

(2014) 08 MAD CK 0159
In the Madras High Court
Case No : W.P. (MD) No. 14103 of 2012

Sozhia Maruthuva Mandagapadi Kattalai Trust	APPELLANT
Vs	
The Secretary to Government, Development Endowment and Information Department	RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92, 92(1)
Constitution of India, 1950 — Article 14, 226
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 114, 116, 34, 34(1), 34(4)

Citation : (2014) 6 CTC 47 : (2014) 4 LW 430

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Judgement

S. Nagamuthu, J.—The petitioner is a Hindu Charitable Endowment Trust, governed by the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as the "Act"). On an application made by some interested persons, the Deputy Commissioner, Hindu Religious and Charitable Endowments Department, in O.A. Nos. 5/1987 and 25/1989, has framed a Scheme. In terms of the Scheme, the affairs of the Trust and properties are managed by the Trustees. The above said Trust owns 1.21 acres of land comprised in Survey No. 43 in Dindigul Town. There is a building on the said land and the income derived from the building is utilised for achieving the objects of the Trust. The building is now in a highly dilapidated condition and it has become not usable. Therefore, according to the petitioner, a decision was taken in the Board Meeting to sell the property for the benefit of the institution, as the same is also absolutely necessary. For so selling the property, the petitioner made an application under Section 34(1) of the Act seeking sanction from the Commissioner, Hindu Religious and Charitable Endowments Department. But the Commissioner, by order in Na.Ka. No. 76943/2010 dated 12.02.2011, rejected the said request and declined to give sanction to sell the said property. Aggrieved over the same, the petitioner filed a revision to the Government under Section

114 of the Act. Having considered the same, the Government, by order in G.O. Ms. No. 297, Tamil Development, Charitable Endowments and Information Department, dated 31.08.2012, confirmed the order of the Commissioner, and thereby declined to grant sanction to sell the property. The petitioner is aggrieved by the same. Therefore, the petitioner has come up with this writ petition seeking to set aside the said order and for a further direction to the Commissioner to grant sanction to sell the said property.

2. I have heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and also perused the records carefully.

3. The learned counsel for the petitioner submitted that the order passed by the Commissioner rejecting the request of the petitioner is a non-speaking order which ought to have been interfered with by the Government, in their revisional jurisdiction. The learned counsel for the petitioner would further submit that the Government had not considered all the relevant facts which would constitute the necessity to sell the property and also the fact that selling the property will be absolutely essential and beneficial for the Trust. The learned counsel for the petitioner has further brought to my notice that earlier, when the writ petition came up for hearing on 25.06.2014, this Court passed an interim order appointing an Advocate Commissioner to inspect the property and to submit a report regarding the present position of the building and other relevant facts. Accordingly, the Advocate Commissioner Mr. V. Muthu Kamatchi has also submitted a report. Referring to the same, the learned counsel for the petitioner would submit that it is absolutely necessary that the property needs to be sold, as the building is highly in a dilapidated condition and is not usable. The learned counsel for the petitioner would further submit that if the properties are sold, and if the Trust utilises the said amount, lot of improvements on the other properties could be made so as to generate more income for the Trust. Thus, according to the learned counsel for the petitioner, the Government also had not taken into account all these relevant facts. Therefore, the impugned order of the Government requires interference at the hands of this Court, the learned counsel for the petitioner contended.

4. But the learned Special Government Pleader appearing for the respondents would submit that though the order of the Commissioner is a non-speaking order, the Government had considered all the grounds raised by the petitioner and the objections, in detail, and has found that there is no necessity at all to sell the property. The Government has further held that selling these properties will not be beneficial to the Trust. Thus, the factual findings arrived at by the Government cannot be interfered by this Court, the learned Special Government Pleader contended. Further, it is the contention of the learned Special Government Pleader that, whether the findings of the Government are right or wrong, it cannot be gone into by this Court, because, the issues are based only on facts. He would further submit that under Sub-section 4 of Section 34 of the

Act, the remedy for the petitioner is to appeal to the Civil Court, within the time prescribed. In this case, according to the learned Special Government Pleader, without availing the said alternative remedy, which is more efficacious, the petitioner has come up with this writ petition, which according to him, is not maintainable. He would further submit that, in a writ proceeding, the disputes on facts cannot be resolved, because such disputes could be resolved only by the competent Civil Court on evidence.

5. I have considered the above submissions.

6. At the outset, let me take up the issue as to whether the writ petition before this Court is maintainable in view of the provisions contained in Section 34(4) of the Act. For better understanding, let us have a look into Section 34 which is extracted hereunder:

"34. Alienation of immovable trust property.--(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purposes, of any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner.

Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.

(2) When according such sanction, the Commissioner may impose such conditions and give such directions as he may deem necessary regarding the utilisation of the amount raised by the transaction, the investment thereof and in the case of a mortgage, regarding the discharge of the same within a reasonable period.

(3) A copy of the order made by the Commissioner under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of a copy of the order, and any person having interest may, within three months from the date of the publication of the order, appeal to the Court to modify the order or set it aside.

(4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such

directions.

(5) Nothing contained in this section shall apply to the inams referred to in section 41."

7. The learned Special Government Pleader would submit that as against an order of the Commissioner declining to grant sanction, under Sub-section 4 of Section 34, the remedy for the petitioner is to file an appeal to the Court. The term " Court" has also been defined in the Act which states that " Court" means (i) in relation to a math or temple situated in the Presidency-town, the Chennai City Civil Court; (ii) in relation to a math or temple situated elsewhere, the Subordinate Judge's Court having jurisdiction over the area in which the math or temple is situated, or if there is no such Court, the District Court having such jurisdiction; (iii) in relation to a specific endowment attached to a math or temple, the Court which would have jurisdiction as aforesaid in relation to the math or temple; (iv) in relation to a specific endowment attached to two or more maths or temples, any Court which would have jurisdiction as aforesaid in relation to either or any of such maths or temples. Therefore, according to the learned Special Government Pleader, the petitioner should have filed appeal to the Subordinate Judge's Court. Dindigul, against the order of the Commissioner.

8. In respect of this issue, the learned counsel for the petitioner would submit that Sub-section 4 of Section 34 can be invoked to file appeal to the Civil Court, if only there has been a positive order by the Commissioner granting sanction to sell the property and that too within three months from the date of publication of such order. It is his further contention that Sub-section 4 of Section 34 cannot be invoked where sanction has been declined by the Commissioner. He would further submit that in the event sanction is not accorded, there is no provision for making publication of such order. Since Sub-section 4 of Section 34 states that appeal to the Civil Court could be made within three months from the date of publication of the order, the said provision is not applicable in respect of an order declining to grant sanction, since such order could not, as a matter of fact, be published. Thus, according to the learned counsel for the petitioner, the remedy available for the petitioner is to approach this Court by way of a writ petition. Therefore, the order passed by the Government is final.

9. I have considered the above submissions.

10. The sanction to sell the property, as indicated in Sub-section 1 of Section 34 of the Act could be granted only on the satisfaction of the Commissioner, on two points. The first point is that he should be satisfied that such sale is necessary. Second point is that the Commissioner should be satisfied that it will be beneficial to the institution. There may be a case where there is no necessity to sell the property, but such sale may be beneficial to the institution, in which case, the Commissioner shall grant sanction. There may be yet another case where selling the property may not be beneficial for the institution, but the said sale must be necessary in the interest of the Trust, in which case also, the

Commissioner shall give sanction. The conjunction "or" needs to be highlighted, which indicates that it is not necessary that both the conditions, viz. necessity as well as benefit, should be available for granting sanction. Either necessity or benefit, to the institution shall be sufficient.

11. Now, whether there is necessity to sell the property or the said sale shall be beneficial to the institution, cannot be arrived at in vacuum. Such conclusion can be arrived at only on the facts placed before the Court based on evidences to be let in. In the absence of evidence to prove either necessity or benefit which may accrue to an institution, it is not possible to come a conclusion as to whether such a sale could be permitted or not. Such conclusion has to be arrived at dispassionately and objectively, by the Commissioner, having regard to all the materials, including evidences to be let in before the Commissioner. In other words, it involves an element of appreciation of evidence.

12. At this juncture, we may refer to Section 92 of CPC which deals with Public Charities and Trusts. Under Sub-section (1)(f) of Section 92 of CPC, for selling a property belonging to a Trust, prior authorisation should be obtained from the Civil Court. The Civil Court will allow the Trust and the Objector, if any, to lead evidence and only on appreciating such evidence, it either grants permission to sell the property or declines. Sub-section 2 of Section 92 of CPC states that in respect of Trusts which are governed by Religious Endowments Act, 1863 or any other corresponding law in force in the territory, then, the question of sanction shall be decided according to the provisions of such Religious Endowments Act or the corresponding law. Here, in the State of Tamil Nadu, the Hindu Religious and Charitable Endowment Trusts are governed by the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and therefore, Sub-section (1)(f) of Section 92 of CPC, is not applicable in respect of these Trusts governed by the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and instead, the provisions of the State Act are applicable, more particularly, Section 34(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which is more or less similar to Sub-section (1)(f) of Section 92 of CPC. When the Civil Court, empowered under Section 92 of the CPC, either sanctions or refuses to grant sanction, only on the basis of the evidences to be let in by the parties, the same analogy has to be drawn, in respect of the Trusts governed by the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Similar to Section 92 of CPC, the Commissioner under Section 34(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, has to permit the parties to let in evidence, appreciate the same and then he has to decide the issue. In short, in the place of the Civil Court under Section 92 of CPC, the Commissioner has been placed under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, entrusted with similar function. Therefore, the Commissioner cannot decide the issue in an arbitrary manner. He has to follow the principles of natural justice, which has almost been recognised as a facet of Fundamental Rights mandated under Article 14 of the Constitution of India. The Commissioner, is therefore, required to permit the parties to let in evidence, and then to decide

the issue dispassionately by appreciating the evidence. Therefore, the order passed under Section 92(1) of CPC by a Civil Court and an order made under Section 34(1) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 by the Commissioner are more or less in the same footing.

13. When the Commissioner passes an order on appreciating such evidence, either granting sanction or declining to grant sanction, there should be an opportunity for the aggrieved, to work out. That is what is found in Sub-section 4 of Section 34 of the Act. There is no controversy before this Court that in the event such sanction is granted under Sub-section 1 of Section 34 of the Act, the Trust or any aggrieved person may make an appeal to the Civil Court. But the controversy before this Court is that, as against the order declining to grant sanction, whether any appeal can be maintained under Sub-section 4 of Section 34 of the Act. In my considered opinion, Sub-section 4 of Section 34 cannot be so narrowly construed so as to say that in respect of an order granting sanction, appeal shall lie before the Civil Court, whereas an order declining to grant sanction, no appeal shall lie and instead only revision shall lie to the Government. This interpretation, in my considered opinion, would only result in absurdity. No interpretation of any statutory provision could be made, which will result only in absurdity exhibiting anomalies. The Civil Court, under Sub-section 4 of Section 34 of the Act, will go into and appreciate the evidence let in before the Commissioner, and decide the issue. When sanction is refused, if it is so construed that a revision alone lies to the Government, as it is well known, in a revisional jurisdiction, the revisional authority cannot re-appreciate the evidence as it is done by the Appellate Authority, so as to substitute its own conclusions in the place of conclusions arrived at by the original authority. Therefore, by giving such interpretation, as it is sought to be made by the learned counsel for the petitioner, one cannot allow two different forums for deciding the same issue involved in the matter. To illustrate this, let us assume that if a petition is filed seeking to sell a large extent of a property of a Trust, and let us assume that sanction is accorded only to sell a small portion and it has been denied in respect of the rest of the property, if the interpretation sought to be made by the learned counsel for the petitioner is approved, then, as against one part of the order granting sanction, the aggrieved has to go to the Civil Court and in respect of the other part of the order declining to grant sanction, the aggrieved has to go to the Government. This may result in conflicting decisions to be arrived at by two different forums. The Legislature would not have thought to create such anomaly by allowing the decisions of two different forums. Therefore, Sub-section 4 of Section 34 of the Act needs to be interpreted in a purposeful manner so as to see that the objects of this Act are really achieved. If only Sub-section 4 of Section 34 is so interpreted to say that appeal shall lie to the Civil Court even in respect of an order declining to grant sanction, it will serve the purpose.

14. But the learned counsel for the petitioner, would point out that Sub-section 3 of Section 34 of the Act states that a copy of the order made by the Commissioner under this Section shall be communicated to the Government and

to the Trustee, and shall be published in such manner as may be prescribed, and Sub-section 4 of Section 34 states that the appeal shall be made to the Civil Court within three months from the date of such publication. From this, the learned counsel for the petitioner would submit that an order negating the request for sanction, cannot be published and therefore Sub-section 4 is applicable only in respect of an order which can be published. In this regard, I have to state that Sub-sections 3 and 4 have not been properly worded. A close reading of Section 34, the object sought to be achieved by the said provision in the light of Section 92 of CPC, would go to show that the intention of the Legislature is that the aggrieved or the Trustee has to approach only the Civil Court. Neither Sub-section 3, nor Sub-section 4 of Section 34 of the Act states that the order granting sanction alone should be published. But, quite interestingly, the Government has issued a Rule known as "Alienation of Immovable Trust Property Rules, 1960". The said Rule has been issued by the Government in exercise of the powers conferred under Sub-section 1 of Section 116 r/w Sub-sections 1 and 2 of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Rule 3 of the said Rules, states that a copy of the order sanctioning an exchange, sale or mortgage, or lease for a term exceeding five years shall be communicated by the Commissioner in the form of proceedings under Section 34 duly signed by him to the Trustee or Trustees and the person having interest, if any, who appeared in the proceedings and shall be published in the manner laid down in clauses (a) to (e) of Sub-rule (2) of Rule 2 for the publication of the notice.

15. Referring to the said Rule, the learned counsel for the petitioner would submit that publication can be made only in respect of an order granting sanction. Though there appears to be some force in the said argument, a further deep consideration would go to show that the said argument is unacceptable. This Rule is in the nature of guidelines as to how to make publication of the order. This Rule does not, either expressly or impliedly, prevent the Commissioner from publishing a negative order. As I have already concluded, Section 34 of the Act needs to be interpreted in such a way so as to achieve the object of such provision which is a special provision, deviating from Section 92 CPC. This view can be supported in a different angle also. As it is stated by the learned counsel for the petitioner, if it is so interpreted that as against the order of the Commissioner, a revision lies to the Government under Section 114 of the Act, the further remedy available for the aggrieved party is to approach this Court under Article 226 of the Constitution of India. It is well known that in the Writ Jurisdiction, this Court cannot convert itself into either a Court of appeal or revision, so as to appreciate the evidence and to examine the correctness of the order passed by the Commissioner and the Government. Such a course would be available only before the Civil Court. Therefore, I am forced to hold that the remedy for the aggrieved, as against the order of the Commissioner declining to grant sanction, is only before the Court by way of an appeal under Sub-section 4 of Section 34 of the Act. Since it has not been either expressly or impliedly

stated that such negative order could not be published, I hold that such order declining to grant sanction also requires to be published, as provided in Section 34 of the Act and in the Rules, stated supra. Such publication will serve many other useful purposes as well. For example, by suppressing such negative order passed by the Commissioner, if any other petition is filed in future seeking permission, the Commissioner may not know about the earlier order. Had the negative order been published in a public place, the public would bring to the notice of the Commissioner the dismissal of the earlier petition. Therefore, it is necessary to publish the negative order also. It is also my view that it is high time for the Government to amend the Rule or to issue fresh rules, making it mandatory to publish the order declining to grant sanction by the Commissioner, for the notice of the public.

16. Now, turning to the relief to be granted under Section 34 of the Act, the learned counsel for the petitioner would submit that in the event the Court holds that appeal under Sub-section 4 of Section 34 is available for the petitioner, the petitioner may be given liberty to approach the Civil Court, within a time to be stipulated by this Court. Going by the peculiar facts and circumstances of the case, I hold that it shall be necessary that the order of the Commissioner shall be published and thereafter, the petitioner shall be at liberty to approach the Civil Court by way of an appeal under Sub-section 4 of Section 34 of the Act. This alone would amount to doing justice to the petitioner as well as to all the other interested persons. Since I am holding so, I am restraining myself from expressing any opinion regarding the necessity for selling the property or the benefits which may accrue for the petitioner by sale of the said property. These are all the matters which are to be decided by the Civil Court on appreciating the evidences to be adduced by both parties.

17. In the result, the writ petition is disposed of in the following terms:

"1) The order declining to grant sanction to sell the property under Sub-section 1 of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 also should be published in the manner provided in Sub-section 3 of Section 34 and Rule 3 of the Alienation of Immovable Trust Property Rules, 1960;

2) The order declining to grant sanction to sell the property under Sub-section 1 of Section 34 is appealable to the Court under Sub-section 4 of Section 34 of the Act;

3) The order declining to grant sanction to sell the property under Sub-section 1 of Section 34 is not revisable by the Government under Section 114 of the Act;

4) The petitioner shall be at liberty to file an appeal to the Civil Court under Sub-section 4 of Section 34 of the Act, as against the order of the Commissioner dated 12.02.2011.

5) The order of the Commissioner dated 12.02.2011 declining to grant sanction to sell the property shall be published in a manner provided under Sub-section 3

of Section 34 and the Rules, stated supra, within one month from today;

6) The petitioner will be at liberty to file an appeal under Sub-section 4 of Section 34 to the Civil Court, within three months from the date of such publication;

7) The Civil Court shall issue notice to all the interested persons, permit the parties to let in evidence and then decide the matter in accordance with law, expeditiously."

18. It is also suggested to the Government to appropriately either amend the Rules or to bring in new Rules, prescribing the procedure of publishing the order of the Commissioner declining to grant sanction as well.

19. Before parting with this order, I would like to record my appreciation for Mr. VR. Shanmuganathan, learned Special Government Pleader and Mr. G.R. Swaminathan, learned counsel for the petitioner, who happens to be the Assistant Solicitor General of India, for their erudite arguments made before this Court, to enable this Court to interpret the provisions of law involved in this case, which is very complex in nature. However, there shall be no order as to costs.