.

10. Though this impugned notice indicates that the enquiry will be held on 24.11.2008 to decide "whether the order in question should not be revised u/s 69(2) of the Tamil Nadu H.R. & C.E. Act, 1959, it is clear as contended by the learned Senior Counsel appearing for the appellant that the Member Secretary, in fact, decided that the appellant cannot be the hereditary Trustee, and therefore, the notice calling upon the appellant for enquiry was indeed an empty formality.

11. Though Section 69(2) does not provide for any time limit, we are not sure that the powers of suo motu revision can be easily exercised after a period of four decades except for very justifiable and compelling reasons, which warrants such drastic exercise of suo motu power of revision.

12. The impugned show cause notice does not indicate any other reason for invoking the power of suo motu revision except the judgment of the Supreme Court reported in Commissioner, Hindu Religious and Charitable Endowment (Admn.), Madras and Another Vs. Vedantha Sthapna Sabha, . In the above case, the Supreme Court, on facts, found that there was no hereditary trustee. It is different here, On 20.9.2008, the respondent had recognised the newly elected Secretary as the hereditary trustee in view of the order passed in 1964 where the first order was passed. So in effect, the respondent had confirmed the earlier order. If so, he cannot suo motu revise the first order having himself confirmed it. In fact, the Supreme Court said that "it really does not call for our decision to determine the question as to whether the Sabha could get itself declared as "Hereditary Trustee" under the provisions of the Act."

13. The definition of trustee u/s 6(22) of the Act shows that a body by whatever designation can be the trustee if the administration of a Temple is vested in it. A hereditary trustee is one as seen from Section 6(11) where such trusteeship

a) devolves by hereditary right, or

b) is regulated by usage, or

c) is provided for by the founder as long as Scheme is in force.

It is the Government, which has the powers of suo motu revision over the order passed by the Commissioner u/s 114.

14. An almost identical case was decided by a learned single Judge of this Court in 1989 T.L.N.J. 68 [R. Velayuthaswami v. The Commissioner for Hindu Religious and Charitable Endowments Administration Department]. In that case, by an order of the year 1944, the then H.R. & C.E. Board allowed the application for a declaration that the petitioner-Madam is neither a temple nor a Mutt as defined in Act 2 of 1927. This order became final. It was sought to be reopened in the year 1957, but this application was dismissed by the Deputy Commissioner, H.R. & C.E. Again, in the year 1977, the Deputy Commissioner initiated proceedings u/s 63A of the 1951 Act. By order dated 19.7.1978, it was again held that the petitioner-Madam is not a religious institution as defined under the provisions of the Act. This order was forwarded to the Commissioner in terms of Section 68 of the Act. The Commissioner examined the order and held that there was no illegality and lodged the matter stating that no further action was necessary. In the year 1982, notice was issued by the Deputy Commissioner proposing to suo motu reopen the order passed in the year 1978, under the powers vested in him u/s 69(2) of the Act. The learned single Judge held that Section 68 of the Act vests the powers in the Deputy Commissioner to enquire into and decide whether an institution is a religious institution. u/s 69(2) of the Act, any order passed by the Deputy Commissioner in respect of which no appeal has been preferred within the specified time may be revised suo motu, but that since the Commissioner had already exercised his power stating that there was no need to revise the order, the powers u/s 69(2) of the Act had already been exercised without any change in circumstances, the very same order cannot be reopened purportedly u/s 69(2) of the Act. This is the sum and substance of the order of the learned single Judge.

15. In the present case, as early as 1962, the application u/s 63(b) was filed and the Deputy Commissioner declared the appellant as the "hereditary trustee". When the new Secretary took charge, the Commissioner had in view of the declaration of the appellant as hereditary trustee and in confirmation thereof, recorded the name of the present Secretary on 20.9.2008. Even on that day, this decision Vedantha Sthapna Sabha was in vogue. We do not see any change of circumstances between 20.9.2008 and 24.11.2008, the date of the impugned order. u/s 69(2), now he cannot revise the 1962 order when he has impliedly approved of it by the order dated 20.9.2008.

16. Therefore, the impugned notice is bad, because a) the respondent has prejudged the issue making the enquiry an empty formality, and b) the impugned order is issued without jurisdiction.

17. For the above reasons, the writ petition is allowed. The impugned order dated 19.12.2008 made in W.P. No. 30115 of 2008 is set aside. Accordingly, the

writ appeal is also allowed. No costs. Consequently, M.P. No. 1 of 2009 is closed.