
(1993) 10 MAD CK 0009

In the Madras High Court

Case No : Criminal R.C. No. 317 of 1990 and Criminal R.P. No. 316 of 1990

Sornam Asari

APPELLANT

Vs

Thangasamy, Executive Officer, H.R. and C.E. Admn. Dept.
Kottar and 2 others

RESPONDENT

Date of Decision : 06-10-1993

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 101

Citation : (1993) LW(Cri) 645

Hon'ble Judges : Bellie, J

Bench : Single Bench

Advocate : K.V. Subramaniam, for the Appellant; S. Subbiah for first Respondent and Respondents 2 and 3 not appearing in person or by Advocate, for the Respondent

Judgement

Bellie J.

1. This Criminal Revision is filed against an order of the Judicial Magistrate No. II, Nagercoil allowing a petition filed u/s 101 of the Tamil Nadu

Hindu Religious and Charitable Endowments Act, 1959, hereinafter referred to as the Act.

2. The Petitioner before the Magistrate i.e., the first Respondent herein has filed the petition claiming that he has been appointed as the Executive

Officer of the Arulmighu Akkasalai Vinayakar temple, Kottar by the Commissioner under Ex.P-4 order and the Respondents who are in

possession of the temple, its accounts and records and properties are refusing to deliver possession of them to him, and therefore they may be

directed to deliver possession to him. Of the four Respondents, according to the Petitioner, the first three of them had been appointed as trustees

by the Hindu Religious and Charitable Endowments Board and the fourth Respondent is acting as a trustee and he is in possession of the temple and its accounts and properties.

3. It appears the first and second Respondents have stated before the trial Court that they are not in possession of the temple or anything belonging to it, and the Petitioner himself has expressed that no relief need be granted against them and accordingly the petition was dismissed as against them. Third Respondent during the pendency of the petition died. Only fourth Respondent contested the petition filing a counter raising various objections.

4. The learned Magistrate over-ruled the objections of the fourth Respondent and he ordered delivery of possession as prayed for. It is against this order the fourth Respondent has filed this Criminal Revision Case.

5. It is contended by Mr. K.V. Subramaniam, learned Counsel appearing for the revision Petitioner-fourth Respondent that the fourth Respondent is not a trustee appointed by the Hindu Religious and Charitable Endowments Board or any other authority and he is one of the four trustees appointed by the Viswakarma community to which the temple in question belongs and therefore the order of Ex. P.1 passed by the Commissioner cannot be executed against him.

6. I find no merit in this contention. A reading of Section 101 of the Act would show that the order of the Commissioner can be executed against any trustee and not against only the trustees who had been appointed by the Board or any other authority. In this connection the learned Counsel relied on a decision in Sankamarayana Pillai v. Ramaswamy Pillai and Ors. (A.I.R. 1965 Mad 512). But a reading of this decision shows that there is nothing supporting this contention. The trustee had been defined u/s 6(22) of the Act, and it is as follows:

6.(22) "trustee" means any person or body by whatever designation known in whom or in which the administration of a religions institution is vested, and includes any person or body who or which is liable as if such person or body were a trustee;

The revision Petitioner-fourth Respondent would himself claim that he is a trustee and as such he is in possession. Therefore, he comes well within the abovesaid definition of trustee. Hence, clearly he comes within the terms of

Section 101 of the Act and therefore he is liable to be evicted.

7. It is next contended that the temple is a denominational temple and therefore the Hindu Religious and Charitable Endowments Board cannot

have control over it, and in fact suit O.S. No. 656 of 1983 had been filed in the Court of the District Munsif, Nageroil for declaration that the suit

temple is a denominational temple and for injunction restraining the Board from interfering with the affairs of the temple. It appears the suit was

dismissed for default. But however from the evidence of the Petitioner-Executive Officer (P.W.1) it is seen that the suit has been restored. But no

injunction order has been made. Admittedly the Revision Petitioner-fourth-Respondent was not a party to the suit but however he claims that he

filed an application for impleading him as a party, but there is no evidence to show that he was impleaded and he is now a party to the suit. It is

also submitted that there was a scheme decree passed in O.S. No. 79 of 1100 M.E. in respect of the temple as evidenced by Ex. R2.

8. However, it may be, regarding the petition filed u/s 101 of the Act, the Magistrate is only acting as an Executing Court and he cannot go into any

question beyond the order of the Commissioner, and the only remedy of an aggrieved person is to get relief in an appropriate forum. In

Rathinasamy Moopanar and Another Vs. Subramania Udayar and Others, Kunhamed Kutti, J. has stated thus:

It is not open to a Magistrate in a petition presented to him u/s 101 of the Madras Hindu Religious and Charitable Endowments Act, 1959, by

persons appointed as trustees of certain temples, to canvass the propriety or validity of the order of appointment of the Petitioners as trustees. His

powers under the section are very limited and in dealing with an application u/s 101 he is in the position of an executing Court and cannot go

behind the order or certificate issued by the Commissioner. He has no power to entertain any objection to the validity, legality or correctness of the

order or to the jurisdiction of the authority issuing it.

9. Earlier in R. Shanmugharn Archagar and others v. C.P. Munuswami Naicker (1959 I M.L.J.144) while dealing with Section 87 which was the

old Section in the 1951 Act corresponding to new Section 101, Ramaswami, J. held as follows:-

The powers of a Magistrate under S. 87(3) of the Madras Hindu Religious and

Charitable Endowments Act are very limited. He is in the position of an Executing Court, and cannot go behind the order or certificate issued by the Commissioner and he has no power to entertain any objection to the validity, legality or correctness of the order or to the jurisdiction of the authority issuing the order of certificate. The only remedy of the aggrieved party is to file a suit which is specifically saved by the last proviso to Section 87 from the bar of S. 93 as well as the consequences arising from the second proviso to the section. Hence, a plea to the effect that the temple is a private temple cannot be raised or entertained before the Magistrate.

Therefore, the above plea of the revision Petitioner-fourth Respondent that the temple is a denominational temple or that there was a scheme decree cannot be countenanced.

10. However, as regards delivery of possession of the properties of the temple, mere order appointing a trustee by the Board u/s 45(1) of the Act, alone is not sufficient but there must also be a certificate issued by the Commissioner in the prescribed form as stated in Section 101(1)(b), There is no such certificate issued in this case and this position has been fairly conceded by Mr. Subhiah, learned Counsel appearing for the Respondent herein-Petitioner in the lower Court. Therefore, the Petitioner cannot get delivery of the properties belonging to the temple.

11. Mr. Subramaniam, learned Counsel for the revision Petitioner- fourth Respondent would then argue that as regards the institution (temple) and its records and accounts also there must be a certificate. But this contention is without any substance. It is very plain from Section 101 that only in regard to properties a certificate is required and not regarding other things. If any authority is required for this refer to 1959 I M.L.J. 144 (supra) which, as stated above, dealt with old Section 87 of the old Act 1951 corresponding to the new Section 101. It has been made clear therein that, S. 87 clearly shows that, in cases where possession of the temple is asked for, only the order of appointment u/s 87(a) has to be produced and it is not necessary to produce any certificate which is required only in cases where possession of the properties belonging to the temple is claimed.

Where the prayer is only for delivery of possession of the temple, it is enough if the order of appointment u/s 87(a) is produced before the

Magistrate.

Therefore, this plea of the learned Counsel has to be rejected.

12. In the result, therefore, the Criminal Revision Case has to be allowed only as regards the properties and it has to be dismissed as regards the

other things viz., the temple, records and accounts. Accordingly the order of the Magistrate is set aside as regards the properties, but confirmed as

regards the temple, records and accounts. In these terms the revision case is disposed of.