

(2014) 09 MAD CK 0349

In the Madras High Court

Case No : W.A. (MD) No. 920 of 2014 and M.P. (MD) Nos. 1 and 2 of 2014

Karthick

APPELLANT

Vs

The Joint Commissioner

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 54,
54(1), 54(3), 54(4)

Citation : (2014) 09 MAD CK 0349

Hon'ble Judges : R. Mahadevan, J; M. Jaichandren, J

Bench : Division Bench

Judgement

R. Mahadevan, J.—The unsuccessful writ petitioner, challenging the order of the learned Judge, dated 04.07.2014 passed in W.P. (MD) No. 2338 of 2014, has come before this Court with the present writ appeal.

2. For the sake of convenience, the parties are referred according to their litigative status in the writ petition.

3. Facts in brief, leading to the filing of the writ appeal are set out thus:

3.1. Arulmighu Pandi Muneeswarar Temple, Melamadai, Madurai North Taluk, Madurai District, was established by one Pandi Kodangi and he was in administration of the temple during his life time as its founder. A suit was filed in O.S. No. 383 of 1973 before the District Munsif Court, Madurai, seeking to frame a scheme and accordingly, a scheme came to be framed on 20.06.1973, according to which, one Sangan Poosari was one of the hereditary trustees of the temple. The second respondent is his natural daughter. Since the said Sangan Poosari could not participate in the temple administration and pooja services because of his illness and therefore, he had executed a deed of settlement on 13.05.1992 relinquishing his rights in the temple in favour of the fifth respondent.

3.2. The said Sangan Poosari died on 01.10.1996 and his wife Palaniammal

predeceased him on 24.01.1993. Prior to the death of the said Sangam Poosari, he had adopted the writ petitioner as his son, in the presence of relatives, villagers and other trustees of the temple on 23.01.1996 and executed a deed of adoption and the same had been registered on 25.01.1996. Consequent to such adoption, the earlier settlement deed dated 13.05.1992 executed in favour of the fifth respondent, came to an end.

3.3. According to the writ petitioner, he was recognized as a trustee in the permanent vacancy, that had caused due to the death of Sangam Poosari, by the then Joint Commissioner, Hindu Religious and Charitable Endowment, Madurai, in his order dated 04.09.1997, after considering the letter of consent dated 17.03.1997, given by the second respondent. Till the writ petitioner attained majority, the fifth respondent being his natural father, was nominated as a guardian in the said order. On attaining majority, the writ petitioner started acting as a hereditary trustee and performing pooja services.

3.4. Meanwhile, the respondents 2 to 4 had 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 caused on the death of Sangam Poosari on 01.10.1996, besides claiming their share of income in the temple during their turn. It was resisted by the writ petitioner stating that the first respondent had passed the order dated 04.09.1997 recording the petitioner as a hereditary trustee in the permanent vacancy that had caused on the death of Sangam Poosari and the same could not be reviewed after the period of fifteen years and the said claim is barred under Article 107 of the Limitation Act. Thereafter, the first respondent had passed the impugned order on 06.01.2014 recording the second respondent as the legal heir to the deceased Sangam Poosari and that she would be 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 Arulgiyu Pandi Muneeswarar Temple, Melamalai, Madurai. Challenging the same, the writ petitioner has filed the writ petition.

3.5. Upon consideration of the rival submissions, the learned Judge of this Court dismissed the writ petition, holding that the writ petitioner had an effective alternative remedy as against the order passed by the first respondent by way of appeal under Section 54(4) of the Act. Aggrieved over the same, the writ petitioner is before this Court.

4. Mr. V. Sitharajandas, learned Counsel for the writ petitioner submitted that the claim of the second respondent could not be accepted in view of the letter of consent on 17.03.1997 executed by her before the first respondent recognising him as a trustee and that the impugned order passed by the first respondent is unsustainable in law for the reason that when there is no vacancy as on the date of the application filed by the second respondent, the question of appointing her as one of the trustees, does not arise at all. The first respondent has no powers

of review and hence, erred in reviewing the order passed by the then Joint Commissioner, that too, after long lapse of fifteen years, according to him. He further argued that the learned Judge had not considered the legal aspect that any person who is fit and consented thereto, can be appointed as a guardian and hence, it could not be stated that the fifth respondent had to obtain necessary permission to act as a guardian of the writ petitioner. Moreover, he contended that the claim of the second respondent is barred by limitation. Accordingly, he prayed for setting aside the order of the learned Judge of this Court.

5. Regarding the scope of availing alternative remedy, the learned Counsel for the writ petitioner placed reliance on the following decisions:

(i) Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, would read as follows:

"20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

21. That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "TRIBUNAL".

(ii) Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, is reproduced hereunder:

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See. Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, . The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

(iii) Hindustan Petroleum Corporation Limited Vs. Geetha Kasturirangan, S. Kasturirangan and The Inspector of Police, would run thus:

"13. The Retail Dealer filed the Writ Petition challenging the order of cancellation of dealership agreement and the same was entertained taking note of the violations of the Principles of Natural Justice and violations of the procedures in not following the time frame within which the sample shall be sent for Laboratory test. It is well settled in law that entertaining the Writ Petition, even if an alternative remedy is available, is a rule of convenience and it is a self-imposed discipline by the Courts and there is no absolute bar to entertain a Writ Petition, though other remedy is available to the person, who approaches the Court, particularly when the facts are not in dispute and no factual finding need be adjudicated upon. In the decision reported in Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, , the Supreme Court held that if a mandatory violation is established, the Court can entertain Writ Petition in respect of cancellation of termination of dealership. In M.P. State Agro Industries Development Corporation Ltd. and Another Vs. Jahan Khan, , the Supreme Court considered in detail the scope of entertaining Writ Petition, though alternate remedy is available. Paragraph 12 reads thus:

"12. Before parting with the case, we may also deal with the submission of learned counsel for the appellants that a remedy by way of an Appeal being available to the respondent, the High Court ought not to have entertained his Petition filed under Articles 226/ 227 of the Constitution. There is no gainsaying that in a given case the High Court may not entertain a Writ Petition under Article 226 of the Constitution on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of Writ jurisdiction due to the availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, a Writ Court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the Writ Petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of Principles of Natural Justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar. (See Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, ; Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, ; State of H.P. and Others Vs. Gujarat Ambuja Cement Ltd. and Another, ; and Mrs. Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd., ""

(iv) Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal, is extracted hereunder:

"15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the

provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes, Titaghur Paper Mills case* [(1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

6. Also, he contended that in the absence of any statutory provision for review, entertaining an application for review or under the guise of clarification/modification/correction is not permissible, as held by the Honourable Apex Court in *Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others*, .

7. Further, he relied on the judgment of this Court in *A. Pandiammal v. P. Sivaji Poosari and others* [W.A. (MD) No. 251 of 2012, decided on 05.07.2012], to contend that having failed to object to the appointment of the writ petitioner as a trustee beyond the limitation period, now, the second respondent could not raise even her little finger against the writ petitioner for the reason that there is a huge delay of fifteen years in this regard.

8. Drawing the attention of this Court to the dates and events filed by the writ petitioner, the learned Counsel for the writ petitioner submitted that the writ petitioner was recognised as a hereditary trustee by the then Joint Commissioner on 04.09.1997 and that the second respondent approached the first respondent on 22.08.2012 to fill up the vacancy that had caused due to the death of her father and hence, having allowed the writ petitioner to perform as a hereditary trustee, the second respondent is not justified in claiming her right at a later point of time. Further, it is contended that the impugned order had been passed by the Joint Commissioner by way of reviewing his own earlier order recognising the writ petitioner as a hereditary trustee, which, is illegal, on the premise that he has no power at all to pass the present impugned order. He concluded by stating that the father of the second respondent died 01.10.1996 and that the vacancy that had arisen, was filled up by recognising the writ petitioner as a hereditary trustee while he was a minor, after obtaining the letter of consent from the second respondent and hence, the application filed by the second respondent seeking to recognise her as a hereditary trustee would not be tenable as there is no vacancy at the time of her claim and more so, her claim is barred by limitation as well.

9. Per contra, Ms. J. Anandhavalli, learned Counsel for the respondents 2 to 4 contended that the second respondent is the natural daughter of the said Sangan Poosari and in order to perform the funeral rituals, the writ petitioner was adopted by her father and she was denied of her legal entitlements to which she is entitled to, based on the recognition conferred on the writ petitioner (minor as

he then was) by the then Joint Commissioner by his order dated 04.09.1997. According to her, the second respondent was not given any opportunity of hearing before passing the order dated 04.09.1997, which itself would vitiate the proceedings and in the said order, neither there was any discussion about the alleged consent given by the second respondent nor any reference was made indicating the same. She also submitted that the second respondent was made to believe that the writ petitioner was performing the poojas for and on behalf of her, but, she came to know about the appointment of the writ petitioner as a trustee only during the proceedings initiated under Section 54(1) of the Act and that the letter of consent said to have been executed by her is nothing but imaginary one. She also pointed out that the writ petitioner was a minor, aged 9 years at the time of giving in adoption to the father of the second respondent and the fifth respondent had illegally acted as a guardian of the writ petitioner to perform the poojas on his behalf. It is her further submission that if she had given such letter of consent, she could not claim such rights after a lapse of fifteen years and the writ petitioner failed to prove the alleged letter of consent executed by her.

10. Regarding the contention of the learned Counsel for the writ petitioner that the claim of the second respondent is barred by limitation as per Article 107 of the Limitation Act, she replied that it cannot be stated so, since the second respondent was kept in dark about the hereditary trusteeship held by the writ petitioner and the same came to her knowledge only at the time of the initiation of the proceedings by her seeking to recognise her as a hereditary trustee in the vacancy that had arisen due to the death of her father, Sangam Poosari and therefore, the second respondent is well within the limitation to claim her right.

11. Insofar as the submission of the learned Counsel for the writ petitioner that the second respondent was duly heard before passing the order recognising the writ petitioner as a hereditary trustee in the vacancy that arose in the place of Sangam Poosari, the learned Counsel for the respondents 2 to 4, by inviting the attention of this Court to the explanatory clause to Section 54(3) of the Act, contended that the then Joint Commissioner had failed to adhere to the procedures as contemplated under Section 54(3) of the Act and thereby, due opportunity had not been given to the second respondent, who is admittedly, the natural daughter of Sangam Poosari and that the alleged letter of consent was denied by her.

12. She further argued that though the writ petitioner filed the objections before the Joint Commissioner to the effect that the second respondent executed the alleged letter of consent on 17.03.1997, the genuineness of the same had not been proved in the eye of law so as to prove his case and in such event, it is not for the writ petitioner to deny the rights of the second respondent.

13. Moreover, she contended that the fifth respondent at no point of time, approached the authorities for appointing him as a guardian of the writ petitioner, which had been lost sight of by the then Joint Commissioner while

passing the order dated 04.09.1997. It is also contended that the female members of the family are also entitled to the trusteeship and that the first respondent had considered the issue regarding the trusteeship of the second respondent and rightly passed the impugned order, which does not warrant any interference at the hands of this Court. Hence, she prayed for the dismissal of the writ appeal.

14. In order to sustain her contentions, she relied on the following decisions:

(i) Chettimai C. Nanjappa Chettiar (deceased) and Another Vs. S.M. Kuppuswami Chettiar and Others, . Paragraph 3 of it, would run thus:

"3....The Supreme Court countenanced that the position of hereditary trustee is that of a Dharmakarthā or a mere manager or custodian of a religious institution with an exception, namely, that the hereditary trustee succeeds to the office as of right and in accordance with the rules governing succession. (emphasis applied by Italics.) Once we countenance that succession as of right is available to the office of the hereditary trustee, it is not possible to permit a person in the office for the time being to barter it away for no value, so as to stultify and cripple the rule of succession. Such bartering away, release or relinquishment by the person for the time being in office in the hereditary trusteeship will be of no legal consequence and the person who is entitled to succeed can insist and claim his right as a successor, ignoring such release or relinquishment." (emphasis added.)

(ii) Prem Anand Vs. The Commissioner, Hindu Religious and Charitable Endowments, Madras and The Deputy Commissioner, H.R. and C.E., Madras reads as follows:

"2. Under S. 54 of the Tamil Nadu Hindu Religious and Charitable Endowments 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...."

(iii) K. Shanmugavel Mudaliar Vs. The Commissioner, HR and CE (A) and Others reads as under:

"12. In this case, the Joint Commissioner has passed impugned order under Section 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 under Section 54(4) of the Act and the learned Single Judge has rightly held so.

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 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."

(iv) The judgment in *Seethalakshmi v. Maruthupandi and two others* [W.A. Nos. 1590 and 1995 of 2011, decided on 24.06.2013], which had been confirmed by the Honourable Apex Court in *Maruthupandi v. Seethalakshmi and others* [Special Leave to Appeal (Civil) Nos. 20572-20573 of 2013, decided on 05.07.2013].

15. Mr. VR. Shanmuganathan, learned Special Government Pleader appearing for the first respondent submitted that the second respondent had not been afforded with any notice at any point of time before recognising the writ petitioner as a trustee and that the first respondent, after taking into account all the relevant materials, passed the impugned order and that the learned Judge had rightly relegated the writ petitioner to avail the effective alternative remedy under Section 54(4) of the Act and hence, the writ appeal is not tenable in the eye of law. He further contended that the appeal, if any, filed by the writ petitioner, the same may be considered by the authority concerned without being influenced by any of the observations made by the learned Judge of this Court.

16. We have considered the rival submissions and scrutinised the materials available on record, including the order of the learned Judge of this Court.

17. Admittedly, the said Sangam Poosari had one daughter, the second respondent herein. Even though the said Sangam Poosari had adopted the writ petitioner as his son, the rights of the second respondent could not be denied by the said adopted son, the writ petitioner herein. The main allegation put forth by the second respondent is that she was not heard before passing such order recognising the writ petitioner as a trustee in the vacant place that had caused due to the death of her father, but, the same had been denied by the writ petitioner, which, in our opinion, are disputed questions of fact, that could not be gone into by the learned Judge in exercise of the jurisdiction of this Court under Article 226 of the Constitution of India.

18. It is pertinent to note that there is no reference to the alleged letter of consent said to be executed by the second respondent on 17.03.1997, in the order passed by the then Joint Commissioner on 04.09.1997 and therefore, the

question as to whether the second respondent had been duly heard before passing such order, would arise in the mind of this Court. In any event, now, the first respondent had recognised the second respondent as the hereditary trustee by virtue of the impugned order.

19. It is the specific claim of the second respondent that she had come to the knowledge of the writ petitioner being appointed as trustee, only through the statement of objections filed by him in the proceedings under Section 54(1) of the Act, in the year 2012 and thereafter alone, she objected to the same.

20. As per Article 107 of the Limitation Act, the period of limitation is only 12 years for possession of the hereditary office, but, the second respondent claimed that such trusteeship of the writ petitioner was brought to her knowledge only in the year 2012 and hence, it is the stand of the second respondent that there is no bar for claiming such right now.

21. A perusal of the materials available on record would make it clear that the learned Judge had analysed the issue in depth and arrived at a conclusion that when there is an efficacious alternative remedy available to the writ petitioner, it is not for him to invoke the jurisdiction of this Court by filing the writ petition and on that ground, the writ petition filed by him, lacks merit.

22. Though it is the contention of the writ petitioner that the claim of the second respondent is barred by limitation and that there is no power of review vested with the Joint Commissioner, all those issues cannot be dealt with by this Court, as the writ petitioner failed to avail the alternative remedy under Section 54(4) of the Act.

23. We, therefore, see no reason to interfere with the order of the learned Judge of this Court and ultimately, the writ appeal fails.

24. In fine, this writ appeal stands dismissed. Consequently, the connected miscellaneous petitions are dismissed. No costs.