

(1970) 03 MAD CK 0035
In the Madras High Court

S. Ramaswamy Velar and Another

APPELLANT

Vs

V. Pidaran and Others

RESPONDENT

Date of Decision : 18-03-1970

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 63

Citation : (1970) 83 LW 568 : (1970) 2 MLJ 453

Hon'ble Judges : S. Maharajan, J

Bench : Single Bench

Judgement

S. Maharajan, J.—These two appeals are directed against the judgment of the learned Subordinate Judge of Madurai in O.S. No. 28 of 1961. In A.S. No 564 of 1963 the plaintiffs are the appellants, whereas in A.S. No. 634 of 1963 defendants 2 to 10 are the appellants.

2. The suit out of which the appeals arise, was instituted by plaintiffs 1 and 2 for cancellation of the order dated 22nd November, 1960 of the Commissioner of the Hindu Religious and Charitable Endowments, Madras, in Appeal No. 36 of 1960 on his file and for a declaration that the plaintiffs are the hereditary trustees of three temples, namely, Karuppannaswami, Kannimar Amman and Ayyanar temples in Anaiyur Village, Madurai taluk.

3. The Commissioner, Hindu Religious and Charitable Endowments, was not made a party to the action. Defendants 2 to 4, who were appointed by the Commissioner as trustees of Karuppannaswami temple, and defendants 5 to 7, who were appointed by the Commissioner as trustees of Kannimar Amman temple and defendants 8 to 10, who were appointed as trustees of Ayyanar temple, were however impleaded as party-defendants to the action. In paragraph 17 of the plaint the plaintiffs alleged that the appointment by the Commissioner of these defendants as trustees was illegal and void and could not bind the plaintiffs, who were the "hereditary trustees of the temples. The defendants resisted the plaintiffs' suit on the ground that the plaintiffs were not hereditary trustees, that the order passed by the Commissioner was valid and not open to

question, and (hat in any event the suit was bad for non-joinder of the Commissioner, Hindu Religious and Charitable Endowments.

4. Issues were framed by the Court below, one of which related to the plea of non-joinder. The learned Subordinate Judge ought to have tried the issue regarding non-joinder as a preliminary issue and if he found that the suit was bad for nonjoinder of the Commissioner, he ought to have given an opportunity to the plaintiffs to implead the Commissioner, and if the plaintiffs refused to implead the Commissioner, the Court might have proceeded to dismiss the suit. But unfortunately the Court below adopted a curious procedure. It tried all the issues together, and gave the findings that the plaintiffs were the hereditary exclusive trustees of the three temples in question, that the suit was bad for non-joinder of the Commissioner, Hindu Religious and Charitable Endowments, and that the order of the Commissioner was not liable to be cancelled because he had not been made a party. After recording these findings, the learned Subordinate Judge proceeded to grant a decree for a declaration that the plaintiffs are the hereditary trustees of the temple and dismissed the suit in other respects.

5. In justification of this improper and illegal decree, he made the following observations:

The suit itself has been laid to set aside the order dated 22nd November, 1960 passed by the Commissioner, Hindu Religious and Charitable Endowments Board, Madras, in Appeal No. 36 of 1960 on his file. Having laid such a suit the plaintiffs must have impleaded the Endowments Board as a party, but far from doing so, they have slept over the matter and have failed to bring the Endowments Board on record. The result is the order referred to above cannot be set aside and the plaintiffs have to go without any remedy in respect of it. Having regard to the facts of the case, the Endowments Board is a proper and necessary party, but as it has not been brought on record the plaintiffs are barred from seeking any remedy against it. The learned Counsel for the defendants has pressed for the dismissal of the suit on this ground, but I think the interest of justice does not require it. At the most, the plaintiffs are entitled to obtain the relief of declaration, but in other respects the suit has to be dismissed as no order can be passed behind the back of the Endowments Board. It is true, without setting aside the order of Commissioner, there will be some difficulty in enforcing the decree for declaration but this is not the stage at which such matters can be gone into. At any rate, the plaintiffs must be prepared to take the risk involved in their action and it is better to leave it at that. For the reasons stated above, issue 2 is found in the negative and additional issue in the affirmative.

The decree granted being unworkable, it is but natural that both the parties should challenge it in appeal.

6. We shall first consider the contentions of learned Counsel for the plaintiffs to the effect that the Court below ought to have cancelled the order of the Board even though the Board was not added as a party. It is said that the order passed

by the Commissioner is an order passed by a quasi-judicial authority, and that in a suit instituted to set aside such an order, the quasi-judicial authority is neither a proper nor a necessary party to the suit.

7. u/s 63 of the Madras Hindu Religious and Charitable Endowments Act (Madras Act XXII of 1959), the Deputy Commissioner is empowered to enquire into and decide the following disputes and matters (a)... (b) whether a trustee holds or held office as a hereditary trustee; (c) ... (d) ... (e) ... (f) ... (g) ...Against the order passed by the Deputy Commissioner an appeal lies to the Commissioner u/s 69 of the Act. Any party aggrieved by the order passed by the Commissioner can u/s 70 of the Act institute a suit in Court against such an order; and the Court may modify or cancel such order but it has no power to stay such an order pending the disposal of the suit. But apart from the quasi-judicial powers, the Commissioner has certain administrative powers under the Act. u/s 11 of the Act the Commissioner shall be a corporation sole and shall have perpetual succession and a common seal and may sue and be sued in his corporate name. u/s 23 subject to the provisions of the Act, the administration of all religious endowments shall be subject to the general superintendence and control of the Commissioner and such superintendence and control shall include the power to pass any orders, which may be deemed necessary to ensure that such endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist. The expression "religious endowment" has been defined in Section 6(1) of the Act to mean all property belonging to or given or endowed for the support of mutts 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 includes the institution concerned and also the premises thereof. u/s 26 of the Act the Deputy Commissioner, who is a subordinate of the Commissioner can supercede even a hereditary trustee if he becomes subject to any of the disqualifications mentioned in that section such as ceasing to profess the Hindu religion, being an undischarged insolvent and so on. u/s 47(2) of the Act, where in the case of any institution included in the list published u/s 46 having a hereditary trustee or trustees the Commissioner after notice to such trustee or trustees and after such enquiry as he deems adequate, considers for reasons to be stated that the affairs of the institution are not and are not likely to be properly managed by the hereditary trustee or trustees, the Commissioner may, by order, appoint such number of non-hereditary trustees as he thinks necessary. Powers of suspension, removal or dismissal of trustees are conferred upon the Commissioner u/s 54 of the Act. Where a permanent or temporary vacancy occurs in the office of a hereditary trustee of a religious institution and there is a dispute regarding the right of succession thereto or when such vacancy cannot be filled up immediately or when a hereditary trustee is a minor and has no guardian fit and willing to act as such or there is dispute respecting a person, who is entitled to act as guardian, or when a hereditary trustee, by reason of unsoundness of mind or other mental or physical defect or infirmity, is unfit for performing the functions

of a trustee the Deputy Commissioner, who is a subordinate of the Commissioner is empowered u/s 54 of the Act to appoint a fit person to perform the functions of a trustee of the institution, until the disability of the hereditary trustee ceases or another hereditary trustee succeeds to the office or for such shorter term as the Deputy Commissioner may direct. There are also other provisions in the Act, which show that the Commissioner has enormous powers of superintendence over temples of the kind in dispute in this suit as well as over hereditary and non-hereditary trustees thereof.

8. There is therefore no analogy between the Commissioner exercising not only quasi-judicial functions but also vast administrative powers under the Act and quasi-judicial bodies like the State Transport Appellate Tribunal who have no administrative powers in respect of matters coming up before them for adjudication. In fact although arbitrators appointed under the Arbitration Act are not necessary parties to the proceedings in which their decisions are impugned, yet in *Lakshmipathi Ayyah v. Mysore Commercial Union Ltd.* (1963) 1 Mys.L.J. 465, it was held

that where allegations personal to the arbitrator were made, findings of Court which may be relied upon by the actual parties to a dispute to enforce the liability against the arbitrator it is in consonance with the principles of natural justice to give an opportunity to him to appear and plead as party rather than take the chance of his being cited as a witness, which may or may not materialise.

9. Further u/s 42 of the Specific Relief Act any person entitled to any legal character or to any right as to any property may institute a suit against any person denying or interested to deny his title to such character or right. Unlike a purely judicial authority, who has no interest in upholding his own order before an appellate Court, the Commissioner, Hindu Religious and Charitable Endowments, is by virtue of his statutory powers of superintendence over religious endowments, interested to deny the character of the plaintiffs as hereditary trustees of the suit temples as well as to uphold the order which the plaintiffs seek to set aside in a Court of law. In these circumstances it cannot be said that the Board is neither a necessary nor a proper party to the suit.

10. Order 1, Rule 10(2) Civil Procedure Code, empowers the Court at any stage of the proceedings to order that the name of any person, who ought to have been joined whether as plaintiff or as defendant or whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit to be added. We are of the view that in the absence of the Commissioner it is not possible for the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. The declaration made by the Court below regarding the status of the plaintiffs behind the back of the Commissioner will lead to complications. It is open to the Commissioner to say that the declaratory decree is not binding on him. The learned Subordinate Judge has foreseen these

difficulties. That is why he refused to cancel the order of the (Board) Commissioner behind his back. But he failed to see that the paper declaration granted by him would be in the nature of a *brulum fulmen*, having no practical utility either to the parties in whose favour he granted it or to the parties against whom the declaration was made. In these circumstances he ought to have tried the issue of non-joinder as a preliminary issue and directed the plaintiffs to implead the Commissioner. Instead of doing that he has chosen erroneously to try all the issues on the merits, and after holding that the plaintiffs are the hereditary trustees, refused to cancel the order of the Commissioner on the sole ground that he was not a party to the suit. The resulting position is far from satisfactory. There is, on the one hand, a declaration of the Court to the effect that the plaintiffs are the hereditary trustees of the temples, and there is, on the other hand, the order of the Commissioner refusing to recognise them as hereditary trustees and subsequently appointing defendants 2 to 10 as non-hereditary trustees of the temples in question. It is small wonder that both the parties are aggrieved with the trial Court's decree which has put them in such a predicament. We have little doubt that the judgment and decree of the Court below should be set aside.

11. Appellants in A.S. No. 564 of 1963 have filed C.M.P. No. 10385 of 1965 praying that this Court may be pleased to implead the Commissioner, Hindu Religious and Charitable Endowments, as a party-respondent to the appeal. This application has been opposed by all the respondents as well as by the Board. But we think it necessary in the interests of justice to implead the Commissioner as the 11th defendant in the suit. As the entire evidence has been recorded in the absence of the Commissioner, we allow both the appeals and set aside the judgment and decree of the Court below and remand the suit for fresh disposal in accordance with law after permitting the plaintiffs to make consequential amendments in the plaint and after giving an opportunity to the Commissioner to file an answer, cross-examine the plaintiff's witnesses and lead evidence on all the issues including those to be raised by him.

12. The appellants in each appeal will be entitled to refund of the Court-fee paid on appeal.

13. The costs of the appeals will abide and follow the result of the suit and will be provided for in the revised judgment of the trial Court.