

(2001) 02 MAD CK 0137

In the Madras High Court

Case No : Criminal R. No. 1252 of 2000

K.M. Murugan Achary, K. Peethamparam, N. Paramasivam
and V. Rajarajan

APPELLANT

Vs

P.M. Neelameham, Rajappa, Ramachandran @ Bombay
Ramachandran and Durai Raj

RESPONDENT

Date of Decision : 06-02-2001

Acts Referred:

Citation : (2001) 02 MAD CK 0137

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : G.R. Edmund, for the Appellant; S. Shamugha Velayutham, for the Respondent

Final Decision : Dismissed

Judgement

A. Ramamurthi, J.—The Petitioners have preferred the revision aggrieved against the order of Revenue Divisional Officer-cum-Sub Divisional Magistrate, Trichy dated 20.11.2000 in Na. Ka.A1. No. 6735 of 2000.

2. The case in brief is as follows:

The Petitioners and the Respondents belong to Kammala Community. Sri Kalika Para-meswari @ Sri Kamatchi Amman Vahayara Devasthanam is managed by the Kammala Community residing within the limits of Municipalities of Trichy and Sri Rangam as per the Scheme Decree dated 28.8.1928 in O.S. No. 2 of 1927 on the file of then District Judge, Trichy. 5 Trustees have to be appointed by election by all the five sects of Kammalas. Only adult members are eligible to participate in the election meeting. The trustees shall hold the office for three years. Among them, one shall be nominated as Executive Trustee. The vacancy arising during the period for any season will be filled up by meeting of the General Body. Respondents 1 to 4 were elected in the General Body. The first Respondent was elected as Executive Trustee. While so, the first Respondent was involved in a

criminal case for cheating and forgery of documents in Crime No. 342 of 2000 on the file of Thillai Nagar. Trichy Police Station for the alleged offence u/s 420 read with 511, 466, 467, 468 and 471 IPC. The first Respondent was also arrested on 12.8.2000 and remanded to judicial custody for 40 days.

3. The Joint Commissioner, HR & CE Department passed an order in the proceedings dated 28.8.2000 suspending the first Respondent from the Trusteeship. In view of the sudden development, the temple could not be managed properly and the General Body meeting was convened on 5.9.2000, wherein 5 new trustees were elected including the 4 Petitioners and one Sakthivel was elected as the Trustee. The first Petitioner was elected as the Executive Trustee on 5.9.2000 by a majority of trustees. Eversince the date, the new Board of Trustees started functioning by conducting all the affairs of the temple and also festivals. On 6.10.2000, the first Respondent came out on conditional bail and started threatening the present trustees. On 21.10.2000 at about 10.00 a.m., the first Respondent along with 5 rowdy elements threatened the Petitioners and a complaint was also given in Gandhi Market Police Station, Trichy. Legal notice was also sent on 25.10.2000. The key of the temple was with Gurukkal and office key was with the Executive Trustee, Neelameham. The Revenue Divisional Officer, Trichy, passed an order u/s 145(1) of the Code of Criminal Procedure on 2.11.2000 and final order has been passed on 20.11.2000 and aggrieved against the said order, the present revision has been filed.

4. Heard the learned Counsel of both sides.

5. The point that arises for consideration is whether the order passed by the Revenue Divisional Officer-cum-Sub Divisional Magistrate Trichy dated 20.11.2000 is proper and correct.

6. Point: There is no dispute that the petitioners and the Respondents belong to Kammala Community. Sri Kalika Parameswari @ Sri Kamatchi Amman Vahayara Devasthanam is managed by the Kammala Community people of Trichy and Sri Rangam as per the Scheme Degree. Respondents 1 to 4 were the elected trustees in the General Body Meeting held on 4.3.1998. Their period of office will come to an end by March, 2001, but the first Respondent was involved in a criminal case relating to offences under Sections 420 read with 511, 466, 467, 468 and 471 IPC in Crime No. 342 of 2000 and he was also arrested, on 12.8.2000 and he was in judicial custody for a period of 40 days and released on bail on 6.10.2000. The Joint Commissioner, HR & CE Department, Trichy passed an order dated 28.8.2000 suspending the first Respondent from the trusteeship of the Devasthanam. Learned Counsel for the Petitioners contended that because of the sudden development, the temple could not be managed and therefore, the General Body Meeting was convened on 5.9.2000, wherein the Petitioners and one Sakthivel were elected as Trustees and the first Petitioner was elected as the Executive Trustee and they started functioning by conducting all the affairs of the temple including poojas.

7. The Petitioners moved the Revenue Divisional Officer, Trichy on 2.11.2000 calling upon the Respondents herein that they should not interfere with the management and administration by the Petitioners and they should be directed to entrust all the records relating to the properties. The Revenue Divisional Officer passed the order u/s 145(1) of the Code of Criminal Procedure and thereafter, interim order of protection was also given. The Petitioners contended that because of the arrest of the first Respondent, the Joint Commissioner, HR & CE Department had suspended the first Respondent from the Office of the Trustee and the other trustees have also voluntarily resigned from their posts. After proper enquiry, the Revenue Divisional Officer passed the impugned order dated 20.11.2000 cancelling the earlier order dated 2.11.2000 on the ground that the Petitioners have suppressed the filing of a suit before the District Court, Trichy and the other trustees have not resigned as stated by the Petitioners. He passed an order enabling the Respondents to carry on the administration as before.

8. Learned Counsel for the Petitioners mainly contended that the order passed by the authorities is not proper and correct. The Petitioners have submitted about 10 documents and there is no reference about the same in impugned order. The request of the Petitioners for oral evidence on 20.11.2000 was not considered. For passing an order u/s 145(5) of the Code of Criminal Procedure, finding has to be recorded with reference to the breach of peace. The order of restoration of possession cannot be passed u/s 145(5) of Code of Criminal Procedure and, as such, the order is without jurisdiction. Hence, the impugned order is liable to be set aside.

9. It is necessary to state that the Petitioners have not approached the authorities concerned with proper material and they have suppressed many details. Admittedly, Respondents 1 to 4 were elected as Trustees in March 1998 and they are entitled to continue in office for a period of three years unless and until their period comes to an end. No doubt, the first Respondent was arrested in connection with some criminal case and he was also in custody for a period of 40 days. This does not mean that the entire administration had come to a standstill which necessitated the Petitioners to move the competent authority. Respondents 1 to 4 were duly elected in March 1998 and even assuming that the first Respondent was suspended from the office of trusteeship by the orders passed by the Joint Commissioner, HE & CE Department, the other trustees are entitled to continue in office till March 2001.

10. There is no record to show that the other trustees have either resigned from their posts or they have been removed. In the absence of any such material, it is not known how the Petitioners have conducted a General Body Meeting on 5.9.2000 even before the expiry of three years and, as such, it is prima facie illegal. The Petitioners have suppressed materials and made the authorities to pass an order u/s 145(1) of the Code of Criminal Procedure. On coming to know that the Petitioners have obtained the orders of misrepresentation, the

authorities had decided to restore the administration with the office bearers duly elected in accordance with law. In fact, the Petitioners have also filed a suit before the District Court to recognise the removal of the Respondents from the post of Trustees, but this fact was not brought to the notice of the Revenue authorities. Moreover, the Respondents have also produced records to show that the order of suspension imposed by the Joint Commissioner, HR & CE Department against the first Respondent was raised by the orders of the Commissioner, HR & CE Department vide order dated 19.1.2001 in A.P. No. 38 of 2000. The aforesaid facts only indicate that only, on misrepresentation, the Petitioner have made the Revenue Divisional Officer to pass an order and on finding the mistake, the Executive Authorities have revoked the earlier order and the possession of administration was given to the elected officer bearers. There is nothing illegal or improper in the orders passed by the competent authorities to intervene.

11. Learned Counsel for the Respondents also relied on the decision reported in *Lophinoris Shangpling and Others Vs. Hemboy Shullai and Another*, that in respect of a dispute over two houses and civil suit is also pending, proceedings u/s 145 Code of Criminal Procedure initiated has to be dropped.

12. Learned Counsel for the Petitioners relied on the decision in *Lalit Kishore Das Vs. Gadadhar Jena and Another*, wherein it was held as follows:

On a plain interpretation of the provisions of the Sub-section (5) it will appear that while passing an order thereunder cancelling the preliminary order passed under Sub-section (1), it is not at all required that the Executive Magistrate should declare the possession of any of the parties to the proceeding in respect of the land in dispute. All that is necessary for him is that from the materials produced by the parties or any other person interested, he shall reach the satisfaction and record that no dispute exists or has existed with regard to the land in dispute. The satisfaction of the Executive Magistrate is subjective. Once he is satisfied as above, there is no impediment for him to cancel the preliminary order and drop the proceeding without further going into the merits thereof for the purpose of declaring as to which of the parties is entitled to possession as provided in Sub-section (6) of Section 145 Cr.P.C.

There is no dispute about this principle and if the same is applied, it is evidently clear that when the Petitioners were able to mislead the Executive Authorities and obtain the order, once the authorities find that a mistake had happened, they have got every right to rectify the same and restore the original position to the elected trustees.

13. Learned Counsel for the revision Petitioners further contended that by virtue of the Board Meeting on 5.9.2000, they have also taken possession of the properties and the Revenue Inspector has also signed in the records; but, however, the Respondents have produced documents to show that the same Revenue Inspector has given a statement before the Tahsildar that he never

entrusted any property with the Petitioners and his signature must have been a forged one. The question whether the signature of the Village Administrative Office is a fake one or not in the records filed by the Petitioners as well as the Respondents is a matter that has to be decided in a Departmental Enquiry to be initiated by the Revenue Divisional Officer. Even assuming that, by mistake, the Village Administrative Officer has entrusted the properties to the Petitioners, they are not entitled to keep the same when once the authorities came to the conclusion that the persons duly elected are entitled to be in office till March 2001. It is therefore evidently clear that the order passed by the lower authority is proper and correct and no interference is called for.

14. For the reasons stated above, the revision petition fails and is dismissed. Consequently, Crl.M.P. No. 8912 of 2000 is also dismissed. The parties are directed to work out their rights in the application pending before the District Court, Trichy.