(2004) 08 MAD CK 0101

In the Madras High Court

Case No : Writ Petition No. 33163 of 2002

M.P. Anandam Pillai (Deceased) and A. Dhatchinamoorthy — APPELLANT

Vs

The State and Others — RESPONDENT

Date of Decision : 13-08-2004

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 — Section 45(1), 54

Citation : (2004) 4 CTC 368 : (2004) 4 MLJ 377

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : S. Silambanan, for the Appellant; K. Sukumaran, Special Govt. Pleader (HR and CE) for respondents-1 and 2, T. Srinivasa Raghavan, for 3rd respondent, N. Umapathy, for respondents-4 and 6 to 9, T.M. Hariharan, for 10th respondent and No appearance for respondents-5 and 11, for the Respondent

Final Decision : Allowed

Judgement

K.P. Sivasubramaniam, J.—The petitioner prays for a Certiorarified Mandamus to call for the records relating to G.O.Ms. No. 81 dated 21.5.2002 of the first respondent, to quash the same as null and void and to direct the second respondent to remove the third respondent from the post of Executive Officer appointed to Sri Nacharammal Kattalai, Vandiyoor attached to Arulmigu Kallalagar Tirukkoil, Madurai and allow the writ petitioner to function as hereditary trustee in pursuance of the Scheme already framed for the Kattalai.

2. The specific endowment attached to the third respondent-temple is governed by the scheme framed in O.A. No. 3 of 1967 on the file of the Deputy Commissioner, Hindu Religious and Charitable Endowments Department, Madurai. The specific endowment and the administration vests in the hereditary trustees comprising of two branches, one branch represented by Anandham Pillai, the writ petitioner, and the other branch represented by the tenth respondent.

3. While the said Anandham Pillai was the trustee, there were certain allegations of mismanagement against him. The Commissioner, by his order dated 24.6.1978, found that some of the irregularities complained against him were substantiated and after holding that the said trustee was guilty of certain irregularities, he considered that the appointment of an Executive Officer u/s 45(1) of the Hindu Religious and Charitable Endowments Act will pave the way for ensuring better administration of the Kattalai. Accordingly, an Executive Officer was ordered to be appointed to the endowment. Since then, the Executive Officer has been in charge of the administration of the Kattalai.

4. While so, the petitioner filed a petition before the Commissioner on 19.10.1999 seeking the removal of the Executive Officer on the ground that the Kattalai was not being properly administered by successive Executive Officers and that therefore, the appointment of the Executive Officer ought to be set aside. By order dated 26.4.2000, the said request was rejected by the Commissioner. A further revision was filed before the Government and the Secretary, H.R. & C.E., Department, by order dated 21.5.2002, confirmed the order of the Commissioner. Hence, the writ petition.

5. During the pendency of the writ petition, the petitioner died and his legal representatives have been brought on record.

6. Mr. S. Silambanan, appearing for the petitioners, brought to my notice a series of audit reports in respect of Faslis 1391 to 1408 and referred to many of the observations by the Audit Officer regarding the alleged mismanagement by the respective Executive Officers during the relevant period. According to him, the Executive Officers have not at all taken any interest in the administration and the Audit Report has pointed out several defects in the functioning of the Kattalai. However, the authorities, without considering any of the materials, have simply rejected his request, without performing their statutory duty in a proper manner.

7. Learned Special Government Pleader contends that the materials relied upon before this Court were never placed before the authorities for consideration. Whatever materials which were placed before them were duly considered and even if there are any additional materials, it is certainly open to this Court to remit the matter to the authorities for re-consideration in the light of any fresh materials which may be placed for consideration by the petitioner.

8. Mr. T.M. Hariharan, appearing for the tenth respondent, namely, the second branch of trustees, contends that while he agrees with the petitioner''s contention that the Executive Officer may be removed in view of the unsatisfactory functioning of the Executive Officers, the prayer of the writ petitioner to the effect that he should be given the right to function as the hereditary trustee pursuant to the scheme cannot be accepted, having regard to the fact that the second branch of trustees represented by him have equal rights to be in the administration. He would also submit that in view of the death of Anandam Pillai, the very basis of appointing the Executive Officer does not

survive anymore and therefore, the legal representatives of Anandam Pillai can validly function as trustees along with the second branch. For this contention, the learned counsel relies on the judgment of M. Srinivasan, J. (as he then was) in PREM ANAND V. THE COMMISSIONER, H.R. & C.E., ETC. 1990 (1) L.W. 144.

9. In the context of the submission of Mr. T.M. Hariharan as above, I have heard the learned Special Government Pleader. Learned Special Government Pleader contends that there is a civil suit pending between the parties in O.S. No. 75 of 2003 on the file of the Subordinate Judge, Madurai, regarding the claim of trusteeship an therefore, it is not desirable to remove the Executive Officer. Mr. S. Silambanan, however, submits that the suit has been withdrawn and both the learned counsel for the petitioner as well as the tenth respondent contend that there is no controversy between the legal heirs of the trustees of the two branches. Therefore, they contend that there is no bar as on date, for their functioning as trustees and the continued administration of the Executive Officer is not at all necessary and not conducive for proper administration of the Kattalai.

10. I have considered the submissions of both sides.

11. In the context of the merit of the impugned orders on the petition filed by the petitioner for the removal of the Executive Officer, I find that as against the materials produced by the petitioner regarding the alleged improper or ineffective management of the endowment, there is absolutely no discussion by both the authorities. In the order of the Commissioner containing 16 paragraphs, upto the 15th paragraph, the reference is only regarding the previous proceedings with regard to the endowment. It is only in paragraph 16, the objection of the petitioner is taken into account and there is absolutely no reference to any of the remarks by the audit. The dismissal of the revision is also in the same manner and there is no reference to the various objections raised by the petitioner. It is true that the learned Special Government Pleader contends that such materials were not placed before the authorities and that proceedings may be remitted to the Commissioner for re-consideration and the petitioner may also be enabled to file his detailed submissions with materials which may be duly considered by the Commissioner. Though on that issue it is true that the learned Special Government Pleader is justified in his contention that the issue may be remitted back to the Commissioner for his fresh consideration, as regards whether the administration should continue to be in the hands of the Executive Officer even after the death of Anandam Pillai, there is no justification to deny the request made by both the petitioner as well as the tenth respondent to allow them to take over the administration and to function as trustees. It is not disputed that the Executive Officer came to be appointed only by the order of the Commissioner dated 24.6.1978 after finding that the then existing trustee had committed certain irregularities and that the Commissioner considered that appointment of the Executive Officer u/s 45(1) of the Hindu Religious and Charitable Endowments Act will pave the way for ensuring better administration of the Kattalai. But, now that the said trustee is dead and no more, the reasons

for appointment of the Executive Officer does not survive as on date. In the judgment referred to above, the learned Judge has held that u/s 54 of the 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 and that there is no necessity, whatever, for the next hereditary trustee to make an application for being appointed under the Act. At any rate, on the facts of this case, the Executive Officer came to be appointed only because of the alleged improper administration by the then Trustee. Now that he has expired, there can be no objection for their legal heirs to take over administration.

12. The delinquency which was attached to the then hereditary trustee which warranted the appointment of the Executive Officer does not survive anymore and now that the new set of legal heirs of the two branches have come into existence and it is also stated that there are no controversies between themselves regarding their rights, the continued administration by the Executive Officer is not warranted.

13. I have also perused the various audit reports as aforesaid, in respect of Faslis 1391 to 1408. Though there is no allegation of misappropriation or dishonest functioning, there is substantial material to show that successive Executive Officers had not devoted proper attention to the day-to-day administration and several defects have been pointed out in the various audit reports. Therefore, in the interest of the administration of the specific endowment, when the legal heirs of the original trustees are ready and willing to take over the administration, there is no justification for the continued functioning of the Executive Officer.

With the result, the writ petition is allowed and the appointment of the Executive Officer is set aside. The hereditary trustees shall be allowed to take over administration in accordance with law and in terms of the scheme. No costs.