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**(1973) 03 MAD CK 0023**  
**In the Madras High Court**  
**Case No : Writ Appeal No. 45 of 1965**

Shanmugha Porayar (Decd.) and Others APPELLANT  
Vs  
The State of Madras RESPONDENT

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**Date of Decision :** 14-03-1973

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 11  
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —  
Section 3

**Citation :** AIR 1974 Mad 90 : (1973) 86 LW 744

**Hon'ble Judges :** Venkataraman, J;Maharajan, J

**Bench :** Division Bench

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## Judgement

Venkataraman, J.—This writ appeal has been filed in order to challenge the notification of the Government of Madras u/s 3 of the Madras

Hindu Religious and Charitable Endowments Act, 1951 in respect of a certain charity conducted by the appellant. The notification extended the

provisions of the Act to the particular charity. The appellant filed a suit challenging the notification on the ground inter alia that there was no

dedication to the public and that it was only a private trust. He failed in the trial Court, in the first appellate Court and in the second appeal.

Thereafter he filed the Writ Petition No. 817 of 1962 challenging the notification on the ground that the Government had no authority to invoke the

provisions of the Act in respect of this Charity because the beneficiaries under the charity were not exclusively Hindus, e.g., feeding and distribution

of water could apply even in respect of non-Hindus. His contention was that the provisions of the Act could be invoked only if the beneficiaries

were exclusively Hindus. In support of this contention, he relied on a decision of a Bench of this Court in The State of Madras and Another Vs.

The Urumu Seshachalam Chettiar Charities and Others, . This ground of attack of the notification had not, however, been taken in the suit which

the appellant had filed earlier. Veeraswami, J., as he then was, before whom the writ petition came up, recognised the force of the submission that

the Government had no jurisdiction to extend the provisions of the Act to this charity because the beneficiaries may not be exclusively Hindus. All

the same, the learned Judge declined to interfere in writ proceedings because in his opinion, this ground of attack should have been put forth in the

earlier suit and that not having been done, it was not open to the appellant to raise the point in the writ petition after having failed in the suit and the

appeals therefrom.

The learned Judge also pointed out that there was a delay of four years in filing the writ petition, though he also observed that in mitigation thereof

there was the circumstance that the appellant had been fighting this matter in the civil Court. It is against this order of Veeraswami, J., as he then

was, that the present writ appeal has been filed. We are in entire agreement with the learned Judge in his view that the ground of attack of the

notification now put forth is not open to the appellant on the principle of constructive res judicata enacted in Explanation IV to Section 11, Code of

Civil Procedure. This is a ground of attack which might and ought to have been put forth in the suit. In *Devilal Modi, Proprietor, M/s. Daluram*

*Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others*, , the assessee was assessed to Sales-tax for 1957-58. He filed a writ petition

challenging the order of assessment. It was dismissed by the High Court. The assessee filed an appeal to the Supreme Court by special leave. At

the hearing, he wanted to raise two new pleas. Permission was refused and the appeal was dismissed. Thereafter the assessee filed another writ

petition in the High Court putting forth the said two pleas. The High Court examined the pleas on merits and rejected them. The assessee filed an

appeal to the Supreme Court. Their Lordships pointed out that the High Court should have dismissed the writ petition on the ground of

constructive res judicata and need not have decided them on the merits. They observed at pages 689 and 690:

This rule (constructive res judicata) postulated that if a plea could have been taken by a party in a proceeding between him and his opponent, he

would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but

basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to

writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time and that plainly is

inconsistent with considerations of public policy to which we have just referred.

Again at pages 691 and 692, their Lordships observed:

In case the Madhya Pradesh High Court had upheld these contentions and had given effect to its decision, its order would have been plainly

inconsistent with the earlier decision of this Court, and that would be inconsistent with the finality which must attach to the decisions of this Court as

between the parties before it in respect of the subject-matter directly covered by the said decision. Considerations of public policy and the

principle of the finality of judgments are important constituents of the rule of law and they cannot be allowed to be violated just because a citizen

contends that his fundamental rights have been contravened by an impugned order and wants liberty to agitate the question about its validity by

filing one writ petition after another.

2. The principle of this decision directly applies to the instant case. The above decision was quoted with approval in Gulabchand Chhotalal Parikh

Vs. State of Bombay (Now Gujarat), . The appellant in that case had stood as surety for certain contractors who had taken in auction the forest

produce on condition of paying certain sums of money to Government. The appellant contended that he had been discharged from his liability by

reason of the act of the Government allowing the contractors to remove some of the produce without the knowledge of the appellant. He filed a

writ petition in the High Court and that was dismissed on merits. Subsequently he filed a suit on the same basis. It was held by the majority of their

Lordships that the decision in the writ petition operated as res judicata in the suit. The decision emphasises that the principle of res judicata is

based on sound policy and that it does not depend on the nature of the earlier or the later proceedings. The appellant against relied on a decision of

the Punjab High Court. Their Lordships in holding that it had been wrongly decided observed at page 573.

Courts do not usually enter into disputed questions of fact (in writ petitions) but there is no bar to their doing so if they feel disposed to enter into

such facts and arrive at a conclusion with respect to them. We do not see why all the grounds which can be urged in support of or against a matter

raised for decision in a writ petition cannot be urged in the proceedings on it.

It is clear from the above decision that it is immaterial that the previous decision in the case before us was rendered in a suit and the second

proceeding is a writ petition. Indeed the position is worse for the appellant before us because, the suit was the most comprehensive form of

remedy, wherein he could have put forth all possible objections to the notification including the ground now urged. The important point is that both

in the suit and in the writ petition, the appellant asks the same relief namely a declaration that the notification does not apply to this trust. The point

is really plain and need not be discussed in further detail.

3. Sri T. R. Srinivasan, the learned counsel for the appellant has relied on two decisions, namely Mathura Prasad Bajoo Jaiswal and Others Vs.

Dossibai N.B. Jeejeebhoy, and Palaniappa Chettiar (died) and Others Vs. Babu Sahib and Others, , but they are not relevant.

4. In the result, the writ appeal has no merit. It is accordingly dismissed, but under the circumstances without costs.

5. Appeal dismissed.