

(1974) 04 MAD CK 0045
In the Madras High Court

S. Ramamurthi

APPELLANT

Vs

V. Rangachari and Others
R. Nagaraja Gurukkal, A.
Kandaswami and Another and D. Kuppuswami Mudaliar and
Others Vs The Commissioner for Hindu Religious and
Charitable Endowments and Others

RESPONDENT

Date of Decision : 29-04-1974

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35
Income Tax Act, 1922 — Section 33(4)
Motor Vehicles Act, 1988 — Section 64

Citation : (1975) 88 LW 814 : (1975) 1 MLJ 407

Hon'ble Judges : M.M. Ismail, J

Bench : Division Bench

Judgement

M.M. Ismail, J.—Though these writ petitions differ with regard to the facts, they are being disposed of together, by a common order, in view of one common point argued in all these writ petitions. In all these writ petitions, against the orders of the Deputy Commissioner, Hindu Religious and Charitable Endowments, pasted under the provisions of Chapter V of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act XXII of 1959) hereinafter referred to as "the Act", appeals were preferred to the Commissioner, Hindu Religious and Charitable Endowments u/s 69 (1) of the Act and the Commissioner by the impugned orders in the writ petitions remanded the matter for fresh disposal to the Deputy Commissioner. The orders of the Commissioner are challenged in these writ petitions and the common point raised in there petitions is that the Commissioner has not power to remand the matter to the Deputy Commissioner.

2. For the purpose of considering this point, the first thing to be noticed is the language in which the power of the appellate authority is couched. Section 69 d) of the Act states : "Any person aggrieved by any order passed by the Deputy Commissioner under any of the foregoing sections of this Chapter may, within

sixty days from the date of the publication of the order or of the receipt thereof by him, as the case may be, appeal to the Commissioner and the Commissioner may pass such order thereon as he thinks fit." From this language two facts are clear. One is, the Commissioner is constituted as the appellate authority and the second is, there is no restriction whatever on the power of the Appellate Authority as to the manner of disposal of the appeal or the nature of the order which he can pass on the appeal. On the other hand" the power that has been conferred on the appellate authority is of the widest amplitude, when the section says that the Commissioner may pass such order as he thinks fit. However, the learned Counsel for the petitioners in these writ petitions contended that there being no specific power conferred on the Commissioner to-remand and the provisions of the CPC not being applicable to the proceedings before the Commissioner, the Commissioner has no power to-remand at all. I am unable to accept this contention for more than one reason.

3. The language referred to above is nothing peculiar to the Act in question. Appellate power has been conferred; on other appellate authorities under different statutes in such widest terms as is possible and Courts have construed that power as one including the power to remand a matter to the original authority. As far as the Motor Vehicles Act, 1939. (Madras Act IV of 1939) is concerned, consistently this Court as well as the different Courts in this country have taken the same view. Section 64 of the Motor Vehicles Act deals with the appellate power and it says that the appellate authority, shall after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final. All that the section says is that the decision must be on an appeal and therefore the decision must be in relation to the subject-matter of the appeal. Apart from that, there is no other restriction whatever imposed on that power.

4. This Court in more than one decision has held that this power of the appellate authority under the Motor Vehicles Act functioning u/s 64 thereof includes the power to remand. Merely by way of illustration, I shall refer to the judgment of Ramachandra Iyer, J., as he then was, in *S. Jawarilal Jamad, Proprietor S.J. Bus Service, Madras v. The State Transport Appellate Tribunal, Madras and Ors.* W.P. No. 699 of 1958 dated 28-7-1960, wherein the learned Judge stated that the Appellate Authority's power to remand is incidental to and consequent upon the setting aside of the order which is the subject-matter of the appeal.

5. A Full Bench of the Kerala High Court in *N.K. Dharmadas Vs. State Transport Appellate Tribunal of Kerala and Others*, held that they entertained no doubt that a power to remand is available to a Tribunal functioning u/s 64 of the Motor Vehicles Act and that the said power is incidental to and implicit In the appellate jurisdiction created by that section.

6. In *M.S. Sambamurti Sastriar and Ors. v. The Deputy Registrar of Co-operative Societies, Ranipet, North Arcot District and Ors.* W.P. No. 790 of 1969 dated 23-4-1970. I had occasion to consider the scope of the appellate power of the

Registrar under the Tamil Nadu Co-operative Societies Act (LIII of 1961). Section 96 (4) of that Act dealing with the appellate power stated:

In disposing of an appeal under this section, the appellate authority may, after giving the parties an opportunity of making their representations, pass such order thereon as the appellate authority may deem fit.

Sub-section (6) of Section 96 stated:

The appellate authority may pass such interlocutory orders pending the decision on the appeal as the appellate authority may deem fit.

The contention that was advanced before me in that writ petition was that in so far as Sub-section (6) expressly dealt with the power of the appellate authority to pass interlocutory orders, it must be presumed that the general power conferred by Sub-section (4) did not include, the power of remand and that, if the power of remand was to be attributed to the appellate authority, such a power should have been expressly conferred upon the appellate authority, just as the power to pass interim orders had been conferred. I rejected that contention by pointing out:

It is Sub-section (4) that deals with the scope of the orders that the appellate authority may pass on the appeal. That sub-section does not impose any restriction whatever on the nature of the order which the appellate authority can pass in respect of an appeal that is preferred before it. It is an ordinary rule of construction that, where a statute confers a jurisdiction on an authority, that jurisdiction must be deemed to include and imply all powers that are necessary or incidental to the effective exercise of the jurisdiction conferred on the authority unless there is anything contrary expressly provided for in the statute itself. In this case there is nothing contrary to such an implication, provided for expressly in the statute, but, on the other hand, the widest terms in which the appellate jurisdiction has been conferred on the appellate authority will clearly show that it has all the powers and attributes of the appellate authority and can pass all orders as are considered to be incidental or necessary to the effective exercise of that appellate jurisdiction.

As a matter of fact, the argument based upon Section 96 (6) of the Tamil Nadu Co-operative Societies Act, extracted above, will not be of any use at all for the simple reason that even if that power to-pass interim orders has not been expressly conferred on the appellate authority,, this Court has repeatedly, held that the power to pass orders of stay during the pendency of an appeal is a power incidental to the appellate power itself.

7. That was the view taken by this Court with reference to the power of the appellate authority u/s 64 of the Motor Vehicles Act (Madras Act IV of 1939) in *Swarnambikai Motor Service v. Wahida Motor Service* (1956) 2 M.L.J. (S.N.) 12. The Kerala High Court also took the same view in *Themmalapuram Bus Transport Ltd. Vs. The Regional Transport Officer, Malabar and Another*, .

8. Section 35 of the Central Excise Act (Central Act I of 1944) dealing with the appellate power stated "that the appellate authority may make such further inquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against". A Bench of this Court in the Collector of Central Excise, Madras v. V.K. Palappa Nadar W.A. No. 53 of 1961 dated 2-7-1963, while confirming the conclusion of a learned Single Judge, held that the appellate authority has been given powers of the widest character which will include a power of remand, but in the particular case the order passed by the appellate authority did not contain a direction by way of remand-

9. The Supreme Court in Hukumchand Mills Ltd. Vs. Commissioner of Income Tax, Central Bombay and Others, , had to consider the scope of the power of the appellate authority under the Income Tax Act (Central Act XI of 1922). Section 33 (4) of the Indian Income Tax Act, 1922 (Central Act XI of 1922) stated that the Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner." The Supreme Court pointed out:

The word, "thereon", of course, restricts the jurisdiction of the Tribunal to the subject-matter of the appeal. The words "pass such orders as the Tribunal thinks fit" include all the powers (except possibly the power of enhancement) which are conferred upon the Appellate Assistant Commissioner by Section 31 of the Act. Consequently the Tribunal has authority under this section to direct the Appellate Assistant Commissioner or the Income Tax Officer to hold a further enquiry and dispose of the case on the basis of such enquiry.

10. The Supreme Court again in Income Tax Officer Vs. M.K. Mohammed Kunhi, , had to consider the scope of the appellate power with reference to the appellate authority's jurisdiction to grant stay under the Income Tax Act, 1961 (Central Act XLIII of 1961). Section 254 (1) of the Income Tax Act, 1961 stated that "the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit." Dealing with the scope of this appellate power, the Supreme Court pointed out:

The right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the appellate tribunal. Indeed the tribunal has been given very wide powers u/s 254(1) for it may pass such orders as it thinks fit after giving full hearing to both the parties to the appeal. If the Income Tax Officer and the Appellate Assistant * Commissioner have made assessments or imposed penalties raising very large demands and if the appellate tribunal is entirely helpless in the matter of stay of recovery the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside. It is difficult to conceive that the legislature should , have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion.... It is a firmly established rule that an express grant of statutory power carries with it by necessary

implication the authority to use all reasonable means to make such grant effective (Sutherland Statutory Construction, Third Edition, Articles 5401 and 5402). The powers which have been conferred by Section 254 on the Appellate Tribunal with the widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective. In Domat's Civil Law, Gushing's Edition, Vol. I at page 88, it has been stated:

It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions but to all the cases where a just application of them may be made, and which appear to be comprehended within the consequences that may be gathered from it.

Maxwell on Interpretation of Statutes, Eleventh Edition contains a statement at p. 350 that "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. *Qui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potuit.* An instance is given based on *Ex parte, Martin* (1879) 4 Q.B.D. 212, that "where an inferior Court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced.

It may be mentioned that in the course of this judgment, the Supreme Court referred with approval to the decision of this Court in *Workers of Spencer and Company, by the Spencer Workers' Union Vs. Spencer and Company and Another*, , and the decision of the Kerala High Court in *Themmalapuram Bus Transport Ltd. Vs. The Regional Transport Officer, Malabar and Another*, , and *N.K. Dharmadas Vs. State Transport Appellate Tribunal of Kerala and Others*, , referred to already.

11. Consequently the decisions referred to above make it absolutely clear that the appellate power of the Commissioner which is not restricted by the statute either expressly or by necessary implication and which has been conferred in the widest possible terms includes a power to remand the matter to the Deputy Commissioner, namely, the original authority for reconsideration, which is incidental and necessary to effectuate the] main appellate power conferred upon him and therefore I hold that there is no substance in the contention of the petitioners in all these writ petitions on this particular point.

12. Coming to the facts of each case, as far as W.P. No. 2035 of 1971 is concerned, respondents 1 to 5 therein filed an application before the Deputy Commissioner, Hindu Religious and Charitable Endowments, for framing a scheme u/s 64 (1) of the Act regarding the administration of the endowment created by one Lakshmi Ammal. According to these respondents, the endowment was created by one Lakshmi Ammal under document dated 7th October, 1925 and as per that document these Respondents were the trustees of the

endowment in question. On the other hand, the petitioner herein put forward the contention that the said Lakshmi Ammal and one Rangaswami Iyer had created an endowment by a document dated 28th September 1914 and by that document they had not reserved any power to cancel or vary the terms of the endowment and consequently the subsequent document dated 7th October, 1925 will have no effect, and that under the former document the petitioner is the person entitled to perform the charities in question. The Deputy Commissioner, who considered the matter, passed an order on 17th August, 1968. He came to the conclusion that though the charity had to be performed at Trichy and in the endowed house, the petitioner who is residing in Madurai had been performing the charity, that there was no need to settle a scheme and that it is enough if the petitioner is directed to carry out the terms of the endowment itself. Against that order of the Deputy Commissioner, respondents 1 to 5 preferred an appeal to the Commissioner, Hindu Religious and Charitable Endowments and the Commissioner by the impugned order came to the conclusion that since the petitioner had been performing the charity in Madurai as against in Trichy which is the place in which the charity had to be performed according to the injunctions contained in the document and since the petitioner had not been feeding 12 Brahmins on every dwadasi day as provided in the document, but had been feeding a less number of persons on certain occasions and since poojas had not been performed to Lord Venkataramana and Nachiar in the endowed house, it was a proper case for framing a scheme and remanded the matter to the Deputy Commissioner in this behalf. It is to quash this order of the Commissioner that the present writ petition, W.P. No. 2035 of 1971 has been filed.

13. The first point that has to be considered is, whether the Commissioner has jurisdiction to remand the matter. As I have already held, the Commissioner has jurisdiction to remand the - matter. Secondly, the Commissioner agreed with the conclusion of the Deputy Commissioner that the endowment in question constituted a religious endowment. Section 64 of the Act which alone deals with the power of settling a scheme states that for the purposes of that section, "institution" means a temple or a specific endowment attached to a temple. The expression, "specific endowment" has been defined in Section 6 (19) of the Act and according to that definition, it includes any property or money endowed for the performance of any other religious charity. Section 6 (16) defines the expression, "religious charity" as meaning a public charity associated with a Hindu festival or observance of a religious character whether it be connected with a math or temple or not. Section 6 (17) defines the expression "religious endowment" or "endowment" as meaning all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and including the institution concerned and also the premises thereof. Consequently a combined effect of Section 6 (16), 6 (17) and 6 (19) of the Act is sufficient to bring the endowment in question within the scope of Section 64 of the Act so as to clothe the Deputy Commissioner with

authority to settle a scheme for the management thereof, if the circumstances warrant settlement of such a scheme.

14. In this particular case, both the Deputy Commissioner and the Commissioner agreed that the petitioner was performing the charity at Madurai as against the prescription and direction contained in the endowment that it should be performed at Trichy. The Commissioner came to the conclusion on a question of fact, that the petitioner had not been feeding 12 Brahmins on dwadasi days and that he had been feeding a less number of Brahmins on certain occasions. The Commissioner also came to the conclusion that the petitioner had not been performing poojas to Lord Venkataramana and Nachiar in the endowed house as has been prescribed in the endowment. All these things will constitute breach of trust on the part of the petitioner and therefore the Commissioner was justified in coming to the conclusion that a scheme should be settled and remanding the matter for such settlement to the Deputy Commissioner.

15. Consequently, W.P. No. 2035 of 1971 fails and is dismissed. There will be no order as to costs.

16. As far as W.P. No. 2860 of 1972 is concerned, the petitioner therein filed a petition before the Deputy Commissioner u/s 63 (b) of the Act in O.A. No. 8 of 1964 for declaring that he is the hereditary trustee of certain temples, namely, Thiru Veerattaneewarar temple and other temples in Komerikuppam village, Kancheepuram Taluk, Chingleput District. The Deputy Commissioner by his order dated 16th March, 1970 declared the petitioner as the hereditary trustee. As against that order of the Deputy Commissioner, the second and third respondents preferred an appeal in A.P. No. 45 of 1970 before the Commissioner. The Commissioner by his impugned order dated 30th March, 1972 came to the conclusion that the Deputy Commissioner had not discussed the entire evidence with reference to all the exhibits placed before him and therefore remanded the matter to the Deputy Commissioner for fresh disposal. I have already held that the Commissioner has power to remand the matter to the Deputy Commissioner.

17. The only other question is, whether the Commissioner was right or not in remanding the matter to the Deputy Commissioner, having regard to the circumstances of this case. The Commissioner has referred to Exhibits B-1 to B-7 as well as the language contained in Exhibit B-9 and /stated that the Deputy Commissioner has not considered all the documents filed before him fully and discussed the same, before arriving at the conclusion which he did, and therefore for the purpose of enabling him to consider the entire matter in full, it is necessary to remand the matter to the Deputy Commissioner. I do not see any error of law apparent on the face of the record or any error of jurisdiction on the part of the Commissioner in doing so. Therefore, the writ petition is dismissed. There will be no order as to costs.

18. However, it is made absolutely clear that since the Commissioner has remanded the entire matter to the Deputy Commissioner for fresh disposal, the

Deputy Commissioner will have to proceed with the matter afresh without being constrained by any expression of opinion, even impliedly or indirectly made by the Commissioner on the merits of the case.

19. As far as W.P. No. 189 of 1973 is concerned, the petitioners therein filed a petition, O.A. No. 15 of 1965 u/s 63 (b) of the Act for declaration that they are the hereditary trustees of the suit temple or in any event to declare the second petitioner as the hereditary trustee. O.A. No. 153 of 1965 was filed by one Sachithanardi- Bhakthan who is impleaded as the third Respondent herein, who claimed a similar declaration that he and his brothers are the hereditary trustees along with Kandaswami, the first petitioner herein. In both these petitions, one Chinnaswami Udayar, figured as the Respondent. The Deputy Commissioner discussed the evidence in both the cases and finally held that the office of the trustee hip in the suit temple was hereditary and that the dispute between the petitioners in O.A. No. 15 of 1965 and the petitioners in O.A. No. 153 of 1965 as to who should succeed to the office of the trustee was a matter not covered by Section 63 of the Act and had to be decided by a separate civil suit. Against that order of the Deputy Commissioner, four appeals were preferred to the Commissioner. The petitioners herein preferred A.P. No. a of 1971. The first petitioner alone preferred A.P. No. 3 of 1971. Chinnaswamy Udayar, preferred A.P. No. 4 of 1971. The third Respondent herein, namely, Sachithananda. Bakthan, preferred A.P. No. 11 of 1971. The Commissioner by his order dated 3rd April, 1972, allowed all the appeals and remanded the matter to the Deputy Commissioner for fresh disposal on the ground that the Deputy Commissioner had not discussed the evidence with reference to each of the documents filed before him. It is to quash the order of the Commissioner made in A.P. No. 2 of 1971 that this writ petition has been filed.

20. Apart from any other consideration, this Writ Petition has to be dismissed on a narrow ground. As I have pointed out already, the order was passed in four appeals and it is a common order. The petitioners have preferred this writ petition only against the order of the Commissioner in A.P. No. 2 of 1971. A.P. No. 3 of 1971 was preferred by the first petitioner himself and A.P. No. 4 of 1971 was preferred by Chinnaswamy Udayar, to which the petitioners herein were impleaded as parties. A.P. No. 11 of 1971 was preferred by Sachitbanandha Bakthan to which the first petitioner was impleaded as a party. Consequently the order of remand was passed in all the four appeals and even if the order of remand in A.P. No. 2 of 1971 is set aside in the present writ petition, the order of remand passed in the other three appeals will stand with the result by the issue of any writ, this Court will be producing an embarrassing and conflicting situation, where with regard to one appeal the order of the Commissioner will stand quashed and with regard to the other three appeals the order of the Commissioner having become final will stand. On this short ground, this writ petition is liable to be dismissed.

21. Apart from this, even on merits, I do not find any justification whatever for

interfering with the order of the Commissioner. The only contention put forward by the learned Counsel for the petitioner is that the Deputy Commissioner has considered all the documents and the evidence and that therefore the Commissioner is wrong in remanding the matter for considering the very same evidence and documents. In my opinion, the Commissioner is right when he pointed out that the entire evidence had not been discussed with reference to each of the documents. Hence, the order of the Commissioner does not call for any interference, on this ground also. Therefore, the writ petition fails and is dismissed. There will be no order as to costs.

22. As far as W.P. No. 1672 of 1973 is concerned, a petition, O.A. No. 19 of 1966, was filed before the Deputy Commissioner for modification of a scheme framed in respect of the temple involved in this writ petition. The Deputy Commissioner passed a preliminary order on 31st March, 1970 deciding to modify the scheme and also passed final orders on 10th August, 1970 actually modifying the terms of the scheme. A.P. No. 50 of 1970 was preferred before the Commissioner by Respondents 1 and 2. herein against the order of the Deputy Commissioner, dated 31st March, 1970 and A.P. Nos. 18 and 42 of 1971 were preferred before the Commissioner by the Petitioners and the Respondents 2 and 3 herein respectively against the final order, dated 10th August, 1970. The Commissioner by his impugned order allowed all the appeals and remanded the matter to the Deputy Commissioner for fresh disposal, after considering the claim of the second appellant before him that he was the hereditary trustee.

23. As in the previous case, in this case also the petitioners have filed this writ petition only against the order of the Commissioner, dated 13th October, 1972 in A. P. No. 18 of 1971. It has to be noted that the other appeal, namely A.P. No 42 of 1971 was preferred by Respondents 2 and 3 herein against the very same order and that appeal was also allowed and the matter was remanded to the Deputy Commissioner by a common order. The petitioners herein who were impleaded as Respondents to A.P. No 42 of 1971 have not preferred any writ petition against the order of the Commissioner in A.P. No. 42 of 1971 and therefore that order has become final, as far as the petitioners also are concerned. Consequently it is not open to them to file a writ petition only for the purpose of quashing the order made in A.P. No. 18 of 1971 alone. On this short ground, as in the previous case, this writ petition also-fails and is dismissed. There will be No. order as to costs.