
(1999) 07 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No.16165 of 1991

S. Babaji Rajah Bhonale Chattropathy

APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable,
Endowments Department, Nun-gambakkam. Madras - 34,
The Deputy Commissioner, Hindu Religious and Charitable
Endowments Department, Thanjavur

RESPONDENT

Date of Decision : 06-07-1999

Acts Referred:

Citation : (1999) 07 MAD CK 0013

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : K. Chandrasekaran, for the Appellant; R. Balasubramanian, Special Government Pleader (H.R. and C.E.) Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Y. Venkatachalam, J.—Invoking Art.226 of the Constitution of India, the petitioner herein ""has filed the present Writ Petition, seeking for a

writ of certiorari to call for the records of the first respondent made in and relating to 166451/88 H.3 dated 7.2.1989 and to quash the same. In

support of the writ petition, the petitioner herein has filed an affidavit wherein he has narrated all the facts and circumstances that forced him to file

the present writ petition and requested this Court to allow the writ petition as prayed for; per contra, on behalf of the respondents a counter

affidavit has been filed rebutting all the material allegations levelled against them one after the other and ultimately they have requested this Court to

dismiss the writ petition for want of merits.

2. Heard the arguments advanced by the learned counsel appearing for the

respective parties. I have perused the contents of the affidavit and counter affidavit together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the various points raised by the learned counsel appearing for the respective parties during the course of their arguments.

3. In the above facts and circumstances of the case, the only point that arises for consideration in this case, is as to whether there are any valid grounds to allow this writ petition or not.

4. The brief facts of the case of the petitioner as seen from the affidavit are as follows: The petitioner herein is the senior prince and Hereditary

Trustee of Palace Devasthanam, Thanjavur, and also Senior Prince of the Thanjavur Maharaja Royal Family, representing the Senior Branch of the

same. His father, Shivaji Rajah predeceased his grand father, Rajaram Rajah Sahib. As the eldest member of the eldest branch of the Royal family,

the petitioner herein now occupies the office of Hereditary Trustee of the Thanjavur. Palace Devasthanam. The temples constituting Thanjavur

Palace Devasthanam were most of them founded by the Mahrata Kings of Thanjavur. They have been endowed by the said kings.

The Privy Council and this Court have held that the senior line of the Tanjore Mahrata Royal Family or the senior prince as he is called, has

heritable interest in the Devasthanam properties and that the Government have no right to resume or take away the management thereof from him.

Courts have consistently held that the right of management of the Devasthanam properties must be treated as impartible property and that the office

of Hereditary Trustee shall be held by a single individual who shall be the eldest member of the eldest branch of the Royal Family. Thus, the

petitioner herein has been in his own right the Hereditary Trustee of the Tanjore Palace Devasthanam. A scheme was framed by the Hindu

Religious Endowment Board for the administration of the Tanjore Palace Devasthanam on 5.7.29 in O.A. No. 414 of 1928, under the provisions

of Madras Act 2 of 1927. Under the said scheme, it was declared and recognised that the Trusteeship of the Tanjore Palace Devasthanam shall be

Hereditary and impartible. Under the scheme his grand father was recognised as Hereditary Trustee in succession to his father. A Superintendent

was appointed by the Board to be responsible for internal management of the

Devasthanam subject to his grandfather's general control. Aggrieved with some of the provisions of the scheme his grand father instituted a suit in O.S. No. 4 of 1930 on the file of the District Court, West Thanjavur against the Scheme and the District Court by decree dated 21.12.1932 allowed the suit in part and modified the provisions relating to Superintendent by substituting the words "Treasurer and Manager"" wherever the word ""Superintendent"" appeared in the scheme. Thus the scheme framed originally by the Board has become a Court scheme and has been in vogue for many years. A reading of clause 22 of the Scheme Decree makes it very clear that appointments in the Temple and in the office itself, Treasurer and Manager, now called Executive Officer shall have the power only to advise and recommend. He should make a report to the Trustee for filling up the vacancy. This procedure has been in practice till the beginning of February 1991. At or about that time the new treasurer and manager who was appointed brought to his notice that for filling up the vacancies, which arise in the post of servants employed in temples, prior permission of the first respondent should be obtained. He also placed before him a communication of the first respondent in Circular No.166451/88 H.3 dated 7.2.1989. This was received by the Treasurer and Manager on 29.11.90 and the same was not brought to his notice by him till then and on coming to know of the same, he made a representation dated 25.2.91 to the first respondent and finding no answer from him he sent several other representations.

5. According to the petitioner, the proceedings of the first respondent are absolutely contrary to law. It is stated by the petitioner that the office of the hereditary Trustee is held to be a property and the duties attached to such office is framed under a scheme as already mentioned. They contend that the Thanjavur Palace Devasthanam is administered by a decree of Court and any amendment to such a Scheme would amount to amendment of the Decree passed in the Scheme suit. They contend that there is no power under the Act to amend such scheme decrees passed by the Court of law. This Court in 1974 2 MLJ 179 held that the Deputy Commissioner or Commissioner do not have the power to amend the decree passed by the Courts of law. It is case of the petitioner that though it may be contended that by G.O. Ms. No. CT & RE dt. 8.3.75 as regards certain

circumstances, for modification or cancellation of the scheme, the Rule would not indicate that the respondents have the power to alter the scheme

decree. It is their case that it can never be contended that the scheme framed by the Court could not be worked out properly in the interests of the

institution. Nor could it be contended that it is not suitable in the altered circumstances nor that it has become unsuitable nor could it be contended

that it is necessary to provide sufficient safeguards for the protection of properties. According to the petitioners as a matter of fact the first

respondent has not even attempted to satisfy himself with regard to the existence of any of the pre-conditions set out in the G.O. for exercising his

powers under Sec. 65(4) (c) of the Act. Sec. 65 itself begins with the words ""when the Commissioner has reasons to believe that in the interests of

proper administration of Mutt or Specific endowment etc.,"" while it is incumbent on the part of the Commissioner who have reasons to come to the

conclusion that in their interests of administration it is necessary that the scheme should be modified or cancelled as the case may be. Further if for

any reason it is contended that Sec. 65(1) of the Act would have no application to the facts of the case, Sec. 65(4)(c) of the Act begins with the

words ""Commissioner may at any time after consulting the Trustees, by order, modified or cancelled etc.",", So this makes the powers of the

Commissioner circumscribed before any scheme settled by the Court even if could be modified by the Commissioner, could only be done after

consulting the Trustee. In this case absolutely there is no notice prior to the issuance of the impugned circular. It is also the grievance of the

petitioner that he was not heard in the matter at any time nor any explanation was called for nor orders were communicated. According to the

petitioner, Sec. 65-4(b) contemplates that if any scheme referred to in clause of that Section is inconsistent with the Act and by rules made

thereunder, the commissioner may at any time modify it in such a manner as may be necessary to bring it into conformity with the provisions of the

Act and the Rules made there under. It is contended by the petitioner that apart from the fact that absolutely there is no whisper as regards any

inconsistency in the scheme settled by the Court with that of any of the provisions of the Act. They state that according to Sec. 118 (2) such a

power is conferred on the first respondent, but at the same time this power does not include to modify a scheme settled by the Court. According to

them the scheme settled by the Court would not be modified under Sec. 65 4(b) also. Further Sec. 116 of the Act gives power to the Government to make Rules particularly sub-section 2 (xxiii) ex powers the Government to frame Rules for the clarifications to be possessed by the officers and servants for appointment to offices in Religions institution and the conditions of service of all such officers and servants. It could never be contended that even the Government has the power where the office is held by the hereditary trustee, that too acting under a Scheme Decree empowering him to appoint persons to posts. To get prior sanction of the Government or the Commissioner, as the case may be, for filing of the posts as the Government itself could only prescribe qualifications for such appointments. The post of hereditary trustee would not be made dummy by the first respondent. It is the case of the petitioner that the issuance of circular takes substantial power of the hereditary trustee. The power of appointments of servants is an important power attached to the office. A restriction is now sought to be placed on such a power. They contend that the restriction imposed is expressive in nature and would definitely amount to taking away the power from the hereditary trustee, that for all the practical purposes he would be made a dummy and can only continue to be a figurehead rather than a person with power. According to the petitioner, this Court has categorically held that the office of the hereditary trustee would not be made a dummy. Hence the impugned order has to be struck down.

6. Challenging the impugned order of the first respondent it is stated by the petitioner that there are 392 schedule sanctioned posts, that there are now 215 vacancies i.e., nearly 50% of the sanctioned posts, that there are so many temples wherein poojas have to be performed as per the schedule and that it is very difficult to carry on with day-to-day administration of the temple due to paucity of man in posts. They also contend that the vacancies are so grave that many of the temples go without poojas for several days and that as he being the local resident, the petitioner herein is feeling pinch of the situation every day. It is also his case that he has to explain to the public the circumstances under which he is holding the post and that this is causing great embarrassment .Thus it is the categorical contention of the petitioner that the impugned circular of the first respondent

is absolutely illegal and ultra vires of the powers conferred on him by the Act.

7. Per contra, justifying the impugned circular it is contended by the respondents that the Commissioner, HR & CE Admn. Department, Madras is

the corporate soul as per Section 11 and he is exercising his powers of general superintendence as contemplated u/s 23 of Act 22/59 in so far as the

Religious Institutions scattered all over the State of Tamil Nadu and he is empowered under the provisions of Act 22/59 to guide the persons in

management of such institutions through his subordinates like Deputy Commissioner and Assistant Commissioners regarding various matters of day

to day administration of such religious institutions. Therefore, the Commissioner has issued a circular instruction impugned in this writ regarding the

regulation of appointment of servants to temple under the control of the Department throughout the State. The Thanjavur Palace Devasthanam is

one among the several Devasthanams (temple) under the territorial control and jurisdiction of the Commissioner, Madras, and as such the

provisions contained in the circular shall automatically apply to such religious institutions also and hence the Hereditary Trustee was advised to get

prior permission of the Commissioner before effecting such appointments as sought for by him. Inter alia it is also contended by the respondents

that the petitioner is not entitled to maintain the writ petition since there are remedies available to the petitioner under the Act. It is also contended

by the respondents that there are no disputes about the hereditary trusteeship of the petitioner over the temples of his charge. Further according to

the respondents, the administration of the temples of Palace Devasthanam, Thanjavur by the petitioner in his capacity as Hereditary Trustee have

not been questioned by the Commissioner. The Institution is under the control of the Department and the petitioner is a Hereditary Trustee within

the meaning of the Act. A general circular has been issued by the Commissioner in his RC. No. 166451/ 88 H3 dated 7.2.89 regarding the norms

that have to be followed while making appointments of servants to all the religious institutions scattered all over Tamil Nadu. It is not meant for a

particular institution. It is applicable to all the religious institutions including the institution in question. According to the respondents the petitioner is

having no rights to question about this. Hence it is improper to say that the circular has made the Hereditary Trustee as a dummy and that therefore

the circular is in order and according to the rules in force.

8. Having seen the entire material available on record and from the has been asked to follow certain procedures and appoint servants with proper

qualifications, with the prior permission of the Commissioner. It is always open to the petitioner to fill up the resultant vacancies with suitable

persons with proper permission of the Commissioner. It is significant to note that the Department never forbids such appointments but only in the

best interest of the institution, it has been advised to adopt certain formalities. Therefore I am of the clear view that the circular in question is in

order and according to the rules in force. That apart, it is not as if the impugned circular is meant only for a particular institution. It is applicable to

all the religious institutions including the institution in question. It is no doubt true that the institution is under the control of the Department and the

petitioner is a Hereditary Trustee within the meaning of the Act. Further the Commissioner is having every right according to Section 23 of the Act

22/59 to regulate the appointment of servants to various temples of his control. Hence such circular was issued for relating guidelines. As rightly

contended by the respondents it is valid, legal and well within the powers of this respondent. Further the petitioner being one among several

hereditary Trustees under the control of the Commissioner, is expected to obey and abide by the instructions issued by the Commissioner under

the Act. In the above circumstances of this case, there is no force at all in the several contentions raised by the petitioner challenging the impugned

circular, and all of them fail.

9. Therefore, for all the aforesaid reasons and in the facts and circumstances of this case and also in view of my above discussions with regard to

the various aspects of this case, I am of the clear view that the petitioner herein has failed to make out any case in their favour and that therefore

there is no need for any interference with the circular impugned in this writ petition. Thus the writ petition fails and the same is liable to be dismissed

for want of merits. In the result, the writ petition is dismissed. No costs.