
(1995) 03 MAD CK 0058
In the Madras High Court
Case No : L.P.A. No. 68 of 1992

M. Sethu

APPELLANT

Vs

The Commissioner for Hindu Religious and Charitable
Endowments and Others

RESPONDENT

Date of Decision : 08-03-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 70

Citation : AIR 1995 Mad 238

Hon'ble Judges : K.A. Swami, C.J.;Raju, J

Bench : Division Bench

Advocate : K. Kappuswami and S. Sethuraman, for the Appellant; R.
Swaminath, Addl. Govt. Pleader, for the Respondent

Judgement

K. A. Swami, C. J.

1. The learned single Judge has dismissed the appeal (A. S. No. 828/81) on the ground that the suit itself is not maintainable as it has been filed

without issuing notice u/s 80, Code of Civil Procedure. It may be pointed out that the suit has been filed u/s 70 of the Tamil Nadu Hindu Religious

and Charitable Endowments Act (hereinafter referred to as the Act) for filing such a suit, no notice u/s 80 of the CPC need be issued, because

Section 70 of the Act itself specifically provides-

70(1)-- Any party aggrieved and an order passed by the Commissioner-

(i) under sub-section (1) or sub-section (2) of Section 69 and relating to any of the matters specified in Section 63, Section 64 or Section 67; or

(iii) u/s 63, Section 64 or Section 67 read with sub-section (1)(a), subsection 1(a) (2) or 4(a) of Section 22 or u/s 65; made within ninety days

from the date of the receipt of such order by him, institute a suit in the Court against such order and the Court may modify or cancel such order,

but it shall have no power to stay the order of the Commissioner pending disposal of the suit;

(2) any party aggrieved by a decree of the Court under sub-section (1) made, within ninety days from the date of the decree, appeal to the High Court.

Thus, the statute itself gives the right for filing suit and prescribes the period within which such suit has to be filed. The nature of power exercised

and the character of orders passed which are to be challenged in the suit also would militate against the application of Section 80, C.P.C., to such

cases. That being so, application of the provisions u/s 80, C.P.C. is excluded by reason of the special provision made u/s 70 of the Act. When a

Statute itself provides for filing a suit, that alone will govern. This is the view taken by a Division Bench of this Court reported in Tholappa Iyengar

v. Executive Officer, Sri Kallalagar Devasthanam 1993 2 Mad LW 537, where it had been observed as follows:

On the basis of the judicial consensus thus we are in a position to say that a notice u/s 80, of the Code of Civil Procedure, 1908 is unnecessary, if

having regard to the nature of the suit and the capacity and the context in which public officers have been impleaded, it is found that no purpose

can be served by notice to such officers. The fact that the officer concerned has acted judicially or quasi-judicially may be one such fact which will

lead to the conclusion that the purposes of the suit is not to sue the officer for any such act done by him in his official capacity which shall attract, S.

80, of the Code of Civil Procedure, 1908. The fact that a special procedure is created and a special jurisdiction is conferred for a certain type of

adjudication upon a public officer and in that official capacity he is required to decide a dispute or a matter and suit is provided as a remedy under

the Special Act for the cancellation or modification of the order of such public officer shall also be a fact showing that such act done by such public

officer in his official capacity will not attract S. 80, of the Code of Civil Procedure, 1908. As the Supreme Court has said, the provisions in S. 80,

of the CPC 1908 are not intended to be used booby trap against the ignorant illiterate persons, but are intended to advance justice by affording on

the one hand a person intending to sue the Government or a public officer in respect of any act purporting to be done by such public officer in his

official capacity opportunity to demand from the Government or such public officer redressal of his grievance within two months next after notice,

and on the other hand to provide to the Government or the officer concerned opportunity to consider whether the Government or the officer

should contest the claim and/or to grant the relief as asked for and thus avoid unnecessary litigation. The scheme of the suit u/s 70 of the

Endowments Act, in particulars, leaves no option with the Commissioner to rescind, review or recall his order. Once this is the position, it is

unimaginable that a notice is necessary to afford to the Commissioner opportunity to consider the redressal of the grievances of the person who

sought relief by way of a suit u/s 70(1) of the Endowments Act. In the case of a public officer, in particulars, if there is no claim made against him in

person it is obvious that he is not sued as such for any relief against him. In fact, one may be inclined to think that the officer is not a necessary

party and he need not be sued and he has not been sued in his personal capacity at all in such a case, since however, the Endowments Act has on

the one hand vested these officers with the power to adjudicate in certain disputes and matters, it has also made them administratively responsible

for the affairs of the religious Endowments, it is only proper that they are impleaded as a party.....

Accordingly, the judgment and decree passed in A.S. No. 828/81 are set aside. The L.P.A. is allowed and the matter is remitted to the file of the

learned single Judge for fresh decision in accordance with law. To avoid further delay in the matter, we direct the parties to appear before the

learned single Judge on 27-3-1995. The appeal is directed to be posted on 27-3-1995 and the same is directed to be disposed of within one

month from 27-3-1995, as the appeal is of the year 1981. No costs.

Appeal allowed.