

(1974) 04 MAD CK 0010
In the Madras High Court
Case No : C.R.P. No. 2148 of 1972

K.K.S. Krishnan Chettiar

APPELLANT

Vs

The Deputy Commissioner for Hindu Religious and Charitable Endowments (Admn.) Department, Nungambakkam, Madras-34 and another

RESPONDENT

Date of Decision : 19-04-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1974) 04 MAD CK 0010

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : M.Y. Raghuraman for M/s. M. Subramania Rao and T.L. Ram Mohan, for the Appellant; G.R. Lakshmanan for Addl. Govt. Pleader, for the Respondent

Judgement

Ramaprasada Rao, J.—The Principal Subordinate Judge of Erode, as the proper authority under S. 90(4) of the Hindu Religious and

Charitable Endowments Act, enquired into a petition filed by the petitioner to set aside the order in Proceedings No. 4126/65 dated 21st March,

1967 passed by the Deputy Commissioner, Hindu Religious and Charitable Endowments (Administration) Madras. Various contentions were

raised by him, but not the contention that the Deputy Commissioner did not have the jurisdiction to enquire into and pass the challenged order. On

the pleadings raised before him, the learned Subordinate Judge framed the following issues:

1. Whether the petitioner is not liable to make good the value of paddy sold to Munian Chettiar?
2. Whether the petitioner is not liable to pay the difference in the value of paddy purchased in the black market?

3. Whether the shortage of 10 pothies of paddy as due to dryage?

On these issues the learned Subordinate Judge gave his findings and in the result made the petitioner liable to pay a sum of Rs. 3,475.55 to the

Math as surcharge levied by the 1st respondent. It is as against this the present C. R. P. has been filed.

2. Learned counsel for the petitioner raises at this stage a legal contention that under S.33(3) of the Madras Hindu Religious and Charitable

Endowments Act it is only the Commissioner who can initiate proceedings in matters which may result in an order of surcharge against a trustee

administering religious institution, and as in this case it was the Deputy Commissioner who passed such an order, it is without jurisdiction. He

would, of course, concede that prior to the issuance of the order by the Commissioner under S.33(3) of the Act, the Commissioner may depute

any one of his officers to inspect the movable and immovable property belonging to the religious institution and peruse the records, accounts, etc.,

and discover any mismanagement in connection thereto. No doubt, the notice under S.33(3) has to issue from the Commissioner. It is stated that

such a notice was issued only by the Deputy Commissioner. On this ground the contention of the learned counsel for the petitioner is that the entire

proceedings are vitiated.

3. The learned Government Pleader who appeared for 1st respondent raised a preliminary objection that no C. R. P. would lie against the order of

the Subordinate Judge who is a statutory functionary under the Madras Hindu Religious and Charitable Endowments Act and who is the final

authority to determine whether the order passed by the Commissioner under S.33(3) is proper or legal. According to him, as under S.90(4)(a) of

the Act it is the Court which has to modify or set aside the order of the Commissioner and as that order prima facie is made final for all purposes

under the Act, the petitioner cannot avail himself of the general remedy under S.115 of the C. P. C. to revise once again the order of the Court of

the Subordinate Judge by this Court.

4. As regards the contention of the learned Government Pleader, there is a fallacy. S.33 of the Tamil Nadu Hindu Religious and Charitable

Endowments Act, 1959 provides for inspection of property and documents and Cl. (3) therein enables the Commissioner to issue an order on the

report made to him either by his deputies or on an inspection undertaken by himself, calling upon the delinquent trustee who in the course of his

administration has committed certain acts which are irregular, illegal and improper, to show cause why an order of surcharge should not be passed.

These are what are ordinarily characterised as surcharge proceedings. When the Commissioner issues such a certificate delineating therein the

amount for which the trustee is responsible, then under S.33 either party can avail himself of the procedure laid down in sub-Ss.(3) to (7) of S.90

of the Act. Cl.(4) of S.96 is one such provision. It provides that the trustee or other person aggrieved by such order of surcharge may within thirty

days of the receipt by him of the order, either apply to the Court to modify or set aside the order, or in lieu of such application, may appeal to the

Government who shall pass such orders as they think fit. In case where such an application is made to the Court for modification or for the removal

of the order of surcharge, it shall function as a Court, take evidence and thereafter confirm, modify or remit the surcharge and pass necessary

orders thereon. It is in this context that the learned Subordinate Judge of Erode, who was approached by the petitioner as an affected trustee,

passed the order which is now the subject-matter of revision. According to the learned Government Pleader, as there is no specific indication in the

Act as to what ought to be the further forum to which an aggrieved party could go to correct the order of the Court mentioned in S.90(4)(a) such

order is final. It is only in such circumstances that S.115 of the C. P. C., which obviously recognises the supervisory jurisdiction of this Court,

provides for a revision of such orders of Courts Subordinate to the High Court in revision under the particular Section. S.115 C. P. C., says that

the High Court may call the record of any case which has been decided by any Court Subordinate to such High Court and in which no appeal lies

thereto and if such Subordinate Court appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so

vested or to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it

thinks fit. This is an enabling Section which confers on the High Court the power of superintendence and hence the power of revision, which also

helps the litigant to approach the higher Court, for correcting an order which takes jurisdiction or which suffers from a material irregularity, etc. and

is certainly a provision, which a delinquent trustee, as in this case, against whom an order of surcharge was made and who could not get adequate relief in the Court to which he applied, can certainly have resort to. If this is not the intention of S.115 C.P.C., I fail to see as to in what other context it could be invoked. It is not in dispute that no appeal has been provided against the order of the Court. The Court, which in this case is the Court of the Subordinate Judge, Erode is a civil Court which is subordinate to the High Court. It cannot be said, therefore, that its orders cannot be revised by the High Court under its power of superintendence which is exercisable under S.115 of the C.P.C. The only other question is whether the order suffers from any error of jurisdiction or any material irregularity, which are the sole circumstances for the exercise of jurisdiction of this Court under S.115 C. P. C. I do not find any error of jurisdiction or any material irregularity in the order. The contention, however, is that the surcharge certificate was issued not by the Commissioner of the Hindu Religious and Charitable Endowments, but by the Deputy Commissioner. This, at best, may be characterised, even if it is true, as an administrative irregularity which does not go to the root of the matter so as to take it outside the jurisdiction of the Deputy Commissioner, who apparently acted in this case. It may be an error of judgment and, as I said, may be an irregularity. But this irregularity was obviously waived by the trustee even when he fought the case before the Deputy Commissioner and even when he approached the Court under S.90(4) to set aside or modify the said order of the Deputy Commissioner. Learned Counsel for the petitioner fairly concedes that no such argument was addressed in the Court below or before the Deputy Commissioner and in fact, the pleadings do not disclose that the trustee ever took up such a jurisdictional objection. The petitioner, therefore, at this late stage, cannot be allowed to moot it in this Court. Further, as I said, he should be deemed to have waived it even in the Civil Proceedings when according to him such an irregularity was writ large in them. In these circumstances I am unable to say that the order of the learned Subordinate Judge suffers from any material irregularity, nor does it lack jurisdiction. The C. R. P. is dismissed. There will be no order as to costs.