

(1967) 10 MAD CK 0003
In the Madras High Court

M.O. Muthukrishnan, Managing Trustee of Sri Pachiamman Temple APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable Endowments and Another RESPONDENT

Date of Decision : 06-10-1967

Acts Referred:

Madras Hindu Religious Endowments Act, 1926 — Section 76(1)

Citation : (1968) ILR (Mad) 729 : (1968) 81 LW 58 : (1968) 1 MLJ 376

Hon'ble Judges : P. Ramakrishnan, J

Bench : Division Bench

Judgement

P. Ramakrishnan, J.—The petitioner is the Managing Trustee of Sri Pachaianman Temple, Mount Road, Madras. He had applied and

obtained from the Deputy Commissioner, Hindu Religious and Charitable Endowments, a certificate u/s 101 of Madras Act XXII of 1959, that a

certain property belongs to Sri Pachaianman Temple. Such certificate would thereafter enable the petitioner to Obtain delivery: of possession of

the property by application to the Magistrate. At that stage, on the initiative of the 2nd respondent a lessee of the property, the first respondent,

Commissioner, Hindu Religious and Charitable Endowments, purporting to exercise powers of revision conferred on him u/s 21 of Madras Act

(XXII of 1959), cancelled the certificate. It is alleged that the main reason which led the Commissioner to interfere with the grant of the certificate

was that the 2nd respondent was in possession of the property as a cultivating tenant and it would not be proper for the trustee of the temple to

dispossess a cultivating tenant. The petitioner has challenged the order of the Commissioner in this writ petition under Article 226 of the

Constitution and prays for the issue of a writ of certiorari quashing the above order.

2. Learned Counsel appearing for the petitioner draws my attention to the specific terms of Section 21(1) of Madras Act (XXII of 1959). That

section gives the power to the Commissioner to call for and examine the record of any Deputy or Assistant Commissioner, for the purpose of

satisfying himself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein. But he has

no jurisdiction to deal in the above manner with a proceeding in respect of which a suit or an appeal to a Court is provided by the Act. Learned

Counsel for the petitioner refers to the terms of Section 101. The third proviso to Section 101(1)(b) states that nothing contained in Section 101(1)

shall bar the institution of a suit by any person aggrieved by an order u/s 101(1) for establishing his title to the said property. According to the

learned Counsel for the petitioner, the terms of this third proviso to Section 101(1)(b) would make the issue of a certificate by the Deputy

Commissioner a matter outside the jurisdiction of the powers of the Commissioner to revise, u/s 21 of the Act. Learned Counsel for the petitioner

seeks to draw support for this argument from the decision of a Bench of this Court reported in *R.V. and Co. Vs. The Hindu Religious*

Endowments Board and Others, , which arose under the Madras Hindu Religious Endowments Act (II of 1927). Section 76(1) of that Act stated

that no exchange, sale or mortgage and no lease for a term exceeding five years of any immovable property belonging to any math or temple shall

be valid or operative unless it is necessary or beneficial to the math or temple and is sanctioned by the Board in the case of maths and excepted

temples and by the committee in the case of other temples. Section 76(2) stated that the trustees of the math or temple or any person having

interest may, within one year of the date of the order of the Board or Committee under Sub-section (1), apply to the Court for modifying or

cancelling such order. Section 34(2)(b) of Act (II of 1927) gave power to the Board to call for any record or proceedings or other document or

paper from any committee for the purpose of satisfying itself as to the correctness, regularity or propriety of any order or proceedings recorded or

passed by such committee. The Hindu Religious Endowments Board purported to exercise its power u/s 34(2)(b) of Act (II of 1927) in that case

and took steps for cancelling the lease. At that stage the lessee applied to the High Court for the issue of a writ of certiorari. Sir Henry Lionel

Leach, C.J., who gave the judgment of the Bench, observed that Section 76 must be regarded as an exception to Section 34 and that the Board

had no jurisdiction to cancel a lease granted u/s 76(1) in exercise of its power of revision u/s 34 and the proper way of modifying a legal lease

would be to take steps u/s 76(2) by applying to the Court.

3. But here the situation is entirely different because of certain clearly expressed limitations mentioned in Section 101 itself. Section 101(1)(b)

comprises of two stages. The first is a stage where the Deputy Commissioner on examining the records is satisfied that a certain property belongs

to a religious institution, and issues a certificate to that trustee who finds himself resisted from taking possession of that property. Before the issue of

the certificate, the first proviso to Section 101(1)(b) authorises the Commissioner to give notice to the parties of his intention to issue the certificate.

The second stage is where the trustee who has been granted a certificate applies to the Magistrate for an order delivering possession of the

property regarding which a certificate has been given. The second proviso states that for the purpose of proceedings u/s 101(1)(b), the issue of the

certificate by the Commissioner shall be conclusive evidence that the property to which it relates belongs to the religious institution. It is thereafter

that the third proviso is found and it states that nothing contained in Section 101(1)(b) shall bar the institution of a suit by any person aggrieved by

an order under that sub-section for establishing his title to the said property. As mentioned already this section contemplates proceedings which

cover two stages. The first stage deals with the issue of a certificate by the Commissioner and the second stage deals with the issue of an order by

the Magistrate delivering possession of the property to the person to whom a certificate had been issued. A person may be aggrieved against the

order granting a certificate. He may also be aggrieved against the order of the Magistrate directing delivery of possession. But the scope of the suit

under the third proviso to that section is not designed for the purpose of cancelling or modifying the certificate of the Commissioner or for

cancelling or modifying the order of delivery of possession by the Magistrate. It is really a suit intended for establishing the title to the property and

such consequences as may flow therefrom. The effect of the third proviso is that the proceedings either for the grant of a certificate or for the grant

of delivery of possession will leave intact the title of the person to the property which thus forms the subject matter of a certificate or of an order

for delivery of possession, such title can be decided in an independent suit. The remedy by way of a suit thus provided for in the third proviso to

Section 101, is not intended for setting aside either the certificate granted by the Commissioner or the order for delivery of possession granted by

the Magistrate. In this respect Section 101 third proviso differs from Section 76(2) of Act II of 1927, where the scope of the suit is concerned

directly with the grant of the lease u/s 76(1), and the Court is empowered to modify or cancel the order granting lease, sale, etc. That position,

therefore, is quite different from the position visualised in Section 101(1). u/s 76 what is intended is to make a grant of the lease or sale, etc.,

subject to the decision of a Court, for the purpose of modifying or cancelling the order of lease. But in Section 101 the scope of the suit is not

directed either to the certificate granted by the Commissioner or to the order directing delivery of possession made by the Magistrate, but relates

to the determination of the title of the aggrieved party, which is preserved intact notwithstanding the order as to grant of the certificate or orders as

to delivery of possession; that title can form the subject-matter of a suit notwithstanding orders granting the certificate or order delivering

possession. From the above point of view it appears to me that the power of revision conferred in Section 21 of the Act on the Commissioner can

be exercised where the Deputy Commissioner grants a certificate, because the right of suit in the third proviso is not directed against the

proceeding granting certificate, but deals with a different matter, namely, the question of title which is unaffected by the grant of the certificate.

4. There was a further argument by the learned Counsel for the petitioner that the power of the Deputy Commissioner was exercised by delegation

from the Commissioner u/s 13, that the power which the Deputy Commissioner thus exercised is really the power of the Commissioner and

therefore the Commissioner cannot review the orders of the Deputy Commissioner. I am unable to appreciate the force of this argument. If the

Commissioner exercises the power which the statute has conferred on him, clearly he cannot revise his own order u/s 21. But where the Deputy

Commissioner exercises a power on the strength of a general delegation from the Commissioner, the Commissioner as the supervising authority can

rely upon Section 21 to correct erroneous or illegal orders passed by the Deputy Commissioner exercising in a specific case powers under a

general delegation. I see no legal impediment to the exercise of the power by the Commissioner u/s 21 in this case.

5. The petition therefore fails and is dismissed. There will be no order as to costs.