

(2007) 07 MAD CK 0096
In the Madras High Court
Case No : W.A. No. 1780 of 1999

S. Babaji Rajah Bonsle Chatrapathy Hereditary Trustee	APPELLANT
Vs	
The Commissioner, Hindu Religious and Charitable Endowments Department and The Deputy Commissioner, Hindu Religious and Charitable Endowments Department	RESPONDENT

Date of Decision : 23-07-2007

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 23, 55

Citation : (2007) 3 LW 954 : (2007) 5 MLJ 289

Hon'ble Judges : S.J. Mukhopadhaya, J;K. Suguna, J

Bench : Division Bench

Advocate : K. Chandrasekaran, for the Appellant; G. Sukumaran, Spl. G.P., for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The appellant is the Senior Prince of the Hereditary Trustee Palace Devasthanam, Thanjavur and also Senior

Prince of the Thanjavur Mahrata Royal Family, representing the senior branch of the same. His father, Sivaja Rajah predeceased his grandfather,

Rajaran Rajah Sahib. As the eldest member of the eldest branch of the Royal Family, the appellant is now occupying the office of hereditary

trustee of Thanjavur Palace Devasthanam.

Whiles functioning, the first respondent, Commissioner of the Hindu Religious and Charitable Endowments Department Madras, issued the

impugned order No. 166451/88 H.3 dated 7th Feb., 1989. By the said circular, it was ordered to take prior approval of the Commissioner, prior

to filling up the vacancies of office holders and servants in the Devasthanam. It

was received by the Treasurer and Manager, but was not brought to the notice of the appellant and having come to know of the same some time later, he challenged the circular dated 7th Feb., 1989, on the ground that the Commissioner has no jurisdiction to issue such order as it will amount to amendment of Section 55 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1955 (hereinafter referred to as "Act, 1955") and as no such power is delegated to the Commissioner. Learned single Judge, by impugned judgment upheld the circular dated 7th Feb., 1989, and dismissed the writ petition on the ground that the Commissioner has power of superintendence in respect of temple and religious endowments u/s 23 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1955.

2. Learned Counsel for the appellant submitted that the proceedings of the first respondent is absolutely contrary to law; the appellant is holding the office of hereditary trustee as is held to be a property and the duties attached to such office is framed under the scheme. The Thanjavur Palace Devasthanam is administered by a decree of Court and any amendment to such scheme would amount to amendment to a decree passed under the scheme suit. He placed reliance on Section 55 of the Act, 1955, wherein trustee has been delegated with the power to fill-up the post of office holders and servants in religious institutions.

Learned Counsel appearing on behalf of the State again relied on Section 23 to suggest that the Commissioner having power of superintendence, could pass such order.

3. Similar matter fell for consideration in T. Kumaresan Vs. The Commissioner, Hindu Religious and Endowment Department, Nungambakkam

High Road, Chennai - 34 and another, wherein similar plea was taken that Section 23 of the Act confers power of general superintendence and

control on the Commissioner, which power of superintendence and control so included the power to pass any order, which may be deemed

necessary to ensure that the temple is properly administered. Learned single Judge of this Court, having noticed the aforesaid provisions of law,

held that the Commissioner has overall control over the action of the trust board and it is not necessary to take prior permission of the

Commissioner for making appointment u/s 55 of the Act.

The Department went on appeal before a Division Bench of this Court in Assistant Commissioner/Executive Officer, Arulmigu Vana

Badrakaliamman Temple, Thekkampattai, Mettupalayam Taluk, Coimbatore District v. T. Kumaresan and 2 Ors. reported in 2000 (2) L W 250.

The question raised in the said appeal was whether prior approval of the Commissioner was necessary for making any appointments. This Court,

while noticed Section 55 of Act, 1955, held as follows:

6. When power is given to the trustees to appoint office-holders and servants in religious institutions u/s 55 of the said Act, such power cannot be

taken away by administrative orders. Asking the trustees to get prior approval to appoint a servant as stated in the impugned order is contrary to

the said specific provision. Further, any order passed u/s 55 of the said Act can be challenged by way of appeal before the Deputy Commissioner.

If the intention of the statute is such that the trustee has to get prior approval before making appointment, in other words, if the appointment should

be made only after getting prior approval of the Commissioner, the Deputy Commissioner should not have been given power to entertain appeals

against the said orders. So a plain reading of Section 55 of the said Act clearly establishes that trustees have power to appoint such office-holders,

and, in absence of any such restriction to get prior approval from the Commissioner to exercise the statutory function, insisting such approval by

administrative order cannot be sustained

The above said proposition of law has also been followed by this Court in the case of Balaji S.J. v. Commissioner, HR & CE Department,

Chennai reported in 2001 (3) CTC 529.

4. The present case of the appellant is also covered by the aforesaid decision of the Division Bench in Assistant Commissioner/Executive Officer,

Arulmigu Vana Badrakaliamman Temple, Thekkampattai, Mettupalayam Taluk, Coimbatore District (supra). We are also of the view that the

power of appointment u/s 55 of the Act having been delegated to the trustee, the Commissioner, HR & CE Department at the time of

appointment, cannot interfere with the process of appointment by asking for prior approval based on the general power of superintendence.

Whether any appointment has been legally made or not could be verified only after such appointment is made.

In view of our findings above, the order passed by the learned single Judge cannot be upheld. Accordingly, we set aside the order dated 6th July, 1999, passed by the learned single Judge in W.P. No. 16165 of 1991 as also the impugned circular No. 166451/88 H.3 dated 7th Feb., 1989, and allow the writ appeal. But there shall be no order as to costs.