
(2014) 06 MAD CK 0300

In the Madras High Court

Case No : W.A. (MD). No. 723 of 2014 and M.P. (MD). No. 1 of 2014

Shanmuga Battar

APPELLANT

Vs

The Executive Officer

RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 63,
63(e), 69(1)

Citation : (2014) 06 MAD CK 0300

Hon'ble Judges : V.M. Velumani, J;V. Ramasubramanian, J

Bench : Division Bench

Judgement

V. Ramasubramanian, J

1. This is an appeal filed against an order of the learned Single Judge dismissing a Writ Petition, on the ground that the matter involved disputed questions of fact with regard to the rights of the brothers to perform poojas in Arulmiku Sri Subramania Swamy Thirukovil, Tiruchendur, Tuticorin District.

2. Heard Mr. R. Nandhakumar, learned counsel for the appellant. Mr. M. Muthugeethayan, takes notice for the first respondent and Mr. R. Vijayakumar, learned counsel for the respondents 2 and 3.

3. The appellant as well as the respondents 2 and 3 are brothers. All of them have inherited the right of performing poojas in Arulmiku Sri Subramania Swamy Thirukovil which is the first respondent. When an order was passed by the first respondent on 06.05.2014, directing the appellant as well as the respondents 2 and 3 to take the rights equally by rotation, the same came to be challenged by the appellant by way of a Writ Petition in W.P. (MD). No. 8465 of 2014. The Writ Petition was dismissed by the learned Single Judge, on the ground that the said order did not call for any interference on merits and equity. Aggrieved by the said order, the Writ Petitioner is on appeal.

4. As against the order impugned in the Writ Petition, the appellant should have actually filed a statutory appeal u/s 69(1) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 to the Commissioner (for short "the Act"). There is a detailed procedure and a three tier mechanism provided under the Act for redressal of such grievances. This Court exercising jurisdiction under Article 226 of the Constitution of India, need not get into this factual details and affirm or set aside such order. Therefore, we are of the view that the appellant could be directed to go before the appellate authority.

5. Mr. Muthugeethayan, learned counsel for the first respondent submitted that the statutory authority conferred with power to decide such issues is a Joint Commissioner or the Deputy Commissioner u/s 63(e) and that an Executive Officer is not the person, who is empowered to exercise such a power. But, if it so, then, the learned Single Judge, ought to have actually set aside the impugned order and left it open to the parties to go before the Joint Commissioner, who is an authority u/s 63 of the Act. In other words, the order which is impugned in the Writ Petition, if the contention of the learned counsel for the first respondent is accepted, is wholly without jurisdiction. But, unfortunately, such an authority came to exercise the power on account of a direction issued by this Court in W.P. (MD). No. 4651 of 2014, dated 17.03.2014.

6. Once it is conceded that the first respondent did not have the power to pass an order u/s 63(e), it is no answer to say that the power not vested by the statute came to be exercised merely on account of a direction issued by this Court. No court can confer any jurisdiction upon any authority to exercise the power, that is not conferred upon him. Therefore, if that is accepted, the very foundation of the order impugned in the Writ Petition will be shaken.

7. Though the provision contained u/s 63 does not speak of Executive Officer, Clause (e) of Section 63 deals with the very dispute on hand. The first respondent happens to be a Joint commissioner. Therefore, we are of the view that any order passed by the the Joint Commissioner that touches upon the subject matter dealt with by Section 63(e) can be subject to an appeal u/s 69(1).

8. There are two issues. The first is as to whether the subject matter falls u/s 63(e) or not?. The second aspect is who should exercise such power? Once it is conceded that the subject matter of the dispute falls u/s 63(e), the mere fact that it was exercised by a wrong authority, will not annul the remedy of appeal u/s 69(1) of the Act. In other words, the exercise of the power conferred u/s 63(e) by a rightful authority or a wrongful authority can become a subject matter of the appeal u/s 69(1) of the Act.

9. In view of the above, the order of the learned Single Judge is set aside and the appellant is given an opportunity to file an appeal to the Commissioner u/s 69(1) of the Act. It appears that the appellant has a time limit of 60 days to file an appeal against the order impugned in the Writ Petition. Therefore, driving the appellant to take recourse to the appellate remedy will not be an ineffective

remedy.

10. In the light of the above, the Writ Appeal is ordered, accordingly. Consequently, the connected miscellaneous petition is closed. No costs.