

(2012) 12 MAD CK 0135

In the Madras High Court

Case No : Writ Petition No. 12996 of 2012 M.P. No's. 1 and 2 of 2012

Raman Ravi

APPELLANT

Vs

Commissioner, Hindu Religious and Charitable Endowments
(Admn.) Dept, Chennai and Others

RESPONDENT

Date of Decision : 19-12-2012

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 110,
6(15), 6(16), 6(18), 6(20)

Citation : (2013) 2 MLJ 169

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : R. Gandhi, for W.C. Thiruvengadam, for the Appellant; S. Kandaswamy, Special Government Pleader (HR and CE) and B.B. Sendhil Kumar, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—This writ petition is filed to quash the order passed by the first respondent in A.P. No. 12 of 2012-D2 dated 17.4.2012, confirming the order of the second respondent in I.A. No. 3 of 2011 in O.A. No. 4 of 2010 dated 14.3.2012, impleading the third respondent herein as necessary and proper party in O.A. No. 4 of 2010, filed by the petitioner u/s 63-A of the Hindu Religious & Charitable Endowments Act, 1959 (hereinafter referred to as "the Act"). The brief facts necessary for disposal of this writ petition, according to the petitioner, are as follows:

(a) Petitioner has constructed a private Prayer Hall in his personal land measuring about 3 grounds situated at Old No. 6, New No. 21, Malviya Avenue, 2nd Cross Road, Thiruvanmiyur, Chennai-41 for personal worship by himself and his family members. According to the petitioner it is not a religious institution coming u/s 6(18) or 6(20) of the Act.

(b) Petitioner filed O.A. No. 4 of 2010 u/s 63A of the Act before the second

respondent and prayed for deciding the character of the institution. According to the petitioner, the trial in the said OA was over as early as in the year 2010. In the said O.A. 4 of 2010, one P.R. Anand Padmanabhan and L. Krishnakumar earlier filed independent interlocutory applications in I.A. Nos. 1 and 2 of 2010 for impleading them as party respondents.

(c) The said applications were dismissed on 7.10.2010 by common order by the second respondent on the ground that they are not necessary parties to be impleaded in O.A., with direction to them to appear before the Inspector of the Department and depose evidence and produce documents, if they possess in favour of the Department.

(d) Against the said order dated 7.10.2010, an appeal was filed by one person, who filed implead petition, which was also dismissed by the first respondent by order dated 29.3.2011 and according to the petitioner, the trial was also closed.

(e) In May, 2012, the third respondent herein filed I.A. No. 3 of 2011 and requested the second respondent to implead himself as a party in O.A. No. 4 of 2010. Petitioner on receiving notice filed counter affidavit and opposed the prayer. On 14.3.2012, the said I.A. No. 2 of 2011 was allowed permitting the third respondent to join as necessary party in O.A. No. 4 of 2011.

(f) Petitioner filed an appeal in A.P. No. 12 of 2012 before the first respondent and obtained interim stay. Ultimately the appeal was dismissed by the first respondent on 17.4.2012 by confirming the order of the second respondent.

(g) The said orders are challenged in this writ petition contending that after hearing was over in the main OA, application filed by the third respondent to implead himself as party is not maintainable; that entertaining the implead application and allowing the same after dismissal of two interlocutory application filed earlier by similarly placed persons, is improper; that without any material evidence third respondent filed implead petition; that O.A. 4 of 2010 having been filed u/s 63A to declare the character of the institution, the same cannot be construed as an application filed u/s 63-B wherein the nature of the public temple is to be decided and only in that case any third party can file implead petition and oppose the application; that the third respondent is not coming within the meaning of Section 6(15) of the Act; and that, no third party can have any say in the claim of the person, who claims the temple as his personal property.

2. The third respondent has filed counter affidavit contending as follows:

(i) Third respondent is a retired staff of Reserve Bank of India and a sincere devotee of Lord Ayyappa. Third respondent along with other public used to worship in the Lord Ayyappa Temple at Old No. 6, New No. 21 Malviya Avenue 2nd Cross Road, Thiruvannamiyur, Chennai-41 for the past over 11 years and the temple is being managed and administered from the contribution of public/devotees. The Temple is opened by the Poojari/Namboodiri in the morning and all

abhishekams and archanas are conducted by collecting charges by way of cash and cheque, and the poojari is paid salary from the collections made from the devotees.

(ii) On 30.3.2010, Raman Ravi, the petitioner herein and another person by name Ramani claimed that the Temple belong to their family and interfered with performing daily poojas. Aggrieved over the same, a complaint was lodged before the concerned police and the same is pending enquiry. Several other complaints were also given before various authorities. The temple is in continuous usage and worship by the public for several years. The public cannot be prevented from enjoying the benefit of worship.

(iii) The third respondent came to know about the proceeding pending before the second respondent and the Inspectors of the HR&CE Department has not conducted enquiries from the Worshipers/Devotees, instead filed report based on the version of the petitioner and his associates. Even the Sreejith Namboodiri's evidence, who has been working in the temple for ten years, was not enquired and his evidence is vital to decide the character of the Temple.

(iv) There are about 500 devotees/donors, who are regularly visiting the temple daily and also participating in various affairs of administration and contributed offerings (gold and silver).

(v) On behalf of the petitioner one Soundar lodged a complaint before the Assistant Commissioner of Police, Adyar and an undertaking letter was received from the petitioner and other devotees on 16.11.2010 at the instance of the police.

(vi) The third respondent being interested and proper person, filed a petition for impleading in I.A. No. 4 of 2010 and the same was considered on merits and he was rightly impleaded by the second respondent, which was also confirmed by the first respondent. By merely impleading the third respondent, the petitioner's rights will not be affected and based on the materials and evidence to be produced by the third respondent, second respondent will be in a position to adjudicate the issue, particularly when the petitioner is claiming the Prayer Hall as private hall and not a Temple or religious institution and prayed for dismissal of the writ petition.

3. The first respondent has filed counter affidavit contending that the petitioner's application made in O.A. No. 4 of 2010 is pending before the second respondent with a prayer to declare that the Prayer Hall is not a temple or religious institution coming u/s 6(20) and 6(18) of the Act. During pendency of the OA, two IAs were filed by T.R. Anand Padmanabhan and L. Krishnakumar to implead themselves as party respondents. The said petitions were dismissed by the Joint Commissioner on 27.10.2010 on the ground that the report of the concerned Divisional Inspector on the OA is awaited and before the report is filed, i.e. pending enquiry, allowing another party to represent will badly affect the work of the Inspector. Therefore, the petitioners therein were directed to approach the

Inspector and produce evidence before the Inspector. The said order was confirmed in appeal by the first respondent. The third respondent filed I.A. No. 3 of 2011 to implead himself in O.A. No. 4 of 2010 stating that he has documentary, oral and photo evidences in the matter to disprove the claim made by the petitioner. A counter statement was filed by the petitioner opposing the impleadment and after considering the rival contentions, second respondent allowed the IA by order dated 14.3.2010, against which the petitioner filed appeal before the first respondent in A.P. No. 12 of 2012, which was also dismissed after hearing respective counsels and perusing the records. It is further stated that IA was filed by the third respondent on different footing that he is having oral and documentary evidence and video recordings to disprove the claim of the petitioner and the said evidence will be useful for the decision to be taken. The earlier dismissal of the application filed by two other persons was on the facts of the said petition filed and at that time enquiry by Inspector was not over. It is also stated in the counter affidavit that the evidences filed by the third respondent in the impleading petition discloses existence of paid Poojari for the temple, offerings are being received from the devotees by poojari, and considering the importance of the documents, second respondent allowed the implead petition. The statement of total income filed by the Melsanthi shows a sum of Rs. 85,200/- as offerings from the devotees. The electricity service connection was obtained by submitting Application No. 118232 stating that service connection is required for "Ayyappan Koil" at No. 10, Malviya Avenue, Thiruvanmiyur, Chennai-41. The said documents are relevant for deciding the character of the Temple. Hence, the second respondent, though fit to implead the third respondent as necessary and proper party in the OA, which was also confirmed by the first respondent by dismissing the appeal.

4. The learned senior counsel appearing for the petitioner submitted that the earlier applications for impleading having been dismissed by the second respondent, which was also confirmed by the first respondent, even though present application is filed by the petitioner, a different person, the reasonings mentioned in the earlier order rejecting the earlier implead petitions will apply to the present implead petition also and non-consideration of the above aspect by the respondents 2 and 3 has vitiated the impugned orders. The learned senior counsel further submitted that even if the petitioner is having any material, he can submit the same through the Inspector and the third respondent need not be impleaded and if he is impleaded, petitioner's rights will be seriously prejudiced. The learned senior counsel also relied on the judgment of the Division Bench of this Court Dr. s. Kameswaran Vs. A. Jayaraman and another, 7 in support of his contentions.

5. The learned Special Government Pleader based on the counter affidavit filed by the first respondent submitted that merely because the third respondent is impleaded, petitioner's rights will not be affected and third respondent's presence and the evidence to be adduced oral and documentary, will throw light on the issue raised in the original application filed by the petitioner in

determining the issue as to whether the Prayer Hall is a private Temple or public Temple.

6. The learned counsel appearing for the third respondent reiterated the contentions in the counter affidavit and filed a voluminous typed set of papers containing several documents which were produced before the second respondent in Original Applications.

7. I have considered the rival submissions made by Mr. R. Gandhi, learned senior counsel appearing for the petitioner and Mr. S. Kandaswamy, learned Special Government Pleader appearing for respondents 1 and 2 and Mr. B.B. Sendhil Kumar, learned counsel appearing for third respondent.

8. The issue to be decided in this writ petition is as to whether impleading of third respondent as party respondent in O.A. No. 4 of 2010 pending on the file of the second respondent, which was filed for declaring the disputed place situated at Old No. 6, New No. 21, Malviya Avenue, 2nd Cross Street, Thiruvannamiyur, Chennai-41, as Prayer Hall or Temple or religious institution is justified on the facts and circumstances of the case.

9. The petitioner has filed O.A. No. 4 of 2010 u/s 63-A of the HR&CE Act, 1959 to enquire into the matter and declare the Prayer Hall situated at Old No. 6 Malviya Avenue, II Cross street, Thiruvannamiyur, Chennai-41 is not a Temple or religious institution coming u/s 6(20) and 6(18) of the Act as contemplated u/s 63-A of the Act. In the application filed before the second respondent, it is stated that a private prayer hall was constructed by the petitioner in his personal lands measuring approximate 6500 sq. ft, which was given by way of settlement by his mother through settlement dated 12.3.1976. According to the petitioner, he constructed a Prayer Hall for the worship and meditation by his family members, in the year 1999 and no idol is installed in the Prayer Hall.

10. The contention of the petitioner that no idol is installed in the Prayer Hall is disputed by the third respondent. According to the third respondent, he is having documents to prove the installation and existence of the idol of Lord Ayyappa and worship is being done by the devotees and poojas are performed by the Poojari, who is also paid from the contributions/collections made by the devotees. The said facts are necessarily to be placed before the second respondent enabling him to arrive at a correct conclusion while deciding the dispute/petition filed u/s 63-A of the Act, which clearly states that the Joint Commissioner shall have power to enquire into and decide the dispute whether an institution is a religious institution or not.

11. Rejection of the earlier application filed by two individuals for impleading themselves as party respondents was before filing Inspection Report by the Inspector. Therefore, the second respondent thought fit at that time that the petitioners therein can very well place the materials before the Inspector during local enquiry. The Inspector, after conducting field enquiry having submitted report, the third respondent cannot be now told that he cannot produce the

records or materials available to disprove the claim made by the petitioner before the second respondent. The third respondent is specifically contending that he is a regular worshiper of Lord Ayyappa at the disputed place and an idol is in existence inside the Prayer Hall, which according to the petitioner is only a Prayer Hall, without idol for offering prayers by his family members. All these issues are to be decided only by the second respondent, who is vested with powers to record evidence and issue summons like a civil Court. Section 110 of the Act specifically states that "inquiries to be made under Chapter V and VI by the appropriate authority in accordance with the procedures applicable under the Code of Civil Procedure, 1908 to the trial of suits or the hearing of appeals, as the case may be and their holding such inquiry/hearing shall be deemed to be a person acting judicially within the meaning of Judicial Officers Protection Act, 1850". For arriving at a just and fair conclusion, the second respondent is bound to find out the truth, for which the evidence available with the third respondent may be relevant.

12. The Hon"ble Supreme Court in the decision *Maria Margarida Sequeria Fernandes and Others Vs. Erasmo Jack de Sequeria (Dead) through L. Rs.*, held that a Court deciding dispute is duty bound to find out the truth and every endeavour should be made to find out the truth. In paragraph 52 the Supreme Court held thus,

52. Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth.

13. Applying the said decision to the facts of this case and the second respondent having been vested with statutory power as a quasi-judicial authority, is justified in impleading the third respondent as proper and necessary party for adjudicating the dispute raised by the petitioner. By merely impleading the third respondent as party respondent, petitioner's rights will not be prejudiced as the petitioner has got every right to cross-examine the third respondent or contest the documents to be filed by him before the second respondent.

14. The decision cited by the learned senior counsel appearing for the petitioner i.e., *Dr. S. Kameswaran v. A. Jayaraman and Another (supra)* is not in any way justify the arguments of the petitioner. In the said case, it is held that a party can be impleaded when there is a cause of action against him and where his presence is necessary and proper for effective adjudication of the dispute involved in the suit.

15. The contention of the petitioner that the second respondent fully heard the matter and order alone has to be pronounced and in the meanwhile, the I.A. filed to implead the third respondent herein, is not maintainable, cannot be sustained in view of the decision of the Supreme Court in *K.K. Velusamy Vs. N. Palanisamy*,

wherein it is held that in appropriate cases re-opening of cases/recalling witnesses can be ordered even if the case is reserved for judgment.

16. Petitioner's claim that for deciding the issue as to whether the Prayer Hall is a religious charity as defined u/s 6(16) of the Act, the third respondent's presence is not required, cannot be countenanced as Section 6(16) of the Act defines religious charity associated with a Hindu festival or observance of a religious character, whether it be connected with a Math or Temple or not. For deciding the same, whether worship is being performed and idol is installed or not, will have a direct bearing. In view of the above findings, I am of the view that the order passed by the second respondent impleading third respondent as a party respondent in O.A. No. 4 of 2010, which was confirmed by the appellate authority/first respondent is valid and no interference is called for.

The writ petition is dismissed. No costs. Connected miscellaneous petitions are closed.