
(1950) 01 MAD CK 0012

In the Madras High Court

Case No : Civil Revision Petition No. 1224 of 1949

Doraiswami Goundan

APPELLANT

Vs

Subramania Mudaliar

RESPONDENT

Date of Decision : 25-01-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)
Madras Hindu Religious Endowments Act, 1926 — Section 44B

Citation : AIR 1950 Mad 659 : (1942) 55 LW 381

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Single Bench

Advocate : R. Desikan, for the Appellant; P.P. Balakrishna Iyer and P.S. Ramachandran, for the Respondent

Final Decision : Allowed

Judgement

Krishnaswami Nayudu, J.—The question for decision in this revision petition is whether the Government is a necessary party to the suit.

2. The suit O. S. No. 193 of 1948 was instituted for a declaration that the resumption proceedings and the orders of the Revenue Divisional

Officer, Erode, and the District Collector, Coimbatore, with reference to the suit property were null and void and that they would not affect the

plaintiff's right, title and enjoyment of the suit, lands, or alternatively for declaring that the inam in the suit land was only of the melwaram and that it

could alone be resumed and regranted to the defendant. The suit was contested and one of the issues which was tried as a preliminary issue is

whether the Government is a necessary party to the suit." The lower Court held that Government was a necessary party and hence this revision

petition by the plaintiff.

3. The plaintiff's case is that the defendant applied to the Revenue Divisional Officer, Erode, u/s 44-B, Hindu Religious Endowments Act, for

resumption of the suit land on the ground that it was a service inam granted to his forefathers and the reason for the resumption was that the plaintiff

was his lessee for many years under a long lease exceeding five years and therefore it was void in law. The Revenue Divisional Officer did not

accept the evidence on behalf of the defendant and dismissed his application for resumption as there had been no proof of lease for a period

exceeding five years, the condition precedent to the exercise of jurisdiction by the revenue authorities for resumption u/s 44-B being either an

alienation or a lease for over 5 years. On appeal the District Collector of Coimbatore remanded the case for fresh disposal and after remand, a

new Revenue Divisional Officer, who heard the case, held in favour of the defendant. As against that order the plaintiff filed an appeal which was

dismissed on 5th February 1948.

4. The case of the plaintiff was, (1) that the order was void, illegal and ultra vires and the revenue authorities had absolutely no jurisdiction to take

up the question of resumption or decide it and (2) that Section 44-B is ultra vires of the Provincial Legislature since it affected or purported to

affect the title perfected by the law of limitation which is to be dealt with by the Central Government. He also asked for a declaration that the inam

was in respect of only the melwaram and that it could only be resumed and regranted to the defendant, u/s 44-B, Hindu Religious Endowments

Act.

5. The defendant contended that the two issues framed in the case, namely, "whether Section 44-B is ultra vires of the Madras Legislature" and

whether the orders passed by the Revenue Officers are void and without jurisdiction?" raise the question of the competency of the Madras

Legislature to enact Section 44-B, Hindu Religious Endowments Act and question the orders passed by the Revenue Divisional Officer and the

Collector, they cannot be gone into in the absence of the Government.

6. The learned Judge after referring to the decisions cited on either side observed that

in the absence of the Provincial Government, a declaration, is sought for that Section 44-B is ultra vires of the powers of the Madras Legislature

as it infringes on the powers of the Central Legislature and it is not difficult to contemplate a case of two parties filing a collusive suit getting

declaration of title without making the real person vitally interested a party to those proceedings and then to rely upon that as the sheet anchor in

subsequent proceedings which may be some years hence,

that it was but elementary justice that a person whose act is questioned should be made a party to those proceedings, that the powers of the local

Legislature were challenged and that in such circumstances it seemed that the contention of the plaintiff that the Government was not a necessary

party was hardly of any force.

7. The point that has to be determined is whether on the plaint as framed and the issues raised in the case, the Government is a necessary party

without whose presence there cannot be a complete and effective adjudication of the matters that are in controversy. In so far as the first of the

issues is concerned, viz., "whether Section 44-B is ultra vires of the Madras legislature," I do not see how the presence of the Government is

necessary to enable the Court to decide on hearing the counsel of the parties as to whether the enactment is ultra vires of the powers of the

Legislature. The learned Judge contemplated the instance of a collusive suit between two parties and a decision obtained from the Court that a

particular enactment is ultra vires of the powers of the Legislature. However much collusion may be suggested between parties, I do not think

Courts could become parties to such collusion. In a case where the validity of a legislative enactment is in question as to whether it is ultra vires of

the powers of the Legislature which brought it into being, any Court will have to decide on the question of law argued by the counsel applying its

own mind to see the correctness or otherwise of the contention and the apprehensions of the lower Court are therefore baseless and unfounded.

7a. In a decision of the Federal Court, i. e., AIR 1941 16 (Federal Court) , Sulaiman and Varadachariar JJ., (Gwyer C. J., doubting) observed as

follows:

Section 205, Government of India Act is principally concerned with the determination of constitutional questions though arising in a litigation

between private parties. The Government stands in a peculiar situation; it has no doubt pecuniary or proprietary interests in one sense, but in

another aspect it is also the custodian and the protector of the interests of the public and the question of the legality of a statute is one in which it has a special interest. It is undesirable to place the Government in the embarrassing position, that while it must deem itself bound by an opinion expressed by the High Court as to the invalidity of the statute, it must find ways of persuading private parties formally to file an appeal, if it desires to have the constitutional question brought up before the Federal Court. The procedure u/s 213, Constitution Act, may not be found appropriate when the question of the legality of a statute has actually been put in issue before a Court of law in a litigation between private parties. Accordingly where either the Advocate-General or the Government has been added as a party to the proceedings in the High Court, though the private parties do not appeal, the Advocate-General or the Government has a right to prefer an appeal to the Federal Court as "any party" u/s 205(2), Constitution Act the language of which is different from that of Section 96, Civil P. C.

The question that had to be decided there, was, whether an Act of the Legislature of the United Provinces was within the competence of the Legislature which enacted it. The Advocate-General having already been made a party in the High Court, he was held to be coming within the words "any party" u/s 205 (2), Constitution Act and was therefore held to be competent to maintain the appeal.

8. In this case, however, it must be noted that the Government has not asked that it should be added as a party. It is the defendant who is

compelling the plaintiff to make the Government a party and unless the Court is satisfied that Government is a necessary party, ordinarily an order

making Government a party should not be made. In *Vicharanakarthar of Tirumalai Vs. The Board of Commissioners for Hindu Religious*

Endowments, which was a suit filed by the head of a Hindu religious institution against the Board of Commissioners for a declaration that the said

Act was invalid and ultra vires and for an injunction restraining the defendant from doing certain acts, the Secretary of State for India in Council

applied to be added as a party defendant. The application having been opposed by the plaintiff, it was held that

as there was no cause of action alleged in the plaint against the Secretary of State and no relief claimed against him, he was neither a necessary

nor a proper party to the suit and hence could not be added as party defendant.

In the interpretation of the words "all questions involved in the suit" in Order 1, Rule 10 (2), Srinivasa Aiyangar J., held that the expression could

only refer to questions as between the parties to the suit and should not be regarded as absolute but only as relative. The phrase "to enable the

Court effectually and completely to adjudicate upon and settle," according to the learned Judge, would seem really to indicate that the addition of

the party should be ordered only if in the opinion of the Court in the absence of the party it cannot effectually and completely adjudicate and settle

all the questions.

9. This decision was cited by Venkatasubba Rao J., in *Secy, of State v. Murugesu*, A. I. R. 1929 Mad. 443 : 118 I. C. 780 where the learned

Judge did not agree with the narrow interpretation put by Srinivasa Aiyangar J., on the words "all questions involved in the suit" meaning only as

questions as between parties to the suit and not in which third parties are interested. The questions that arise for adjudication need not however

necessarily be between parties to the suit as observed by Venkatasubba Rao J. But I agree with the observation made in *Vicharanakartha of*

Tirumalai Vs. The Board of Commissioners for Hindu Religious Endowments, , that the addition of a party should be ordered only if, in the

absence of that party, the Court cannot effectually and completely adjudicate and settle all questions in the suit.

10. No relief is asked against the Government and the Court is only considering an order passed by an authority constituted under the Endowment

Act, in this case the Collector, whose order is attacked as being one without jurisdiction which is raised by issue 2 in the suit. It is again for the

Court to find whether the Collector, who ordered the resumption proceedings, had acted within the powers conferred on him u/s 44B, Hindu

Religious Endowments Act. It cannot be stated that the Government is a necessary party in such cases where the only question that the Court has

to go into is whether the order is void by reason of the authority who exercised it having acted without jurisdiction. As pointed out already, no relief

is asked against the Government and the plaintiff being generally dominus litus, he cannot be compelled to add the Government as a party, if the

Government is not a necessary party. It cannot be said, however, the

Government is not a proper party since it is impossible to contend that the Government has absolutely no interest either in resumption proceedings or as to the decision of the question whether a particular enactment is ultra vires.

11. It is also pointed out that further objections may be raised as to there having been no notice u/s 80, Civil P. C., if the suit is to be maintainable against the Government after it is added as a party. However, I do not think it necessary to give any opinion as to whether notice would be necessary u/s 80 in such cases but in view also of the reasonable apprehension of the plaintiff in this regard, it will not be proper that he should be compelled to make the Government a party since Government is not a necessary party to the suit.

12. In the result, the petition is allowed with costs.