
(2009) 05 MAD CK 0013
In the Madras High Court
Case No : W.A. No. 1504 of 2008

K. Shanmugavel Mudaliar	Vs	APPELLANT
The Commissioner, HR and CE (A) and Others		RESPONDENT

Date of Decision : 12-05-2009

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 53(1), 53(2), 54, 54(1), 54(2)

Citation : (2009) 05 MAD CK 0013

Hon'ble Judges : P. Jyothimani, J; Aruna Jagadeesan, J

Bench : Division Bench

Advocate : T.L. Rammohan for S. Velmurugan, for the Appellant; T. Chandasekar, Spl. G.P. for Respondents 1 and 2, W.C. Thiruvengadam, for N. Sathiamoorthy, for Respondents 3 to 9 and C. Selvaraju for T.R. Shanmugam, for Respondents 10 to 13, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Jagadeesan, J.—This writ appeal is directed against the order dated 15.12.2008 of the learned Single Judge passed in W.P. No. 14929/2008 dismissing the Writ Petition, however with liberty to file statutory appeal if the petitioner, appellant herein, is aggrieved, within two weeks from the date of receipt of the copy of the order. It is further observed that merits of the contentions made by either party was not decided in any manner in the Writ Petition.

2. Undisputed facts are that Arulmigu Agastheeswaran Temple and its allied temples at Pozhichalur, Chennai, comes under the provisions of HR & CE Act, 22/1959, and the office of the trusteeship in the aforesaid temple has been declared as "Hereditary" within the meaning of Section 6(11) and 663(b) of the H.R. & C.E. Act [hereinafter referred to as, "the Act"], in O.A. No. 100/1972 dated 24.09.1973. In the said original application, five persons viz., 1.Venkatasubramania Mudaliar, 2.Subramania Mudaliar, 3.Kumarasami Mudaliar,

4.P.S.Murugesa Mudaliar, 5.P.S.Sambandha Mudaliar were declared as persons holding the office of the Hereditary Trusteeship in Arulmigu Agastheeswaran Temple and its allied temples. All the aforesaid Hereditary Trustees have died and the respondents 3 to 5 are the descendants of Subramania Mudaliar. Appellant is the only descendant of Kumarasami Mudaliar and respondents 6 to 9 are the descendants of Murugesa Mudaliar. The appellant got himself recognized as Hereditary Trustee by filing petition u/s 54(1) of the Act without impleading the other descendants of the deceased Hereditary Trustees. He was functioning as a Hereditary Trustee till he was placed under suspension by the Joint Commissioner by invoking Section 53(1) and (2) of the Act. The respondents 3 to 9 have jointly filed proceedings No. 15678/2007 before the Joint Commissioner H.R.& C.E. (Administration) for recording their succession u/s 54(1) of the Act and after enquiry, their right to Hereditary Trusteeship was recognized by the Joint Commissioner by order dated 29.05.2008 as against which, the appellant filed the above said Writ Petition to quash the said order and to forbear the respondents 3 to 9 from interfering with the administration and functioning of Arulmigu Agastheeswaran Temple and allied temples, claiming as Hereditary Trustees.

3. The learned Single Judge has held that when facts are in dispute and when there is an effective alternative remedy provided, those disputed questions cannot be decided in a Writ Petition, and dismissed the Writ Petition with liberty to the petitioner to file statutory appeal. Challenging the said order, the appellant has come up with this writ appeal.

4. There is no dispute that after the demise of the original Hereditary Trustees, all the above said legal descendants, who are in the next line in succession, are entitled to succeed to the office of the trusteeship as Hereditary Trustees within the meaning of Section 54(1) of the Act. The legal descendants of Subramania Mudaliar, the 2nd Branch and Murugesa Mudaliar, the 4th branch, jointly filed proceedings No. 15678/2007 before the Joint Commissioner for recording their succession and their right of succession has been recorded in the impugned Order of the second Respondent. Since the right of the appellant has already been recognized, he has not been impleaded in the above said proceedings filed by the heirs of Subramania Mudaliar and Murugesa Mudaliar.

5. The case of the appellant is that the management of the temple was given to the appellant as Hereditary Trustee by order dated 24.11.1998 and the same was challenged by one Valleesan, Jalandaran, Aruleesan and Shanmuga Mudaliar in M.P. No. 1/1998 and the Joint Commissioner by order dated 03.11.1999, directed the parties to implead necessary parties i.e. heirs of other Hereditary Trustees who are entitled to succeed to the Hereditary Trustee, and also directed the parties to approach the Civil Court since there was dispute in respect of succession. In the said Order, he also gave liberty to file fresh application thereafter.

6. Thiru.T.L.Rammohan, the learned Senior Counsel for the appellant contended

that as the Joint Commissioner has ordered those parties to approach the Civil Court to decide the disputed claim of Hereditary Trusteeship and subsequent to the said order, as none of the trustees have established their right through Civil Court, the impugned Order of the Joint Commissioner dated 29.05.2008 recognizing the right of one set of legal descendants to the trusteeship is against law. That being so, the order passed by the learned Single Judge directing appellant to exhaust the remedy of filing statutory appeal u/s 54(4) of the H.R. & C.E. Act is not sustainable. He would contend that the second respondent has no jurisdiction to decide about the entitlement of right of respondents 3 to 9 to the Hereditary Trusteeship as he was not made a party to the said proceeding and therefore, the order passed without hearing him is against the principles of natural justice and in such situation, it is not necessary for him to exhaust the alternative statutory remedy.

7. In support of his contention, the appellant placed reliance on the Judgment reported in Uma Nath Pandey and Ors. v. State of U.P. and Anr. 2009(2) CTC 185 contending that even an administrative order, which involves civil consequences, must be consistent with the rules of natural justice so as to prevent miscarriage of justice. The relevant passage is extracted below:

15. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

8. The learned Senior Counsel would further contend that when an order is passed by the authority without jurisdiction, or in violation of principles of natural justice, this Court shall not refuse to exercise its discretion although there exists an alternative remedy. He places reliance on the decision reported in Committee of Management and Anr. v. Vice Chancellor and Ors. 2009(2) SCC 630 in support of the said contention.

9. On the other hand, Thiru.W.C.Thiruvengadam, appearing for the respondents 3 to 9 submitted that Section 54(1) of the Act contemplates an automatic succession to the office of the Hereditary Trusteeship and this question of law has been well laid down in the case reported in Prem Anand v. Commissioner of HR & CE and Anr. 1990 (1) LW 144 and the same was confirmed in W.A. No. 453/1990. It is held thus:

Under Section 54 of the Tamil Nadu Hindu Religious & Charitable Endowment Act, when a permanent vacancy occurs in the office of the Hereditary Trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. There is no necessity, whatever, for the next Hereditary Trustee to make an application for being appointed under the Act.

By referring to the said observation, the learned Counsel would contend that the respondents 3 to 9 being the direct descendants of Subramania Mudaliar and Murugesu Mudaliar, they were entitled to succeed to the office as next in the line of succession and the same cannot be challenged by the appellant. He would further submit that the remedy available to the appellant is only to invoke Section 54(4) of the Act, if he disputes the entitlement of the respondents 3 to 9 to the Hereditary Trusteeship of the office.

10. Section 54 reads as follows:

Filling up of vacancies in the office of hereditary trustee.

54.(1) When a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office.

(2) When a temporary vacancy occurs in such an office by reason of the suspension of the hereditary trustee under Sub-section (2) of Section 53, the next in the line of succession shall be entitled to succeed and perform the functions of the trustee until his disability ceases.

(3) When a permanent or temporary vacancy occurs in such an office and there is a dispute respecting the right of succession to the office, or

When such vacancy cannot be filled up immediately, or when a hereditary trustee is a minor and has no guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as guardian, or

When a hereditary trustee is by reason of unsoundness of mind or other mental or physical defect or infirmity unfit for performing the functions of the trustee,

The Deputy Commissioner may appoint a fit person to perform the functions of the trustee of the institution until the disability of the hereditary trustee ceases or another hereditary trustee succeeds to the office or for such shorter terms as the Deputy Commissioner may direct.

Explanation. - In making any appointment under this Sub-section, the Deputy Commissioner shall have due regard to the claims of members of the family, if any, entitled to the succession.

(4) Any person aggrieved by an order of the Deputy Commissioner under Sub-section (3) may, within one month from the date of the receipt of the order by him, appeal against the order to the Commissioner.

11. On a close scrutiny of Section 54(4) of the Act, it is clear that an appeal

would lie under that section as against the order passed under Sub-clause (1) (2) and (3) of Section 54. A reading of Section 54(1) clearly shows that succession to the office of Hereditary Trustee is automatic in case where permanent vacancy arises, as held in *Prem Anand v. Commissioner of HR & CE* and Anr. 1990 (1) LW 144. Likewise, Section 54(2) contemplates that if any temporary vacancy occurs in view of the suspension of the Hereditary Trustee under Sub-clause (2) of Section 53, then the next heir in line of succession becomes entitled to succeed to the Hereditary Trusteeship. So, Section 54(1) deals with the permanent vacancy, whereas, Section 54(2) deals about the temporary vacancy and in the above said contingency, a fit person can be appointed on four different situations, as set out in Section 54(3) of the Act, which includes a case when dispute arises in case of filling up of vacancy, either permanent or temporary. Against such order passed u/s 54(3), an appeal would lie to the Commissioner u/s 54(4) of the Act. At the risk of repetition, we reiterate that a conjoint reading of Section 54(3) along with Section 54(1) and 54(2) makes it clear that permanent vacancy and temporary vacancy referred to in Section 54(3) has to be traced from Section 54(1) and (2) of the Act and the remedy available against the orders passed thereunder is u/s 54(4) of the Act.

12. In this case, the Joint Commissioner has passed impugned order u/s 54(1) recognizing the respondents 3 to 9 as Hereditary Trustees, as there was no dispute in their claim at that time and thought fit to recognize them as Hereditary Trustees, which has been disputed for the first time by the appellant by filing Writ Petition. Therefore in the said factual scenario, remedy in such case would be only to file an appeal u/s 54(4) of the Act and the learned Single Judge has rightly held so.

13. The order passed by the Joint Commissioner i.e. second respondent in M.P. No. 1/2008 directing the parties to approach the Civil Court has no relevance to the application filed by the respondents 3 to 9 u/s 54(1) of the Act as the said application was filed by the cousins of different branches, who were not direct descendants except one Aruleesan, and in such circumstances, the second Respondent has directed them to approach the Civil Court for proving their heirship to the office. The said direction is not binding on the respondents 3 to 9 who are the direct descendants and they are entitled to Hereditary Trusteeship automatically. It is also not in dispute that the appellant is also entitled to Hereditary Trusteeship as he is also a direct descendant through the third branch.

14. The contention of the appellant that he was not heard before passing of the order by the second respondent merits no consideration as the respondents 3 to 9 are not challenging his recognition as Hereditary Trustee and in fact, they admit his entitlement as he is the direct descendant through one of the branch. It is the appellant, who raises the dispute against the recognition of respondents 3 to 9 to the trusteeship and in such circumstances, the remedy available to him is only u/s 54(4) of the Act. Therefore, the contention of the appellant that there is violation of principles of natural justice and the order passed by the Joint

Commissioner is without jurisdiction, cannot be countenanced.

15. Mr. C. Selvaraju, learned Senior Counsel appearing for the respondents 10 to 13 submitted that their right to the trusteeship should also be recognized. Respondents 10 to 13, claim trusteeship under Shanthakumari (since deceased), remaining descendant of Subramania Mudaliar. It is brought to our notice that they have filed an application in that regard and it is for them to pursue their remedy u/s 54(1) of the Act before the Joint Commissioner.

16. At the fag end of his argument, the learned Senior Counsel appearing for the Appellant would raise a doubt that all the trustees cannot be collectively placed in management of the temple, the Joint Commissioner without deciding the said fact, has recognized all the seven heirs, the respondents 3 to 9 to be entitled to the trusteeship and therefore, the impugned Order cannot be given any validity.

17. We are unable to agree with this submission because there are five branches of Hereditary Trustees and from each branch, there are more than one legal descendant, who are entitled to succeed to the office of the Hereditary Trusteeship. Merely because there are more than one legal descendant, it cannot take away their right to the Hereditary Trusteeship, which is available under the statute and they can be considered as co-trustees. As regards the person to act as trustee at any particular time, it would be open to those trustees to decide the matter as and when the question arises, by resorting to the provisions of the Act. It is made clear that by placing management of the temple in any one of the trustee or trustees, it will certainly not detract their status as Hereditary Trustees, nor can it confer any succeeding right of trusteeship upon the persons appointed by them.

18. In view of the reasons stated above, we see no reason to interfere with the order of the learned Single Judge. The Writ appeal fails and the same is dismissed. No costs. M.P. No. 1/2009 is also dismissed.