

(2007) 11 KL CK 0010

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 21987 and 29881 of 2007 (P)

Ramani Nessiar and M. Surendran Nessiar

APPELLANT

Vs

The Commissioner, The Deputy Commissioner and Achikulath
Mohandas

RESPONDENT

Date of Decision : 21-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2008) 2 ILR (Ker) 267 : (2008) 1 KLT 565

Hon'ble Judges : T.R. Ramachandran Nair, J;K.S. Radhakrishnan, J;A.K. Basheer, J

Bench : Full Bench

Advocate : T. Krishnan Unni, for the Appellant; Mohan C. Menon, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—We are in this case primarily concerned with the scope and ambit of Section 62(1)(ii) of the Madras Hindu Religious and Charitable Endowment Act, 1951 which says that the civil court can modify or cancel an order passed by the Deputy Commissioner u/s 57, Section 58 or Section 60 read with Sub-section (1)(a), (2), or (4)(a) of Section 19 but it shall have no power to stay the Commissioner's order pending disposal of the suit. Petitioner is the senior most member of the Madathinkeezhil Tharavadu and is the hereditary trustee of Shri Bhayanamkavu Bhagawathy Temple which is a private temple of that family. Being the senior most member of the family and hereditary trustee he manages the affairs of the temple. While so, 5th respondent, one of the members of the family who is in enimical terms with the family of the petitioner due to certain civil litigations filed OA. No. 20 of 2003 u/s 57(a) of the HR & CE Act seeking declaration to the effect that the temple is a pubic temple coming under the purview of the HR & CE Act and also for appointment of an Administrator for the management of the temple. Deputy Commissioner, HR & CE, Kozhikode as per order dated 4-10-2006 declared that

the temple is a public temple and rejected the prayer for appointment of an Administrator. Aggrieved by the said order petitioner filed appeal before the Commissioner as A.P. No. 24/06 u/s 61 of the Act and the appeal was dismissed by the Commissioner vide its order dated 6-7-2007.

2. Deputy Commissioner then initiated suo moto proceedings u/s 58 of the HR & CE Act as OA. No. 28/06 for framing a scheme for management of the temple. Aggrieved by the said order the then trustee filed WP(C) No. 27355 of 2006 before this court and this court granted stay of the appointment of appointment of the fit person and the writ petition was fully disposed of directing the Deputy Commissioner to consider the objections raised by the petitioners therein and pass appropriate orders. Later the Commissioner passed an order on 30-8-2007 by which it was decided to frame a scheme for administration of the temple and the order of appointment of the fit person was cancelled. The order was passed on 30-8-2007 in IA. No. 38 of 2007. Later the second respondent issued Ext.P5 order calling for objections if any against the finalisation of the scheme. Aggrieved by those orders petitioner has filed the present writ petition. We hear Sri. K. Mohanakannan and also Sri. Mohan C. Menon appearing for the 5th respondent and the learned Govt. Pleader Sri. K. Sandesh Raj.

3. We are primarily concerned with the question whether the civil court has got jurisdiction to grant stay of the order passed by the Deputy Commissioner in view of Section 62(1)(ii) of the Act. Section 62 of the Act deals with suits and appeals. Said provision in its entirety is extracted hereunder:

62. Suits and appeals: (1) Any party aggrieved by an order passed by the Commissioner-

(i) u/s 61, Sub-section (1) or Sub-section (2), and relating to any of the matters specified in Section 57, Section 58 or Section 60; or

(ii) u/s 57, Section 58 or Section 60 read with Sub-section (1) (a), (2), or (4) (a) of Section 19 may, within ninety days from the date of the receipt of such order by him, institute a suit in the Court against such order; and the Court may modify or cancel such order, but it shall have no power to stay the Commissioner's order pending the disposal of the suit.

(2) Any party aggrieved by a decree of the Court under Sub-section (1) may, within ninety days from the date of the decree, appeal to the High Court.

(3) (a) Any scheme for the administration of a religious institution settled or modified by the Court in a suit under Sub-section (1) or on an appeal under Sub-section (2) or any scheme deemed u/s 103, Clause (d), to have been settled or modified by the Court may, at any time, be modified or cancelled by the Court on an application made to it by the Commissioner, the trustee or any person having interest.

(b) Any party aggrieved by an order of the Court under Clause (a) may, within ninety days from the date of the order, appeal to the High Court

Framing a scheme: While framing a scheme the Deputy Commissioner and in a suit or application for amendment of a scheme the court, will mould the relief having regard to the circumstances of each case. The Commissioner or the Court is not bound to appoint an executive officer in every case. SDG Pandarasannidhi v. State of Madras AIR 1965 SC 1683.

Procedure before the court: The suit filed before the civil court should be tried in accordance with the provisions of Civil Procedure Code. The order of the trial court that the plaintiff cannot adduce evidence because what is challenged is the validity of the order passed by the Deputy Commissioner and the validity of the order is to be adjudged on the basis of the evidence already adduced is not correct. Ramachandran v. Kallianikutty Amma 2001(3) KLT 838.

Word "Commissioner" has been defined u/s 6(5) of the Act to mean the commissioner appointed u/s 8. Word "Deputy Commissioner" has been defined u/s 6(7) of the Act to mean the Deputy Commissioner appointed u/s 8. Section 8 says that the State Government shall appoint the Commissioner and such number of Deputy and Assistant Commissioners as they think fit. Section 57 of the Act confers power on the Deputy Commissioner to decide certain disputes and matters. Section 57(a) confers power to inquire into and decide whether an institution is a religious institution or not. Section 58 confers power on the Deputy Commissioner to frame scheme. Section 60 confers power on the Deputy Commissioner on being satisfied that a religious institution has whether before or after the commencement of the Act ceased to exist, then to follow enquiry to ascertain its properties, funds etc. Section 62 confers right of appeal to the Commissioner against the order passed by the Deputy Commissioner under Sections 57 to 60. Section 61(1) says that against an order passed by the Deputy Commissioner appeal u/s 61. Section 62 says that any party aggrieved by an order passed by the commissioner u/s 61 Sub-section (1) of Sub-section (2) and relating to any of the matter specified in Section 57, Section 58 or Section 60 can institute a suit in the civil court against such order and the court may modify or cancel such order, but it shall have not power to stay the commissioner's order pending the disposal of the suit. Section specifically says that civil court has no power to stay the commissioner's order. Question looms large as to whether the civil court has power to stay the deputy Commissioner's order. Power has been conferred on the Deputy Commissioner under Sections 57 to 60 to pass various orders. We find it unnecessary to dwell into that question. Question raised is whether the civil court has got jurisdiction to stay Ext.P2 order dated 6-7-07 passed by the commissioner in A.P.24/06. Civil court has no power to stay that order. Further question that loom large is whether the civil court has passed any order to save guard the interest of the petitioner in the interest of justice. We are of the view, civil court has no power to stay the order and the civil court has got power under CPC to pass every order in the interest of justice. Same issue came up for consideration before the Madras High Court in Muthusami Gurukkal v. Ayyasami Thevan 1958 MLJ 256 and the Bench of the Madras High Court has taken the view that the ban imposed by Section 62(1) of

the Madras High Religious and Charitable Endowments Act can be applied only to the extent warranted by the language of that statutory provision. The rest of the jurisdiction of the civil court, e.g., those regulated by Rules 1 and 2 or Order 39 CPC remain intact. We have gone through the the order passed by the commissioner and the consequential orders passed by the Deputy Commissioner. Since the matter is seized before the civil court we need not examine the various contentions raised against the impugned orders. All the same, in the facts and circumstances of the case we are of the view the orders passed by the Deputy Commissioner shall be kept in abeyance till civil court passes final orders in the matter. Balance of convenience is in favour of the petitioner since the temple is a private temple and that the petitioner is a hereditary trustee who was managing the affairs of the temple. Pending suit if it is taken over by the administrator and a scheme is framed and a non-hereditary trustee is appointed that will adversely affect the interest of the family and its properties. Under such circumstance we are inclined to allow the writ petition and direct the parties to maintain status quo till final orders is passed by the civil court.