

(2011) 09 MAD CK 0014

In the Madras High Court

Case No : A.S. No. 271 of 2007 and W.P. No. 16890 of 2004

R. Ramakrishnan

APPELLANT

Vs

S. Amirthalinga Mudaliar 7, Karani Garden Main Street
Saidapet, Chennai-15 and Others
S. Amirthalinga
Mudaliar Vs The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 118,
188(1), 69, 69(2), 70(1)

Citation : (2011) 09 MAD CK 0014

Hon'ble Judges : M. Jaichandren, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : R. Subramanian in A.S. No. 271 of 2007, Mr. V.S. Sethuraman, A.A.G. I assisted by Mr. S. Kandaswamy, Spl. G.P. HR and CE in A.S. No. 4 of 2011 and Mr. P.N. Radhakrishnan in W.P. No. 16890 of 2004, for the Appellant; P.N. Radhakrishnan for R1, Mr. V.S. Sethuraman, Additional Advocate General I Assisted by Mr. S. Kandaswamy, Spl. G.P. (HR and CE) for R2 in A.S. No. 271 of 2007 for R1 to R3 in W.P. No. 16890 of 2004, Mr. A.K. Sriram for M/s. A.S. Kailasam and Associates for R3, for R4, Ms. G. Sumitra for R4 to R7 in A.S. No. 271 of 2007, Mr. P.N. Radhakrishnan for R1, Mr. A.S. Kailasam and Associates for R2 and Mr. R. Subramanian for R3 in A.S. No. 4 of 2011 and for R5 and R6 in W.P. No. 16890 of 2004, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Since the issues arising for the consideration of this Court in both the appeal suits and in the writ petition are similar in

nature, they have been taken up together and a common Judgment is being passed.

2. The appeals, in A.S. No. 271 of 2007 and A.S. No. 4 of 2011, had been filed against the judgment and decree, dated 12.7.2006, made in

O.S. No. 5545 of 2004, on the file of the VIth Assistant City Civil Court, Chennai.

The suit in O.S. No. 545 of 2004, had been filed seeking for a declaration declaring that the orders of clarification bearing Nos. D.Dis.25342/2004 (D2), dated 16.4.2004 and D.Dis.25342-2/2004 (D2), dated 18.5.2004, issued by the first defendant in A.P. No. 12 of 2003, are illegal, void and inoperative and for a declaration that the scheme of the third defendant Devasthanam, as modified by the order, dated 4.9.2003, passed by the Joint Commissioner, Hindu Religious and Charitable Endowments Department is valid and binding on the defendants and for costs.

3. The plaintiff in the suit, in O.S. No. 5545 of 2004, had stated that the second defendant in the said suit is a Hindu Religious and a Charitable Trust and it is governed by the provisions of the Hindu Religious and Charitable Endowments Act, 1959. The defendants 3 to 7 had been carrying on the administration of the second defendant Devasthanam. The defendants 3 to 7 had been incharge of the administration of the second defendant Devasthanam, which runs and maintains the Sri Karaneeswarar Temple, Saidapet.

4. It had also been stated that the management and the administration of the second defendant Devasthanam is governed by a scheme, which had been settled, originally, by the Subordinate Judge, Chingleput, in M.P. No. 1 of 1924, in O.S. No. 43 of 1919. The scheme had been effective from 23.4.1924. The salient features of the original scheme, inter alia, dealt with the description of Karani village as being made up of seven streets, election of three executive trustees, who could hold office for three years, the residential and other qualifications of the persons, who can become trustees of the second defendant Devasthanam and with regard to those, who can vote for electing the trustees and the mode and extent of the expenditure that the trustees can incur in the course of the administration of the said Devasthanam. As per the original scheme, Karani village consisted of seven streets, which are as follows:

- i) Karaneeswarar koil (Car) street
- ii) Vathiyar Subbaraya Mudali Street
- iii) Subramaniya Mudali Street
- iv) Koothadum Pillaiyar Koil Street
- v) Jones Road (Part)

vi) Kappara Ponnappa Mudali Street - not presently existent

vii) Visalal Street (now Karani Garden Main Street)

5. The plaintiff had also stated that he belongs to the Sengunthar Mudaliar Community of Karani village and he is a worshipper of Sri

Karaneeswarar Temple, Saidapet. He had made substantial contributions for the activities of the Temple. While so, after the coming into force of

the amended Hindu Religious and Charitable Endowment Act, 1959, the Joint Commissioner of the Hindu Religious and Charitable Endowments

Department had taken steps to modify the original scheme framed for the Temple. However, the trustees of the second defendant Devasthanam

had filed a suit, in O.S. No. 6784 of 1971, on the file of the II Assistant City Civil Court, Chennai, and had obtained a decree, dated 2.3.1974,

declaring that the second defendant Devasthanam had a right to elect its own representatives for managing its affairs without interference from the

Hindu Religious and Charitable Endowments Department. The modified scheme framed by the Hindu Religious and Charitable Endowments

Department had been set aside. Subsequently, as the Supreme Court, confirming the Judgment of a division bench of this Court, had held that the

powers of the Court to modify its scheme stood transferred to the Hindu Religious and Charitable Endowments Board and that the first defendant

was well within its powers to issue a notice to the second defendant Devasthanam to modify the schemes framed by the Court.

6. It had also been stated that as the second defendant Devasthanam was being, allegedly, mismanaged by the trustees, the Joint Commissioner,

Hindu Religious and Charitable Endowments Department, had issued a notice, dated 24.11.1998, initiating suo moto proceedings, in O.A. No. 20

of 1998, to modify the original scheme for the second defendant Devasthanam, in accordance with Section 188(1)(b) of the Hindu Religious and

Charitable Endowments Act, 1959. This had been done pursuant to a representation made by the plaintiff and a few other persons to the Hindu

Religious and Charitable Endowments Department, in the year 1998, complaining about the maladministration and mismanagement of the second

defendant Devasthanam, by the successive trustees of the Temple. The plaintiff had been included as the respondent in the said proceedings.

7. It had been further stated that the two main contentions in the modification

proceedings were that the area of operation of the scheme should be enlarged to cover the members of the Sengunthar Mudaliar Community living in the entire Saidapet area and that the mode of election and appointment of trustees ought to be changed, in view of the malpractices in the conduct of the elections.

8. It had also been stated by the plaintiff that the old Visalal Street specified in the original scheme is the present Karani Garden Main Street, where the plaintiff is residing, and that the Karani Garden 1st, 2nd and 3rd streets, which were not in existence at the time of framing of the original scheme, came into being subsequently and that they were also a part of the Karani village and that a substantial portion of the lands in the said streets belonged to the second respondent Devasthanam.

9. It had also been stated that, on being notified of the modification proceedings, the defendants 3 and 4 had filed a writ petition, in W.P. No.

1495 of 1999, and the said writ petition had been, subsequently, dismissed by this Court. Thereafter, the Joint Commissioner of the Hindu

Religious and Charitable Endowments Department had passed the order, on 29.8.2001, issuing the draft of the modified scheme. The defendants

3 and 4 had filed an appeal before the first defendant, in A.P. No. 29 of 2001. The first defendant, by an order, dated 18.2.2002, had remanded

the matter to the Joint Commissioner of the Hindu Religious and Charitable Endowments Department to modify the scheme, in accordance with the

provisions of the Hindu Religious and Charitable Endowments Act, 1959, thereby, upholding the power of the Joint Commissioner to modify the

scheme. Thereafter, the Joint Commissioner had passed a fresh order, on 27.3.2002, issuing a fresh draft of the modified scheme. After the

publication of the draft of the modified scheme and after calling for and hearing the objections, he had passed an order, on 4.9.2003, issuing a

modified scheme, which had been published in the Tamil Nadu Government Gazette Extraordinary, on 17.9.2003. One of the main features of the

modified scheme was that the area of operation of the Scheme was expanded to include all the members of the Sengunthar Community in the entire

Saidapet area, for their benefit. Further, the mode of election/appointment of the Trustees had been changed to be in accordance with the

provisions of the Hindu Religious and Charitable Endowments Act, 1959.

10. It had also been stated that in the meanwhile, the third and the fourth respondents had been removed from the post of trustees, by the order of the first defendant, dated 19.12.2002, due to mismanagement of the affairs of the second defendant Devasthanam. A revision petition filed by them, before the Government of Tamil Nadu, challenging their removal had been dismissed, on 16.5.2003, and the state Government had issued the Government orders, in G.O.Ms. Nos. 105 and 106 of 2003, dated 16.5.2003, appointing an Executive Officer and a fit person for the second defendant Devasthanam and Temple. The third and fourth defendants, who were no longer in office, had filed an appeal, in A.P. No. 12 of 2003, before the first defendant without having any authority to do so, challenging the order, dated 4.9.2003, passed by the Joint Commissioner, modifying the scheme. The first defendant, after hearing the arguments of the parties concerned, had passed orders, on 24.3.2004, dismissing the appeal. However, the plaintiff had received an order, dated 16.4.2004, from the first defendant, clarifying the earlier order passed by him, on 24.3.2004, to the effect that the scheme would be operative only in the area, as it was prior to the modification of the scheme. The said order of clarification was purportedly based on a letter, dated 14.4.2004, issued to him by the third defendant seeking clarification of his appellate order, dated 24.3.2004.

11. The plaintiff had further submitted that the impugned order of clarification issued by the first defendant, without notice to the plaintiff and to the other beneficiaries of the modified scheme, is arbitrary, illegal and void. In fact, the first defendant had issued a notice calling for a hearing, on 23.4.2004, based on the said letter, dated 16.4.2004, issued by the third defendant seeking clarification. It can be seen that the first defendant had admitted that the order of clarification, dated 14.4.2004, had been issued without notice to the plaintiff and therefore, it is illegal and non est in the eye of law. In such circumstances, the plaintiff had filed a memo, on 23.4.2004, when the matter came up for hearing, stating that the original order, dated 24.3.2004, was not ambiguous and that it did not require any clarification. However, the first defendant had passed another order, on 18.5.2004, after hearing the parties, including the plaintiff, as though it had been passed based on the request for a further clarification from the

third defendant, upholding the earlier order of clarification and stating that the plaintiff had stated in his memo that there was no ambiguity in the

order requiring any further clarification and that there was nothing left to be clarified. While the earlier order of clarification was by itself contrary to

law, the order of the first defendant referring his earlier order of clarification, dated 16.4.2004, is also arbitrary and illegal.

12. In such circumstances, the plaintiff had filed the suit, in O.S. No. 5545 of 2004, stating that the impugned order of the first defendant, dated

16.4.2004, clarifying his original order, dated 24.3.2004, and the consequential order, dated 18.5.2004, are illegal, void and contrary to law and

the principles of natural justice. The order, dated 16.4.2004, clarifying the original order, dated 24.3.2004, has the effect of allowing the appeal,

which had been dismissed in toto, by the original order of the first defendant. The first defendant, having become functus officio, once he had

passed the order, dated 24.3.2004, in A.P. No. 12 of 2003, dismissing the same, he had no authority or jurisdiction to pass the impugned order,

dated 16.4.2004.

13. The trial Court, in O.S. No. 5545 of 2004, had passed a decree stating that the orders of clarification bearing Nos. D.Dis.25342/2004 (D2),

dated 16.4.2004 and D.Dis.253422/2004 (D2), dated 18.5.2004, issued by the first defendant in A.P. No. 12 of 2003, are void.

14. The appeal suit in A.S. No. 4 of 2011, had been filed by the Commissioner of Hindu Religious and Charitable Endowments Department,

Chennai, who was the first defendant in the suit, in O.S. No. 5545 of 2004, stating that the trial Court had erred in law in holding that the appellant

had no power, to clarify the order, dated 24.3.2004, when he had such power, u/s 69(2) of the Hindu Religious and Charitable Endowments Act,

1959.

15. It had also been stated that the trial Court had erred in not advertng to the fact that, even under the earlier scheme framed for the

administration of Sri Karaneeswarar Temple, Saidapet, the right to elect the trustees had been confined only to the people of Saiva Sengunthar

Mudaliar Community, residing in the six streets mentioned therein.

16. It had also been stated that the trial Court had erred in holding that the suit, in O.S. No. 5545 of 2004, is not barred by limitation. It had been

further stated that the trial Court had erred in entertaining the suit, as it is not a suit that would fall, u/s 70(1) of the Hindu Religious and Charitable

Endowments Act, 1959, and that the order, dated 23.4.2004, passed by the first defendant is not an order, u/s 69 of the said Act.

17. It had been further stated that the trial Court had failed to note that the provisions of Section 118 of the Act would enable the authority concerned to modify the scheme, that had been framed earlier.

18. Even though various grounds had been raised in the appeal, in A.S. No. 4 of 2011, the learned Additional Advocate General appearing on

behalf of the appellant had made his submissions only on the aspect of jurisdiction of the Commissioner to clarify his earlier order.

19. He had submitted that the Commissioner of Hindu Religious and Charitable Endowments Department has the power to clarify his earlier order,

as per the provisions of the Hindu Religious and Charitable Endowments Act, 1959.

20. In view of the averments made and on a perusal of the records available, this Court is of the considered view that the appellant cannot be

aggrieved by the judgment and decree of the trial Court, dated 12.7.2006, made in O.S. No. 5545 of 2004, as there is no finding in the said

judgment that the authority concerned has no power to clarify. It has only been stated in the said judgment that, in the guise of issuing a clarification,

no modification can be made to the earlier order. As such, the appeal, in A.S. No. 4 of 2011, is liable to be dismissed. Hence, it is dismissed.

21. Insofar as the appeal suit, in A.S. No. 271 of 2007, is concerned, this Court finds it appropriate to set aside the judgment and decree of the

trial Court, dated 12.7.2006, made in O.S. No. 5545 of 2004. The clarificatory orders issued by the first defendant, dated 16.4.2004 and

18.5.2004, are set aside, as they are found to have been issued by the first defendant, without affording a reasonable opportunity of hearing to the

parties concerned. Accordingly, without going into the merits of the matter, the clarificatory orders issued by the first defendant, dated 16.4.2004

and 18.5.2004, are set aside and the matter is remitted back to the Commissioner of Hindu Religious and Charitable Endowments Department,

Chennai, to pass appropriate orders, on merits and in accordance with law, on the letter, dated 14.4.2004, issued by one R. Ramakrishnan, on

behalf of the defendants in the suit, in O.S. No. 5545 of 2004, seeking clarification regarding the order of the first defendant, dated 24.3.2004, made in A.P. No. 12 of 2003, after giving a reasonable opportunity of hearing to the parties concerned, within a period of three months from the date of receipt of a copy of this order. The appeal is ordered accordingly. No costs. Connected M.P. No. 1 of 2007, M.P. No. 1 of 2011 are closed.

W.P. No. 16890 of 2004:

22. Pursuant to the order passed by this Court, in A.S. No. 271 of 2007, we find that no further orders are necessary in the above writ petition.

Hence, the writ petition stands closed. No costs. Connected W.P.M.P. No. 20010 of 2004 is closed.