

(1994) 07 MAD CK 0079
In the Madras High Court

P.K.S.T. Radhakrishnan

APPELLANT

Vs

The Deputy Commissioner, Hindu Religious and Charitable
Endowment Department and Others

RESPONDENT

Date of Decision : 26-07-1994

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 54, 69

Citation : (1995) 1 LW 250 : (1994) 2 MLJ 483

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

Bench : Single Bench

Judgement

K.A. Swami, C.J.—At the stage of admission, notice was issued to the respondents. Accordingly, they have put in appearance through counsel. As the matter lies in a narrow compass, it is admitted and heard for final disposal.

2. This writ appeal is preferred against the order dated 7.7.1993 passed by the learned single Judge in W.P. No. 10008 of 1993. Learned single Judge has allowed the writ petition, quashed the order dated 8.5.1993 and directed the Deputy Commissioner, Hindu Religious and Charitable Endowments Department, Tirunelveli, to give notice to all representatives of the hereditary trustee and also the 2nd respondent (Executive Officer) and to pass suitable orders in accordance with the provisions of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as the Act). Learned single Judge has also further directed that till such time, the petitioner/appellant is permitted to continue as hereditary trustee. There is also a further direction that the 1st respondent will consider the claims of all the parties and pass final order, within 3 months from the date of receipt of the order.

3. There is a dispute between the appellant and the 4th respondent as to who should be appointed as hereditary trustee of the temple in question. The father of the appellant and the 4th respondent died on 2.1.1993. Till then, he was the hereditary trustee. After his death, the dispute has arisen. By the order dated 29.1.1993, the Deputy Commissioner appointed the appellant as the hereditary

trustee of the temple in question. Thereafter, the 4th respondent filed an application that an order on 29.1.1993 the order has been passed without holding an inquiry, even though he had filed an objection on 10.1.1993 and as such, it is bad in law. Further, he has stated that he has already filed a suit being O.S. No. 16 of 1993 in Sub Court, Tirunelveli, to which the present appellant has also been arrayed, as defendant claiming that he should be declared as hereditary trustee. The Deputy Commissioner acting upon the representation of the 4th respondent has passed an order on 8.5.1993 without even issuing notice to the appellant only on the ground that the suit already been filed by the 4th respondent and the civil court is seized of the matter. Therefore, learned single Judge has held that the order dated 8.5.1993 having been passed without notice to the appellant/petitioner cannot be sustained, accordingly, has quashed the order and remitted the matter with certain directions as stated above.

4. Now, the question for consideration is, when the parties have already approached the civil court and civil court is seized of the matter whether the proceedings before the Deputy Commissioner should be allowed to continue. Under the provisions of the Act, ultimately, the question as to who is the hereditary trustee, has to be decided by the civil court only. The proceedings under the provisions of the Act before the Deputy Commissioner and the Appellate Authority if not challenged in the civil court, will hold the field, but, in a case like this where there is already a suit filed even prior to the order passed on 29.1.1993 concerning the very same subject, whether it should be necessary to permit the Deputy Commissioner to continue the proceedings. It is submitted on behalf of the 4th respondent that as the order dated 29.1.1993 has been passed without holding an inquiry the same cannot be considered to have been a valid order passed u/s 54 of the Act, hence it should not be allowed to hold the field, as the same is likely to affect the decision of the civil court. Learned Counsel appearing for the appellant fairly submitted that as the matter is seized by the civil court, the question of placing reliance on the order dated 29.1.1993 does not arise and it need not be relied upon by the civil court. On going through the records also, we find that the said order has been passed without holding an inquiry as required by Section 54 of the Act. Under these circumstances, if the civil court is directed to decide as it has been seized of the matter including the interim order in order to ensure the proper management of the temple during the pendency of the suit and also safeguard the interests of both sides, the proceedings before the Deputy Commissioner need not be allowed to go on, as it would amount to duplication of the proceedings. Further, as already pointed out, in the presence of the suit filed by the parties, the proceedings u/s 54 of the Act and further appeal u/s 69 of the Act and the order passed therein will not assume any finality. In the interest of saving public time and also the unnecessary hardship to the parties, we are of the view that the proceedings before the Deputy Commissioner can be directed to wait, until the civil court decides the suit.

5. We accordingly dispose of the appeal in the following terms:

(i) The order passed by the learned single Judge remitting the matter to the Deputy Commissioner is not disturbed. However, the further directions given therein are set aside,

(ii) The Sub-Court, Tirunelveli, shall decide the interlocutory applications filed by the parties within 4 weeks from the date of receipt of a copy of this judgment, without reference to the order dated 29.1.1993 passed by the Deputy Commissioner appointing the appellant as the hereditary trustee. The civil court shall decide on the basis of the pleadings of the parties and the evidence produced before it and not on the basis of the order dated 29.1.1993. All the contentions of the parties are left open.

(iii) In the mean while, until the civil court decides, in order to ensure that the management of the temple does not suffer, the appellant will continue to function as hereditary trustee, as has been directed by the learned single Judge. There shall be no order as to costs.