(1960) 07 MAD CK 0025

In the Madras High Court

Ramayya Nandiar and Another APPELLANT

Vs

Sri Swaminathaswami Devasthanam and Others RESPONDENT

Date of Decision : 02-07-1960

Acts Referred:

Citation : (1961) ILR (Mad) 379 : (1960) 73 LW 744 : (1960) 2 MLJ 376

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—The question in the second appeal is whether it is not open to the civil Court to examine whether an order made u/s 29(1) of Madras Act (XIX of 1951) is not in conformity with the requirements prescribed in it. Disagreeing with the trial Court, the lower appellate Court held that there was no such jurisdiction in the civil Court and in that view allowed the appeal and dismissed the suit. The aggrieved plaintiffs have filed the second appeal.

2. The suit was filed by the plaintiffs as persons interested for a permanent injunction restraining the defendant temple from selling the suit lands. The suit lands are of an extent of one acre and 42 cents which were endowed by one Raghava Nandiar by a trust deed, dated 23rd November, 1914, for the performance of abishekam to Sri Swaminathaswami deity on the occasion of Skandasashti in the month of Arpasi each year at a cost of Rs. 5 and for feeding of one paradesi every day on a scale of half a Madras measure of rice. The donor first nominated Vasudeva Nandiar as a trustee to conduct the charity after his lifetime and provided that after the lifetime of Vasudeva Nandiar, the trustees of the temple should take over the property, manage the same and conduct the abishekam and charity. At the request of the trustees of the Devasthanam the Commissioner for the Hindu Religious and Charitable Endowments made an order, dated 19th July, 1954, permitting sale of the suit lands. It would appear that the sale was permitted on the ground that having regard to the situation of the lands they were uneconomic and it was inconvenient to manage the same by the temple trustees. By another order, dated 15th January, 1955, the

Commissioner directed the trustees to invest the sale proceeds and to perform the charities out of the interest accrued. The plaintiffs who claim to be related to the original founder of the trust and to be persons interested in the performance thereof objected to the proposed sale contending that it would be a breach of trust and prayed for a permanent injunction restraining the defendant from selling the suit, lands. The trial Court granted a decree as prayed for by the plaintiffs. But the lower appellate Court: reversed the decree in the view that the provisions of Sub-section (4) of Section 29 and Section 93 of Madras Act (XIX of 1951) barred the jurisdiction of the civil Court from examining whether the order of the Commissioner was in compliance with section.

3. All that we have in this case is the order in Exhibit B-i dated 19th July, 1954: "Sanction accorded, as prayed for." The order shows that it was made on the application of the trustees of the defendant temple. On what grounds this order was made, there is no means of knowing. If any reasons were given for making'' the order, no copy thereof has been filed in the suit by the trustees. Apart from that, D.W. 1 giving evidence on behalf of the defendant temple admitted that no notification contemplated under the Proviso to Section 29(1) had been made. His evidence was that there was no notification calling for objection for the proposed sale.

4. It is the validity of that order that is challenged by the learned Counsel for the appellant before me. He contended that a notification published in the prescribed manner inviting objections and suggestions with reference to the proposed sale was a condition precedent for the exercise of jurisdiction by the Commissioner u/s 29(1) and that unless this requirement was complied with, any order made under Sub-section (1) would be void as one without jurisdiction. Section 29(1) states that:

Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall: lie null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution.

The Proviso to this section is material and runs thus:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and" suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner.

5. It is clear from this Proviso that before the Commissioner sanctions a sale the particulars relating to the proposed sale should be published in the manner prescribed inviting objections and suggestions arid he should consider them. As already stated, it is admitted by D.W. 1 that no such notification was made and no objections were called for and much less considered by the Commissioner before granting sanction for the sale. Obviously the procedure prescribed by the

Proviso has to be strictly followed before the Commissioner can exercise his jurisdiction under subsection (1) of Section 29 and make an order thereunder permitting a sale. If the requirements of the Proviso are not complied with, in my opinion, the Commissioner will have no jurisdiction to make an order under Sub-section (1). This is clear from; the words " provided that before such sanction is accorded ". In as much as the procedure provided by the Proviso to Sub-section (1) of Section 29 has not admittedly been followed, it seems to me that the order made by the Commissioner permitting the sale in this case was without jurisdiction and was void.

6. But the learned Counsel for the respondent urged that in view of the provisions of Sub-section (4) of Section 29 which provided for an appeal to the Government within the prescribed time from an order made under Sub-section (1) of Section 29 and of the provision of Section 93, the civil Court will have no jurisdiction to entertain the suit and go into the question whether the order of the Commissioner under Sub-section (1) of Section 29 was made in conformity with the requirements, of that Sub-section. I am unable to agree with this contention. It is true that when an order has been made in conformity with Sub-section (1) of Section 29, it may not be open to the civil Court to go into the merits of the order, review the circumstances and substitute for the Commissioner''s order its own conclusions as to the propriety or otherwise of the order in relation to the existence or non-existence of necessity for or benefit to arise out of the proposed sale. But I think it is competent for the civil Court to see whether where a power has been entrusted to a statutory Tribunal or officer it has been exercised in conformity with the requirements of the provisions conferring such power. If the jurisdiction conferred is conditional upon a prescribed procedure being followed, and an order has been made in the purported exercise of that jurisdiction without following the procedure prescribed, in my opinion, the order so made will be one without jurisdiction and as such void. In such cases, the fact that an appeal has been provided to a departmental authority against an order made u/s 29(1) will not be a bar to the jurisdiction of the civil Court to enquire and find whether the requisites for the exercise of the jurisdiction have been complied with.

7. Nor can I see how Section 93 acts as a bar to the civil Court enquiring into whether the order u/s 29(1) is in conformity with the provisions of that Sub-section. It appears to me that Section 93 does not have in its view a question such as the one under consideration, namely, whether even where the provisions of the Act have not been complied with which are required to be complied with before making an order, a civil Court will not be competent to investigate into and decide that question. It would not have been open to the Commissioner himself to consider whether his own order was in conformity with the provisions of the Act. There is no provision made u/s 29 for deciding whether once an order has been made u/s 29(1) or (4), it is in conformity with that section. Section 93 appears to contemplate only such an order as the Commissioner himself could make and not a question which the Commissioner is not empowered to enquire

into and decide u/s 29. In my opinion, neither Sub-section (4) of Section 29 nor Section 93 of the Act is a bar to the civil Court deciding the question whether an order made u/s 29(1) was in compliance with the requirements of the Proviso to that Sub-section.

8. It follows, therefore, that the order of the Commissioner for the Hindu Religious Endowments contained in Exhibit B-i was void as it was one without jurisdiction. That being the case, there is no valid sanction u/s 29(1) for the proposed sale. The suit, will, therefore, have to be decreed. But this does not mean that if as and when the trustees of the defendant temple get a valid and proper sanction u/s 29(1), they can in any way be prevented from selling the properties.

9. The second appeal is allowed. The judgment and the decree of the lower appellate Court are set aside, but, in the circumstances, there will be no order as to costs.

