(1967) 08 MAD CK 0053

In the Madras High Court

Sambamurthy Gurukkal APPELLANT

Vs

The State of Madras and Others RESPONDENT

Date of Decision : 09-08-1967

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 45

Citation : (1968) 1 MLJ 184

Hon'ble Judges : P. Ramakrishnan, J

Bench : Division Bench

Judgement

P. Ramakrishnan, J.—Since the matter in controversy in this writ petition can be disposed of on a preliminary ground regarding jurisdiction, it is sufficient to state briefly such facts as are necessary for that purpose. The petitioner is the hereditary trustee of Sri Purathanavaneswarar Temple, Thiruchitrambalam, Pattukottai Taluk, Tanjore District. It is common ground that a scheme framed by the former Madras Hindu Religious Endowments Board, as modified in O.S. No. 38 of 1949 on the file of the District Court, West Tanjore, continues to be applicable to the affairs of the temple. That scheme contains a clause, which is to the following effect:

The Board shall have power to appoint an Executive Officer for the temple. His salary shall come out of the funds of the temple. The salary and scale of his salary and the conditions of his service shall be governed by the provisions of Board''s Order No. 2001, dated 20th July, 1942, as modified from time to time.

2. Relying on this provision, on 18th September, 1962, the Deputy Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Thanjavur, appointed one Kandswami as the Executive Officer of the temple. The petitioner field a revision petition aggrieved against that order to the Commissioner who rejected the petition by an order dated 2nd August, 1963. A subsequent revision to the State Government was also dismissed. The petitioner has, the there-after, come to this Court by filing this writ petition and seeks for a writ of certiorari quashing the orders mentioned above.

3. It is urged by the learned Counsel for the petitioner that the appointment of an Executive Officer substantially diminishes his powers to manage the temple, and that such an appointment ought not to have been made in this case, without prier notice to the hereditary trustee, when no specific allegations had been made that he had mismanaged the affairs of the temple and that the interests of the temple required the appointment of an Executive Officer. As against this contention, the learned Government Pleader appearing for the respondents urges that Clause 6 of the scheme above extracted gives the necessary power for the appointment of an Executive Officer, that the trustee is bound by the provisions of the scheme, and that therefore he cannot insist upon, prior notice before an Executive Officer is appointed. Learned Counsel for the petitioner refers to certain observations of the Supreme Court in the decision in Sri La Sri Subramania Desiga Gnanasambanda Pandara Sannadhi, Trustee of Sri Vaidyanathaswami Temple, Vaitheeswarankoil Vs. State of Madras, at 1687. The Supreme Court observed, with reference to certain powers conferred on the Executive Officer to be appointed under a proposed modification of a pre-existing scheme and which was dealt with in that decision:

Such a drastic provision may be necessary in a case where the temple is mismanaged, or if there are other circumstances which compel such an appointment. But there is concurrent finding of fact in this case that the Commissioner has failed 1 to establish any of the charges levelled by him against the trustee. It is not, therefore, possible to hold that any case has been made out for the appointment of an Executive Officer who practically displaced the trustee.

The learned Government Pleader submits that the above decision will apply only where for the first time there are proposals undertaken to appoint an Executive Officer and to that extent the powers of the trustee are sought to be affected, but not to a case like, the present, where the matter has already been considered and a scheme passed and accepted which contains the necessary power to appoint an Executive Officer, and, in such circumstances, there will be no need before the power is exercised to give notice to the hereditary trustee, or to establish that he had been guilty of mismanagement of the affairs of the temple. The learned Government Pleader refers also to two unreported decisions of this Court one in S. Nataraja Pillai v. The Commissioner, Hindu Religious and Charitable Endowments, Madras W.P. No. 880 of 1960 by Srinivasan, J., which was followed by Ramamurti, J., in Sri Abhyapradanvaradarajawami Temple, Kambarajapuram, Kancheepuram Taluk v. The Commissioner, Hindu Religious and Charitable Endowments (Administration), Madras W.P. No. 547 of 1962. What the learned Judges have laid down in the above decisions, is that when the Commissioner for Hindu Religious and Charitable Endowments Department proceeds to appoint an Executive Officer u/s 45 of the Madras Hindu Religious and Charitable Endowments Act, 1959, he is competent to do so without any reference to the trustee and that it could not be contended that before such appointment of an Executive Officer, the trustee should be given notice.

4. But it has to be borne in mind that in the present case, the Executive Officer was not appointed u/s 45 of the aforesaid Act. When it was urged before the Commissioner in the revision petition filed before him by the petitioner herein, that it was the Commissioner who was empowered to appoint an Executive Officer and not the Deputy Commissioner, the Commissioner met the objection by observing that in the present case the appointment was made by the Deputy Commissioner in pursuance of Clause 6 of the scheme and, therefore, the objection that he had no power to make such appointment u/s 45 of the Act would not hold good. So it is clear that the respondents have treated the appointment of the Executive Officer in this case as one made in pursuance of Clause 6 of the scheme aforesaid. Consequently, it is unnecessary to apply to the interpretation to Section 45 of the Act given by the learned Judges in the two writ petitions stated above.

5. What remains therefore is to examine whether the present appointment by the Deputy Commissioner is in Compliance with Clause 6 of the scheme. That clause gives power to the Hindu Religious and. Charitable Endowments Board to make the appointment. The Board as constituted under the earlier enactments ceased to exist with the enactment of the Madras Act XIX of 1951. Section 102 of that Act states that any reference to the Board in any enactment in force in the State of Madras or in any notification, order, scheme, etc., made under any such enactment and in force in the State, shall, on and from the commencement of the Act, be construed as reference to the Commissioner appointed under the 1951 Act. The 1959 amended Act maintains this continuity in regard to the Commissioner exercising the powers which the Board exercised, under the enactments prior to 1951. From this, it would be clear that the power which Clause 6 of the scheme had conferred on the Board for appointing an Executive Officer, could be exercised only by the Commissioner, and not by the Deputy Commissioner. On this preliminary ground, the appointment in the present case cannot be sustained and has to be set aside. I, therefore, allow the writ petition and quash the appointment of the Executive Officer in this case by a writ of certiorari.

6. I have not given any decision on the other point raised as to whether a notice is necessary or not before the Commissioner exercises his power under Clause 6 of the scheme to appoint an Executive Officer. But, considering the circumstance that for 13 years the hereditary trustee has been allowed to be in management without any complaint, it would be reasonable to give him an opportunity to make any representations in that respect before an appointment of Executive Officer is made. Further the temple itself is a very small one, its annual income, being only Rs. 572, as appears from the petitioner''s affidavit. The income may not be sufficient to meet the expenses of an Executive Officer appointed solely for the temple. In fact the temple had to be grouped with another temple and treated as one unit to be under the management of an Executive Officer appointed for both the temples. This circumstance also may have relevancy in considering the question whether it is really necessary to have the management

by the hereditary trustee supplemented by the appointment of an Executive Officer in the interests of the temple. These points will have to be considered by the Commissioner.

7. The petition is allowed with the observations mentioned above. No order as to costs.

