

**(2012) 08 MAD CK 0127**

**In the Madras High Court**

**Case No : Writ Petition (MD) . No. 9648 of 2012**

S. Nellai Kannan

APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable  
Endowment, Uthamar Gandhi Salai, Chennai-600 034 and  
The 292nd Guru Maha Sannidhanam, Sri La Sri  
Arunagirinatha Sri Gnanasambanda Desiga Paramachariya  
Swamigal

RESPONDENT

**Date of Decision : 14-08-2012**

**Acts Referred:**

Constitution of India, 1950 — Article 21  
Criminal Procedure Code, 1973 (CrPC) — Section 197

**Citation : (2012) 5 LW 684**

**Hon'ble Judges : K. Chandru, J**

**Bench : Single Bench**

**Advocate : T.S.R. Venkat Ramana, for the Appellant; M. Murugan Government  
Advocate for Respondent No. 1 and Mr. G. Bala, for the Respondent**

**Final Decision : Dismissed**

## Judgement

K. Chandru, J.—The petitioner in this Writ Petition originally sought for a direction to give permission to him to file a suit u/s 59 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as the "Act"], in terms of his petition dated 11.06.2012. It is seen from the records that the petitioner along with one V.P. Ganeshan sent a representation dated 11.06.2012 to the first respondent, the Commissioner of Hindu Religious and Charitable Endowments seeking permission to sue for the removal of the Junior head of Madurai Aadheenam. Subsequently, the petitioner filed M.P. (MD) No. 1 of 2012 seeking for the amendment of the prayer in the Writ Petition and the prayer was for a Writ in the nature of Mandamus to give permission to file a suit u/s 59 of the Act, which is pending before the first respondent. Thereafter, he made an endorsement stating that he was not pressing the said application.

2. Subsequently, M.P. (MD) No. 3 of 2012 was filed seeking for amendment of

the prayer and as per the current relief claimed, the petitioner seeks for a direction to the first respondent to consider the petition dated 11.06.2012 to file a suit u/s 59 of the Act, within a time frame fixed by this Court. That application is ordered today.

3. Subsequently, the second respondent, Thirugnanasambanda Swamigal Aadheenam was impleaded as the second respondent by filing M.P. (MD) No. 2 of 2012. The second respondent had also filed a counter-affidavit dated 01.08.2012 together with the supporting typed-set of papers containing several proceedings initiated against the petitioner and the Junior head of the Aadheenam. It is unnecessary to traverse the various allegations. It is stated by the second respondent that u/s 59 of the Act, the Commissioner has to exercise a quasi judicial function one way or the other.

4. Section 59(1) and (2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 read as follows:

59. Suit for removal of trustee of math or specific endowment attached thereto.-

(1) The Commissioner or any two or more persons having interest and having obtained the consent in writing of the Commissioner, may institute a suit in the Court to obtain a decree for removing the trustee of a math or a specific endowment attached to a math for any one or more the following reasons, namely:-

- (a) the trustee being of unsound mind;
- (b) his suffering from any physical or mental defect or infirmity which renders him unfit to be a trustee;
- (c) his having ceased to profess the Hindu religion or the tenets of the math;
- (d) his conviction for any offence involving moral delinquency;
- (e) breach by him of any trust created in respect of any of the properties of the religious institution;
- (f) waste of the funds or properties of the institution or the wrongful application of such funds or properties for purposes unconnected with the institution;
- (g) the adoption of devices to convert the income of the institution or of the funds or properties thereof into "pathakanika";
- (h) leading an immoral life or otherwise leading a life which is likely to bring the office of head of the math into contempt;
- (i) persistent and willful default by him in discharging his duties or performing his functions under this Act or any other law.

(2) Where the Commissioner refuses to give consent under sub-section (1), the party aggrieved may, within three months from the date of the receipt of the order by him, appeal to the Government who may, after making such inquiry as

they may consider necessary, confirm the order of the Commissioner or direct the Commissioner to give his consent in writing.

[Emphasis added]

5. The consent that is sought for is for instituting a suit in the civil Court for obtaining a decree for removing the trustee for the reasons set out in the said Section. The said Section deals with the power of the Commissioner to grant consent by satisfying himself that the persons, who are moving, are having interest. In case the Commissioner refused to grant permission u/s 59(1) of the Act, there is a further appeal lies to the State Government in terms of Section 59(2) of the Act. Therefore, the scheme of things is very clear that the power to grant consent solely vests with the Commissioner, failing which, the State Government will have to be satisfied.

6. On notice from this Court, the Commissioner of Hindu Religious and Charitable Endorsement, viz., the first respondent herein had informed the learned Government Pleader, by his proceedings dated 16.07.2012, that the petitioner has not only addressed the petition to the Commissioner but also addressed to the State Government. The petition sent to the State Government was re-directed to the Office of the first respondent for giving a suitable reply to the petitioner. In the meanwhile, the petition received by the Commissioner was also received and it was found that both the petitions are one and the same.

7. In paragraph No. 5 of the proceedings dated 16.07.2012, the Additional Commissioner (Enquiry), on behalf of the Commissioner, informed the learned Government Pleader as follows:

5. The said petition dated 11.06.2012 addressed to the Commissioner and sent to the Secretary to Government was returned to the petitioner Thiru. Nellai Kannan in this office Rc. No. 33222/2012/D2(1) dated 12.07.2012 for the reasons stated therein. A copy of this office letter dated 12.07.2012 is also enclosed herewith for ready reference.

8. As stated above, a copy of the communication sent by the Additional Commissioner (Enquiry) on behalf of the Commissioner dated 12.07.2012 was produced before this Court, in which, the petitioner's petition along with enclosures of 86 pages, was returned for rectifying the defects found in the petition. It is stated that the appropriate stamp duty was not paid and the process fee for serving the respondents were also not enclosed by paying the fee before the Assistant Commissioner's Office. Most importantly, it is stated that the aggrieved parties have not been made as parties and additional copies for serving them have also not enclosed.

9. Mr. T.S.R. Venkat Ramana, learned counsel appearing for the petitioner informs this Court that at the stage of seeking permission, it was unnecessary to hear the affected parties and place reliance upon a judgment of a Division Bench of this Court in Dr. J. Jayalalitha Vs. Dr. M. Channa Reddy, Governor of Tamil

Nadu and Others, He placed reliance on the following passages found in paragraph Nos. 24 and 25 and it read as follows:

24. Thus, the settled position in law is that an order sanctioning prosecution does not by itself affect the right of any person and much less fundamental right under Art. 21 of the Constitution. The question of violation of Art. 21 of the Constitution does not arise at this stage at all. If that argument is accepted there can be no prosecution of any citizen in this country. The Supreme Court has repeatedly rejected such arguments. In *State of Maharashtra Vs. Captain Buddhikota Subha Rao*, the court has pointed out that personal liberty of an individual can be curbed by procedure established by law and the Code of Criminal Procedure is one such procedural law which permits curtailment of liberty of anti-social and anti-national elements.

25. The fact that the first respondent has passed the impugned order does not mean that he is satisfied that the charges made against the petitioner by the fourth respondent have been proved. The impugned order does not cast any stigma on the petitioner. The fourth respondent is yet to lodge a complaint with the Special Court and at this stage, Art. 21 of the Constitution of India does not come in the picture.

It is not clear as to how the said judgment will have any relevance to the case on hand.

10. In that case, the Court was concerned about sanction for prosecution. The Division Bench held that a sanction u/s 197 Cr.P.C. does not cast a stigma. Even otherwise the sanction order can also be challenged in the proceedings initiated. Such is not the case on hand. The consent of the Commissioner, Hindu Religious and Charitable Endowment is not a mechanical power to be exercised at the instance of anyone. The consent gives the right of parties to sue the mutt head which otherwise could not have been done.

11. The Commissioner of Hindu Religious and Charitable Endowment is an independent authority constituted u/s 59 of the Act, subject to the further supervision by the State Government. The very power has been conferred with an authority only to see that the frivolous cases are not filed against any mutt for removal of any of the trustees. Therefore, the power has to be exercised in accordance with law and the satisfaction of the authorities is a must.

12. When the authority, after seeing the petitioner's petition, returned the same, it is for the petitioner to re-present the same, after rectifying the defects. The contention that the aggrieved parties need not be impleaded also cannot be accepted. Therefore, this Court do not find any illegality in the returning of the petition made by the petitioner. As and when the petitioner re-submits the petition in accordance with law, after rectifying the defects pointed out, it is needless to state that the first respondent will consider the application and pass appropriate orders. Hence, the Writ Petition will stand dismissed with the above observation. No costs.