
(1957) 11 MAD CK 0028
In the Madras High Court

K. Subramania Chettiar and Others

APPELLANT

Vs

Commissioner, Hindu Religious and Charitable Endowments
and Another

RESPONDENT

Date of Decision : 12-11-1957

Acts Referred:

Citation : AIR 1958 Mad 501 : (1958) 71 LW 449 : (1958) 2 MLJ 139

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Judgement

Panchapakesa Ayyar, J.—This is a petition filed by K. Subramania Chettiar, Section N. Venugopal Chettiar, P.E. Raghava Chettiar and K. Venugopal Chettiar as trustees of Sri Kandaswami Temple, Madras, who are elected by the Beri Chetties, who claim to have founded and endowed the temple and to have a right of electing the trustees, for issuing a writ of certiorari and quashing the order of the Commissioner for Hindu Religious and Charitable Endowments, respondent 1, declaring the petitioners not to be hereditary trustees and setting aside the order of the Deputy Commissioner declaring them to be hereditary trustees. The second respondent is one Balakrishnan who claimed to be interested in the temple and wanted the order of the Deputy Commissioner to be vacated as affecting him adversely. It is on his appeal that the first respondent Commissioner set aside the order of the Deputy Commissioner declaring the petitioners to be hereditary trustees. Interim suspension of the order of the Commissioner was passed by Rajagopala Ayyangar, J., in C.M.P. No. 5661 of 1957 in this Writ Petition and was made absolute on nth October, 1957.

2. I have perused the records and heard the learned Counsel for the petitioners and the learned Additional Government Pleader contra. The learned Additional Government Pleader raised a preliminary objection that there was a right of suit given to the petitioners u/s 62 of the Hindu Religious and Charitable Endowments Act, 1951, and that this writ would therefore not lie. Mr. K.E. Rajagopalachari, learned Counsel for the petitioners, while conceding that there was a right of

suit, contended that a writ would lie, because the alternative remedy byway of suit was not equally efficacious or expeditious. According to him, if a suit were filed, it would drag on for years, not only for its own disposal, but for the disposal of the appeal, etc., whereas a writ would be far more expeditiously disposed of. I agree with the learned Additional Government Pleader that this circumstance, by itself, would not warrant the entertainment of the writ. A little more delay involved by filing a suit and appeal, compared to a writ and writ appeal, should not be held to be a ground for allowing a person entitled to file a suit to file a writ and flood the Court with writs. Mere balance of convenience will not do. Where a suit lies, that is the proper course, and a writ can be applied for only in special circumstances. Cases where a suit has been held to be not as effective or efficacious as a writ are cases of attachment of properties with threatened immediate sale, arrest of a person, etc., and not a mere greater delay as urged here.

3. Then Mr. Rajagopalachari urged that u/s 62 there is no provision for stay of the order of the Commissioner, as in a Writ Petition, and so all the petitioners will not necessarily continue as trustees, and people of other castes may be appointed as trustees by the Commissioner, and that this is a circumstance causing hardship to the Beri Chetti community, and I should therefore exercise my discretion and allow the writ to be filed. This argument too is unavailing. I agree with the learned Additional Government Pleader that this too is not a circumstance sufficient for allowing a writ to be filed. It is not as if the petitioners have no chance at all of applying for being appointed as trustees by the Commissioner and of being selected, at least some of them, by him, if otherwise found suitable. The fact that men of other castes may also be appointed trustees by the Commissioner, if found suitable, cannot be a circumstance fit to be urged in the new set-up of the Indian Republic aiming at the socialistic pattern of society and a casteless and classless society. Indeed, in many greater old and more famous temples than this, people of so-called low castes have been appointed as trustees without any detriment to the temple or the public.

4. A third circumstance was urged by Mr. Rajagopalachari, namely, that the order of the Commissioner was passed on an appeal by the second respondent, Balakrishnan, who was only interested in the temple, and was not proved to be aggrieved by the order of the Deputy Commissioner. There is no need to discuss the difference between mere interest and grievance caused by an order passed regarding a temple in which a person is interested. The two things are very much inter-connected. A person interested in a temple may feel aggrieved at certain persons, whom he considers to be not hereditary trustees, being declared hereditary trustees, and may file an appeal as an aggrieved person. This point too will have to be decided in the suit to be filed. So I need not discuss it further.

5. Then Mr. Rajagopalachari urged that the time for filing a suit has already lapsed, and that I should at least put on record my opinion that this is a fit case for excusing the delay if and when a suit is filed within a short time, with a

petition for excusing delay. I agree, and record my opinion that if a suit is filed within a month from today and a petition for excusing the delay is also filed along with an affidavit, it may be a fit case for excusing the delay.

6. With these remarks this Writ Petition is dismissed. In the circumstances, there will be no order as to costs. Advocate's fee Rs. 100.