

(2014) 07 MAD CK 0277

In the Madras High Court

Case No : W.P.(MD). No. 2338 of 2014 and M.P. Nos. 1 and 2 of 2014

Karthick

APPELLANT

Vs

The Joint Commissioner Department of Hindu Religious and
Charitable Endowment

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Hindu Minority and Guardianship Act, 1956 — Section 7
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 107,
53(3), 54, 54(1), 54(3)

Citation : (2014) WritLR 978

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Judgement

R. Subbiah, J.—The writ petition has been filed by the petitioner seeking for issuance of a writ of Certiorari to call for the records relating to the order of the 1st respondent dated 06.01.2014 made in Miscellaneous Petition No. 3 of 2013, which was despatched on 04.02.2014 and delivered to the petitioner on 05.02.2014, and to quash the same. The brief facts, which are culled out from the materials placed on record, for deciding the issue involved in this writ petition, are as follows:-

1(a) The petitioner is the adopted son of one Sangam Poosari. The 2nd respondent is the natural daughter of the said Sangam Poosari and respondents 3 & 4 are her son and daughter respectively. The 5th respondent is the natural father of the petitioner. The said Sangam Poosari was one of the hereditary trustees of Arulmighu Pandi Muneeswarar Temple, Melamadai, Madurai North Taluk, Madurai District. The said temple was established by one Pandi Kodangi and he was in administration of the temple during his life time as its founder. The said temple is only a village temple and it was not established as per Agamic Principles and the rituals and pooja services are also not in conformity with the Agamic principles. After the demise of the founder Pandi Kodangi, his son Periasamy was acting as trustee and performing poojas. At the time of death of

Periasamy, his sons Pandian @ Pothai Poosari and Periannan @ Mahamuni Poosari were minors and therefore, their mother Valliammal was in administration of the temple as a guardian to them. On attaining majority, both Pandian @ Pothai Poosari and Periannan @ Mahamuni Poosari became trustees of the temple and performed poojas. In fact, Nallathangal who is the daughter of Periasamy, was not considered or recognized as a trustee. After the death of Pandian @ Pothai Poosari, his sons- 1) Veeramalai, 2) Sangam Servai, 3) Ponnas Servai, 4) Kodangi Servai, 5) Pandian Servai became trustees along with Periannan @ Mahamuni Poosari. All of them had decided to frame a scheme to share the services and filed a suit in O.S. No. 383/1973 on the file of the District Munsif Court, Madurai, for framing a scheme.

1(b) A Scheme was framed in that suit on 20.06.1973. As per the said Scheme, Sangam Poosari is one of the hereditary trustees of the temple. The said Sangam Poosari died on 01.10.1996 and his wife Palaniammal died even before his death i.e., on 24.01.1993. Prior to his demise, the said Sangam Poosari has adopted the petitioner as his son, in the presence of relatives, villagers and other trustees of the temple on 23.01.1996 and also executed deed of adoption, which was registered on 25.01.1996.

1(c) During the year 1992, since the said Sangam Poosari was not well, he could not participate in the temple administration and pooja services. Hence, he had executed a deed of settlement on 13.05.1992 relinquishing his rights in the temple in favour of the 5th respondent and the same has come to an end in view of the adoption of the petitioner as son on 23.01.1996 and by virtue of registered deed dated 25.01.1996.

1(d) The petitioner was recognized as a trustee in the permanent vacancy, that has occurred due to the death of Sangam Poosari, by the then Joint Commissioner, Hindu Religious and Charitable Endowment, Madurai, by passing necessary order to that effect in his proceedings Na.Ka. 13594/96/AA1 dated 04.09.1997, after following the procedure and formalities. Since the petitioner was a minor on the date of passing the aforesaid order, the 5th respondent, who is the natural father of the petitioner, was nominated as a guardian till his attainment as a major in the above said proceedings itself. The 2nd respondent, who is the daughter of the deceased Sangam Poosari, was enquired before passing the aforesaid order recognizing the petitioner as trustee. In fact, she submitted a letter of consent on 17.03.1997 before the 1st respondent through the then Managing Trustee and the said letter of consent was executed in the presence of Panchayat President and others.

1(e) The petitioner attained majority on 03.03.2006 and from that day onwards, he is acting as a hereditary trustee and performing pooja services personally. While so, the respondents 2 to 4 have filed a petition in Miscellaneous Petition No. 3 of 2012 under Section 54(1) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 to record them as hereditary trustees of the temple in the place of permanent vacancy that occurred on the death of Sangam

Poosari on 01.10.1996, and also for their share of income in the temple during their turn, by stating that the 3rd respondent who is the grandson of Sangam Poosari, was away from the family at the time of death of Sangam Poosari and hence the petitioner was authorized and allowed to perform funeral rites to the deceased Sangam Poosari and the 5th respondent was allowed to act as a guardian and perform pooja service, since the petitioner was a minor during the relevant period; the husband of the 2nd respondent and the father of the respondents 3 & 4 died in the year 1999 and the 3rd respondent went for job and they were under the impression that the petitioner is in the temple administration on their behalf and they were paid with a sum of Rs. 1000/- as a share from the income of the temple during their turn of pooja service; but suddenly, the petitioner stopped paying their share from the income of the temple which made them to question the petitioner.

1(f) The said petition was resisted by the petitioner herein contending that the 1st respondent has already passed an order in Na.Ka.13594/96/AA1 dated 04.09.1997 recording the petitioner as a hereditary trustee in the permanent vacancy that has occurred due to the death of Sangam Poosari and the same cannot be reviewed after the period of 15 years and there is no provision under the Hindu Religious and Charitable Endowment Act for reviewing; the 5th respondent was acting and performing pooja service of the deceased Sangam Poosari even during his life time i.e., from 13.05.1992 onward till the petitioner was adopted as his son; the 1st respondent passed the order recognizing the petitioner as a hereditary trustee in the place of permanent vacancy that has occurred due to the death of Sangam Poosari, only after hearing the 2nd respondent, who is his daughter, and the said order has become final and there is no vacancy at all to claim under Section 54(1) of HR & CE Act; the claim under Section 54(1) of the HR & CE Act made by the respondents 2 to 4 herein is not maintainable in law due to the above said facts and apart from that the claim is barred under Section 107 of the said Act.

1(g) The 1st respondent herein has passed the impugned order on 06.01.2014 recording the 2nd respondent herein as the legal heir to the deceased Sangam Poosari and that she is entitled to all shares and monetary benefits including poojai murai and also a share in Hundial which were available to the other hereditary trustees/poosari in Arulgihi Pandi Muneeswarar Temple, Melamadai, Madurai.

1(h) Aggrieved over the said order, the petitioner has filed the present writ petition for the relief as stated supra.

2. Pending the writ petition, on 12.02.2014 this Court has granted an interim order of stay in M.P.(MD). No. 1 of 2014 in W.P.(MD). No. 2338 of 2014.

3. On appearance, the 2nd respondent has filed a petition in M.P.(MD). No. 2 of 2014 to vacate the interim stay. In the affidavit filed in support of vacate stay petition, it has been stated by the 2nd respondent that she is the natural

daughter of Sangam Poosari and the respondents 3 & 5 are her son and daughters. The petitioner is the natural son of the 5th respondent. For performing the last rites, her father Sangam Poosari adopted the petitioner as his son and at the time of adoption, the petitioner was a minor. The 2nd respondent's father Sangam Poosari died on 01.10.1996 and a permanent vacancy has occurred in his place. After the death of Sangam Poosari, taking advantage of the adoption deed and with the connivance of the 5th respondent, his natural father and Managing Trustee of the temple, the petitioner filed a petition before the 1st respondent under Section 54(1) of the Act. The 5th respondent was behind the scene in the claim of the petitioner in as much as the petitioner was a minor at the time of death of Sangam Poosari. The 5th respondent sought permission of the 1st respondent to record the petitioner as trustee on the death of Sangam Poosari and the petitioner then was represented by the 5th respondent. No notice was issued to the 2nd respondent when the application of the petitioner was moved and no enquiry was conducted. Since the petitioner was giving Rs. 1000/- towards the share on every turn of deceased Sangam Poosari, and being a widow, the 2nd respondent has to maintain her family with two children, she was under the impression that the petitioner has accepted her also as one of the trustees and was sharing the income. Because of her family circumstances, she was under the impression that the petitioner was acting as trustee-cum-poojari on her behalf also. Though there was a settlement deed executed by Sangam Poosari in favour of the 5th respondent, the same was not acted upon and it was the 2nd respondent's father Sangam Poosari, who was doing the poojari right and administering the temple till his death. Hence, on 22.08.2012 the respondents 2 to 4 have filed an application under Section 54(1) of the HR & CE Act before the 1st respondent to record them as legal heirs of Sangam Poosari and hereditary trustees of the said temple, in the vacancy that had occurred due to the death of Sangam Poosari. In the said petition, notice was served to the petitioner and the 5th respondent herein and after hearing all the parties, the 1st respondent has passed an order on 06.01.2014, recording the 2nd respondent herein as legal heir to the deceased Sangam Poosari, under Section 54 of the HR & CE Act. According to the 2nd respondent, the present writ petition has been filed by the petitioner with the connivance of the 5th respondent. Thus, the 2nd respondent prays for vacating the interim stay and dismissal of the writ petition.

4. The 1st respondent has filed a counter affidavit stating that the proceedings under Section 54 of the HR & CE Act is a quasi judicial proceedings, which requires necessary enquiry. But, proceedings dated 04.09.1997 has been passed without making her a party. Section 54(3) makes it mandatory to consider the claims of the members of the family. The 2nd respondent is the natural daughter. Writ petitioner is claimed to be adopted son of Sangam Poosari. Therefore, the 2nd respondent must have been made as a party. Further, the writ petitioner at that time was only 9 years old. Therefore, the proceedings dated 04.09.1997 is ab initio void. Therefore, the proceedings impugned now cannot be treated as

one of reviewing the earlier order. The contentions raised by the writ petitioner are not sustainable and the impugned order is perfect and legally tenable. Thus, the 1st respondent sought for dismissal of the writ petition.

5. Heard the submissions made by the learned counsel on either side and perused the materials available on record.

6. It is the submission of the learned counsel for the petitioner that the 2nd respondent is the natural daughter of Sangam Poosari, who was a hereditary trustee of the Arulmighu Pandi Muneeswarar Thirukoil at Madurai. The petitioner, who is the son of 5th respondent, was given in adoption to Sangam Poosari as his son and the adoption deed was registered on 25.01.1996. As per Section 7 of the Hindu Minority and Guardianship Act, 1956, the natural guardianship of an adopted son, who is a minor, passes, on adoption, to the adoptive father and after him, to the adoptive mother. Thus, from the date of adoption, the petitioner has become the son of Sangam Poosari. The said Sangam Poosari died on 01.10.1996. On the death of Sangam Poosari, a permanent vacancy has occurred in the office of trusteeship. Hence, the petitioner has filed a petition under Section 54(1) of HR & CE Act to record him as a hereditary trustee. By the order dated 04.09.1997, the 1st respondent appointed the petitioner as hereditary trustee. Since the petitioner was a minor on the date of passing the order recording him as trustee, the 5th respondent was nominated as guardian till the petitioner attains majority. Thus, the office of trusteeship has been filled up as early as on 04.09.1997 itself by the 1st respondent. In the said proceedings, the 2nd respondent herein, who is the natural daughter of the said Sangam Poosari, has given a letter of consent through the then Managing Trustee of the temple, expressing her consent for appointing the petitioner as a hereditary trustee. Based on the consent letter given by the 2nd respondent, the petitioner was appointed as a trustee by proceedings dated 04.09.1997. Now, after a lapse of 15 years, on 22.08.2012 the respondents 2 to 4 i.e., natural daughter of deceased Sangam Poosari and her son & daughter respectively, have filed an application under Section 54(1) of HR & CE Act, before the 1st respondent to record them as hereditary trustees. On the date of filing the petition under Section 54(1) of Act by the respondents 2 to 4, there was no permanent vacancy in trusteeship in the temple, since already the same has been filled up on 04.09.1997 itself. Further more, the conduct of the 1st respondent in recording the 2nd respondent as hereditary trustee of the temple would amount to reviewing his own order dated 04.09.1997, whereas the 1st respondent has no such power of review. The impugned order passed by the 1st respondent is without jurisdiction. Hence, though alternative remedy is available under the HR & CE Act, the writ petition is maintainable before this Court.

7. In support of his contentions, the learned counsel for the petitioner relied upon number of judgments. In M.P. State Agro Industries Development Corporation Ltd. and Another Vs. Jahan Khan, , it has been held that alternative remedy does not operate as a bar to the exercise of a writ court's jurisdiction of

judicial review in cases - (i) seeking enforcement of fundamental right, (ii) where there is failure of natural justice, and (iii) where the impugned orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. For the same proposition of law, the learned counsel for the petitioner relied upon the judgment Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, .

8. Further, the learned counsel for the petitioner submitted that when there is no vacancy in the office of trusteeship on the date of filing application for recording a person as hereditary trustee of a temple, such petition is not maintainable. In support of this contention, the learned counsel for the petitioner relied upon the judgment reported in M.C. Karthikeyan Vs. The Joint Commissioner Hindu Religious and Charitable Endowment (Admn.) Department and Another, .

9. The next fold of submission made by the learned counsel for the petitioner is that under Article 107 of the Indian Limitation Act, the period of 12 years is the limitation period prescribed to claim for possession of the office of hereditary trusteeship; the time from which period begins to run is when the defendant takes possession of the office adversely to the plaintiff. But, in the instant case, the petitioner was appointed as trustee as early as on 04.09.1997, whereas the application was filed by the respondents 2 to 4 herein under Section 54(1) of HR & CE Act only on 22.08.2012 to record them as hereditary trustees, i.e., beyond 12 years limitation period. Under such circumstances, the 1st respondent ought not to have entertained the application filed by the respondents 2 & 4.

10. It is further submission of the learned counsel for the petitioner that in so far as the subject temple is concerned, the right of succession is only to the male heirs in view of the custom and practice of the said temple. In the absence of any evidence to show that the female heirs are also having right in succession, the impugned order recording the 2nd respondent as hereditary trustee is erroneous.

11. Per contra, the learned counsel appearing for the 1st respondent submitted that the earlier order dated 04.09.1997 recording the petitioner herein as hereditary trustee was passed without enquiry and before passing the said order, no notice was issued to any of the family members. As per Explanation to Section 54(3) of the HR & CE Act, for appointing a person in the office of hereditary trustee, the authority shall have due regard to the claims of the members of the family, if any, entitled to the succession. Therefore, for appointing the petitioner herein as hereditary trustee, the respondents 2 to 4 ought to have been issued with a notice as family members. But, in the instant case, no such notice was issued before passing the order recording the petitioner herein as hereditary trustee. It is further submitted by the learned counsel for the 1st respondent that though consent letter was produced by the petitioner as if the 2nd respondent has given consent on 17.03.1997 to appoint him as hereditary trustee, no reference was made in the order dated 04.09.1997 about the alleged consent letter said to have been given by the 2nd respondent, which

would show that the said consent letter would have been created by the petitioner for the purpose of his claim. Since the earlier order dated 04.09.1997 appointing the petitioner as hereditary trustee was passed not in the manner known to law, the said order is non-est in the eyes of law. Therefore, the question of reviewing the earlier order by the 1st respondent does not arise in this case; the question of filling up the vacancy that has arisen on the death of Sangam Poosari does not arise in this case, till the year 2012 when the respondents 2 to 4 have filed a petition to record them as hereditary trustees. When that being so, if the petitioner is aggrieved by the impugned order, he has to work out his alternative remedy as per Section 54(4) of the HR & CE Act. Therefore, the writ petition is not maintainable. Thus, he sought for dismissal of the writ petition.

12. The learned counsel appearing for the respondents 2 to 4 submitted that since the petitioner herein was given in adoption to Sangam Poosari, the 5th respondent lost his right of father by virtue of adoption deed. Further, having given his son/petitioner in adoption to Sangam Poosari, the 5th respondent cannot file any petition under Section 54(1) of the HR & CE Act to appoint the petitioner as hereditary trustee, representing himself as a guardian of the petitioner, unless the 5th respondent obtains an order from the Court of Law to appoint him as guardian to the petitioner herein. But, in the instant case, even according to the petitioner, in the year 1997, the 5th respondent had filed a petition under Section 54(1) of the Act, as a guardian of the petitioner, to appoint him as hereditary trustee. Without obtaining any order from the Court appointing the 5th respondent as guardian to the petitioner herein, the very petition filed under Section 54(1) of the Act by the 5th respondent to appoint the petitioner herein as hereditary trustee itself is not legally sustainable. Therefore, the order dated 04.09.1997 appointing the petitioner as hereditary trustee itself is not legally tenable and therefore, the question of reviewing the order by the 1st respondent does not arise in this case.

13. By way of reply, it is the submission of the learned counsel for the petitioner that under Section 53(3) of the HR & CE Act, any fit person can be appointed as a guardian of a minor and there is no need to obtain orders from the Court to act as a guardian.

14. The learned counsel for the respondents 2 to 4 submitted that it is incorrect to state that the custom & practice of the temple did not allow women to do pooja service and to hold hereditary trusteeship. In fact, as regards the other branch of hereditary trustees, namely Mahamuni Poosari, he had seven wives and since his second wife Saroja Ammal did not have issues, in the Will written by Mahamuni Poosari, in so far as his turn is concerned, his second wife was given on turn by rotation. The 5th respondent is aware of this fact. In this regard, the learned counsel for the respondents 2 to 4 relied upon the judgment reported in Raj Kali Kuer Vs. Ram Rattan Pandey, and contended that a female hindu can always do pooja services and be appointed as hereditary trustee.

15. With regard to the submission of the learned counsel for the petitioner in respect of limitation period of 12 years prescribed under Article 107 of Limitation Act, it is the submission of the learned counsel for the respondents 2 to 4 that in the instant case, though the petitioner was said to have been appointed as a hereditary trustee by the order dated 04.09.1997 passed by the 1st respondent, he was only a minor at that time. Even according to the petitioner, he had taken possession of trusteeship only in the year 2006, after attaining majority. As per Article 107 of the Limitation Act, limitation period begins only from the date of taking possession of trusteeship. Therefore, the limitation period has to be calculated only from the year 2006. Under such circumstances, the impugned order, which is under challenge in this writ petition, passed by the 1st respondent is not hit by limitation. Thus, the learned counsel for the respondents 2 to 4 sought for dismissal of the writ petition.

16. In view of the submission made by both sides, the following questions arose for consideration in this writ petition-

Whether the impugned order dated 06.01.2014 passed by the 1st respondent would amount to reviewing of the earlier order dated 04.09.1997 and Whether the writ petition is not maintainable when there is an alternative remedy under Section 54(4) of the HR & CE Act?

17. According to the petitioner, he was given in adoption to Sangam Poosari on 23.01.1996, which was registered on 25.01.1996. On 01.10.1996, the said Sangam Poosari, who is the natural father of 2nd respondent herein and the adoptive father of the petitioner, died. On his death, in his place a permanent vacancy has occurred in the office of hereditary trusteeship. According to the petitioner, in view of the next line of succession, he is entitled to be appointed as hereditary trustee in the place of deceased Sangam Poosari. Since at the time of death of Sangam Poosari the petitioner was a minor, a petition under Section 54(1) of the HR & CE Act was filed by the 5th respondent to appoint the petitioner as hereditary trustee. It is the case of the petitioner that pursuant to the said petition, a notice dated 07.04.1997 was issued to the 2nd respondent by the 1st respondent fixing the date of enquiry as 11.04.1997. Further, according to the petitioner, on 11.04.1997 the 2nd respondent appeared before the 1st respondent and she has given a consent letter stating that she has no objection to appoint the petitioner as a trustee. But, now the 2nd respondent denies the same.

18. In this regard, the attention of this Court was also invited to the order dated 04.09.1997 passed by the 1st respondent, through which the petitioner was appointed as hereditary trustee of the temple. In the said order dated 04.09.1997, in reference column, six documents were mentioned. But, there is no reference in the said order, neither to the petition said to have been filed by the 5th respondent on behalf of the petitioner under Section 54(1) of the Act nor to the consent letter given by the 2nd respondent.

19. According to the 2nd respondent, had the consent letter been given by her in favour of the petitioner and had a statement been made before the Joint Commissioner, HR & CE, as alleged by the petitioner, the same would have found a place in the said order dated 04.09.1997. But, absolutely there is no reference in the said order with regard to the consent letter alleged to have been given by the 2nd respondent in favour of the petitioner. Similarly, no reference was made in the said order with regard to the petition alleged to have been filed by the 5th respondent on behalf of the petitioner. Thus, as contended by the learned counsel for the respondents 2 to 4 that from a reading for the order dated 04.09.1997 it could be inferred that the said order has been passed without giving any notice to the 2nd respondent and without conducting any enquiry. In fact, in the impugned order dated 06.01.2014 the 1st respondent has clearly observed that the consent letter alleged to have been given by the 2nd respondent to the petitioner is of no use, as it was not made on oath before the Court of Law or quasi judicial authority and it was not subjected to judicial scrutiny. Therefore, the order dated 04.09.1997 is non-est in the eyes of law. Under such circumstances, the question of reviewing the earlier order does not arise in this case. When that being so, the petitioner ought to have filed only appeal as against the impugned order.

20. Further, a reading of the entire order would show that the order dated 04.09.1997 has been passed without conducting any enquiry and without issuing any notice to the family members of the deceased Sangam Poosari. As contended by the learned counsel for the respondents 2 to 4, the proceedings under Section 54(1) of the HR & CE Act is a quasi judicial proceedings and it requires necessary enquiry. Explanation under Section 54(3) of the Act makes it clear that for the appointment to the office of hereditary trustee of a religious institution, an enquiry with regard to the claims of the members of the family is necessary. The 2nd respondent is the natural daughter of the deceased Sangam Poosari. Therefore, the 2nd respondent ought to have been made as a party in the earlier proceedings. But, the 2nd respondent was not made as a party in the petition filed by the petitioner in the year 1997. Further no tangible evidence was also produced before this Court that the 2nd respondent had the knowledge of the earlier proceedings through which process the petitioner was appointed as hereditary trustee of the temple.

21. Though the learned counsel for the petitioner contended that the 2nd respondent has given a consent letter and made a statement before the 1st respondent, there is no mentioning in the order dated 04.09.1997 about the consent letter alleged to have been given by the 2nd respondent. Under such circumstances, this Court is of the view that when the petitioner is having efficacious alternative remedy, as observed earlier, he ought to have filed an appeal before the concerned authority under Section 54(4) of the HR & CE Act.

22. Further more, the issues raised in this writ petition are involving so many disputed questions of facts and the same cannot be considered by this Court in

this writ petition as this Court is not conducting any roving enquiry in this writ petition. Therefore, this Court is of the considered opinion that the writ petition is not maintainable, when the petitioner is having alternative remedy.

23. As this Court has come to the conclusion that the petitioner has to seek alternative remedy, this Court is not dealing with the other contentions made by both sides. In the result, the writ petition is not maintainable and the same is dismissed. Consequently, connected Miscellaneous Petitions are closed. However, there is no order as to costs.