(2003) 03 MAD CK 0096

In the Madras High Court

Case No : W.P.No. 2629 of 2001 and W.M.P. No. 3559 of 2001 and 18642 of 2002

S.R. Ramesh APPELLANT

Vs

The State of Tamilnadu RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 03 MAD CK 0096

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : T.V. Ramanujam for T.V. Krishnamachari, for the Appellant; D. Nandakumar, Government Advocate for Nos. 1 and 2 and R. Subramaniam, for 3rd respondent, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The petitioner is one among the worshippers of Arulmighu Devarajaswamy Tirukoil, Kancheepuram. He is a resident of

Kancheepuram for the past 40 years. He is an ardent devotee of Lord Devarajaswamy. The grievance of the petitioner is that his claim for

performing ""Oonjal Sevai"" on the 6th day of "" Brahmotsavam"" has been negatived by the first respondent by the impugned order dated 23.5.2000.

By that order his right to offer Sevai is deprived.

2. For the disposal of the Writ Petition, the following facts are necessary: The temple in question is governed by a Scheme Decree passed by this

Court in Appeal No. 175 of 1934 dated 17.1.1941. As per Clause (3) of the Scheme Decree, the Devasthanam shall be administered by a paid

Executive trustee, who shall be appointed by the Board and by two honorary trustees, who shall be elected in the manner laid down in the

Scheme. For the last 15 years, election to Honorary Trustees was not held and as on today, the Devasthanam is administered by the sole

Executive Trustee of the temple.

3. During the year 1998, the petitioner applied to the Executive Trustee of the temple for permission to perform ""Oonjal Sevai"" on the 6th day of

Brahmotsavam"" and such permission was granted to the petitioner. Subsequent to the same, it appears, that objections were received by the

Executive Trustee as to the grant of such permission to the petitioner on the ground that petitioner may claim in future to perform ""Oonjal Sevai

either as customary or hereditary right. Keeping the above objections in mind, when the petitioner again applied for similar direction during the year

1999, a meeting was conducted by the Joint Commissioner, H.R.& C.E. on 31.5.1999. In the said meeting it was resolved that since the petitioner

had already made arrangements for the conduct of ""Oonjal Sevai"", he may be permitted for that year only. It was further unanimously agreed that

in future years, the decision of the trustees administering the affairs of Devasthanam shall be accepted by one and all. On the above understanding,

the petitioner was permitted to conduct ""Oonjal Sevai"" for the year 1999.

4. Dispute in the petition arose as the petitioner again applied for such permission for the year 2000. In fact, the request of the petitioner was

considered by the Executive Trustee, who is administering Devasthanam and the request for permission was also recommended on 12.5.2000 to

the Commissioner of the H.R.& C.E. Department through the Joint Commissioner for passing appropriate orders.

5. It is obvious that such recommendation was made by the Executive Trustee to the Commissioner by virtue of the reason that there was no

election for two Honorary Trustees for quite number of years. The said recommendation has not been considered either by the Joint Commissioner

or Commissioner of H.R.& C.E. Department and infact the recommendation of the Executive Trustee has not also been rejected. It seems a

lawyer''s notice dated 12.5.2000 was issued by one Mr. S.D.N. Vimalanathan, Advocate, a resident of Nanganallur, Chennai, objecting to the

permission granted to the petitioner for the conduct of ""Oonjal Sevai"" on the ground that such practice was not either customary or hereditary and

it is introduced as a new practice in the temple which is not permissible. The said notice was taken note of by the Commissioner and by order

dated 16.5.2000 advised the Executive Trustee to avoid such permission for the conduct of"" Oonjal Sevai"". Though the said order is only a

advisory in nature the petitioner was not allowed to perform ""Oonjal Sevai"", hence he approached the Government, the first respondent, by filing a

Revision Petition against the order of the Commissioner, the 2nd respondent herein. The Revision petition was disposed of by the impugned order

dated 23.5.2000 on the ground that conduct of ""Oonjal Sevai"" is neither customary nor hereditary. The first respondent also took note of the

objection of the Advocate made in the notice dated 12.5.2000.

6. Mr. T.V. Ramanujam, learned Senior Counsel appearing for the petitioner would fairly contend that the petitioner does not claim any customary

or hereditary right for the conduct of ""Oonjal Sevai"" and for his own satisfaction, as a Worshipper, he sought permission of the Executive Trustee

for the conduct of ""Oonjal Sevai"" and only as a ""Upayadarar"". He would further contend that there is no question of any violation of the customary

practice in this regard as the printed book published by Devasthanam, containing the details regarding festivals refers to ""Oonjal Sevai"" as one of

Sevai conducted in the temple. In the said book at page 42 the practice of performing ""Oonjal Sevai"" is mentioned. Further the Form to be used

for getting permission to perform ""Upayam"" is mentioned at page 43 of the book.

7. Further, the learned Senior Counsel submitted that while the Executive Trustee considered the request of the petitioner for the grant of

permission, there was no objection from any person whatsoever as could be seen from the very order of the Executive Trustee dated 12.5.2000.

While that being so, it is strange as to how the first respondent could adduce the reason that there were objections. Except the lawyer''s notice

dated 12.5.2000, the reasons adduced by the first respondent are not supported by any material. Further the learned Senior Counsel submitted

that even assuming that the objections of the Advocate as espoused in the lawyer''s notice dated 12.5.2000, could be taken into consideration, the

petitioner ought to have given an opportunity to submit his explanation or objection before any reliance is placed on the same. In the absence of

such opportunity, the reasons adduced by the first respondent in the impugned order in rejecting the permission to the petitioner to conduct ""Oonjal

Sevai"" cannot be sustained.

8. Mr. R. Subramaniam, learned counsel appearing for the 3rd respondent on the other hand would submit that the order of the Executive Trustee

dated 12.5.2000 cannot be considered as an order, permitting the petitioner to conduct ""Oonjal Sevai"" as it is only a recommendation to the

Commissioner through the Joint Commissioner for passing appropriate orders. The petitioner cannot claim as a matter of right for the conduct of

Oonjal Sevai"" on the basis of the recommendation and in the absence of any order as to the permission granted, the petitioner cannot be allowed

to perform ""Oonjal Sevai"". The learned counsel would further submit that the permission of the Commissioner was sought by the Executive

Trustee, only in view of the fact that as per the Scheme Decree, in addition to the Executive Trustee, two Honorary Trustees to be elected and

factually, no election was held for the past 15 years for the post of two Honorary Trustees and the sole Executive Trustee is administering the

affairs of the temple. Hence it became necessary for the Executive Trustee to seek orders from the Commissioner.

9. The learned counsel would further submit that in case, if the petitioner is allowed to perform ""Oonjal Sevai"" for one year, there is every

possibility of the petitioner claiming either customary or hereditary right to conduct such ""Oonjal Sevai"" in the years to come. Hence, the petitioner

cannot be permitted to conduct ""Oonjal Sevai"".

10. I have given my anxious consideration to the above submissions made by their respective counsel. In the light of the above submissions, it is to

be now considered as to whether the petitioner could be permitted to perform ""Oonjal Sevai"" on the 6th day of the ""Brahmotsavam"".

11. The temple in question is governed by a Scheme Decree passed by this Court and the temple should be administered by the Executive

Trustees. Clause (3) of the Scheme, provides that the administration of the temple vest with one paid Executive Trustee and two Honorary

Trustees to be elected. Election to the post of two Honorary Trustees was not held for the past 15 years and the temple is now administered only

by the Executive Trustee. In such event, it is incumbent on the part of the Executive Trustee to seek further orders, as to the grant of permission from the Commissioner under the provisions of the Act. Hence, I do not find any infirmity in the letter of the Executive Trustee dated 12.5.2000,

seeking permission from the Commissioner to permit the petitioner to conduct ""Oonjal Sevai"".

12. Coming to the claim of the petitioner to conduct ""Oonjal Sevai"" the learned Senior counsel appearing for the petitioner has fairly submitted that

the petitioner does not seek permission either as customary or hereditary right to perform ""Oonjal Sevai"". In fact, the learned Senior Counsel went

on to add that permission was sought only in the capacity of a devotee/ worshipper and as a ""Upayadharar"". The petitioner is anxious to do

Upayam"" only and the ""Oonjal Sevai"" is performed by the Archakar of the temple and this ""Oonjal Sevai"" is just like any other ""Upayam"" offered

to the Deity. The order of the Executive Trustee dated 12.5.2000 also discloses that such ""Oonjal Sevai"" is performed in the temple and it is not a

new practice introduced. The printed book published by Devasthanam also refers to such Sevai in more than one place. It is an accepted practice

in the temple. Hence the reason adduced by the Government that there is no customary practice in the temple for performing ""Oonjal Sevai"" is not

supported by any material, as infact, in my considered view, is contrary to the materials available.

13. On the above factual finding, it is to be now considered as to whether the petitioner is entitled to the permission for the conduct of ""Oonjal

Sevai

14. As already stated, the petitioner has applied to the Executive Trustee for permission to conduct ""Oonjal Sevai"" in the year 1998 and such

permission was also granted. When some objections were raised, by resolution dated 31.5.1999 it was resolved that the petitioner may be

directed to perform ""Oonjal Sevai"" for that year with further understanding that any decision that may be taken for the subsequent years, will bind

all the persons concerned. A reading of the resolution does not disclose that there was an undertaking by the petitioner that he will not apply for

permission to conduct ""Oonjal Sevai"" as contended by the learned counsel or the 3rd respondent. All that the resolution speaks only the decision

that may be taken in the future years will bind all the persons concerned and therefore, the resolution does not preclude the petitioner to seek permission again. Accordingly, the petitioner has made an application for the year 2000. Considering the fact that there was no objection, as well

as the practice followed in the temple to perform ""Oonjal Sevai"", the Executive Officer in fact recommended for permission. The said

recommendation was forwarded to the Commissioner through the Joint Commissioner for passing appropriate orders. It is not in dispute that such

recommendation has not been considered and further order is passed so far.

15. On the other hand, the Commissioner placing reliance on the lawyer''s notice said to have been issued by Mr. S.D.N. Vimalanathan,

Advocate, a resident of Nanganallur, Chennai dated 12.5.2000, without affording an opportunity to the petitioner, has advised the Executive

Trustee to avoid such permission. As rightly contended by the learned counsel for the 3rd respondent, in the absence of two Honorary Trustees,

the decision of the Commissioner is necessary to permit the petitioner to perform ""Oonjal Sevai"". While that being so, the Commissioner though

has advised the Executive Trustee to avoid permission for performing ""Oonjal Sevai"" the said communication of the Commissioner dated

16.5.2000 must be considered only as a direction to the Executive Trustee not to permit the petitioner to perform ""Oonjal Sevai"" as the

proceedings of the Commissioner dated 16.5.2000 is traceable to the statute to be performed by him u/s 63 of The Tamilnadu Hindu Religious and

Charitable Endowments Act, 1959. Such order would certainly affect the right of the petitioner in the make of the recommendation of the

Executive Trustee. Further, the petitioner was not given an opportunity of being heard and he was not afforded any opportunity to explain or

object to the contents of the notice. Hence the order of the Commissioner cannot be sustained in the light of the above facts. More strangely, when

the petitioner has filed the revision before the first respondent, the first respondent went beyond the scope of the order of the Commissioner, gave

a finding that the petitioner has claimed the permission for the conduct of ""Oonjal Sevai"" as customary and hereditary right.

16. As already referred, it was never the case of the petitioner that he has sought such permission either as customary or hereditary right. He

sought for such permission only as a worshipper and as a ""Upayadharar"". The said finding of the first respondent is not supported by any material.

I do not find any such material available before the Commissioner, except the lawyer''s notice dated 12.5.2000. The first respondent also went on

to add that there was no customary practice or use to perform ""Oonjal Sevai"" in the temple. The above said finding, in my view, is not supported

by any material. The order is totally silent about the details for such conclusions. Further, the issue of estoppel is put against the petitioner on the

ground that as if the petitioner has given an undertaking that he will not apply for permission to perform ""Oonjal Sevai"" in future years in the

Resolution dated 31.5.1999. As already stated, the said resolution does not indicate any such undertaking on the part of the petitioner. Resolution

only speaks that all concerned shall abide by the decision taken by the Trustee either to allow or to permit ""Oonjal Sevai"" in future. Therefore, the

plea of estoppel is contrary to the records available. In view of the above, I do not find any merit to sustain the order of the first respondent,

confirming the order of the second respondent. Hence both orders are liable to be set aside and accordingly, they are set aside.

17. Coming to the relief portion, as already noted, under the Scheme Decree, the Executive Trustee and the two Honorary Trustees shall consider

any request for permission to perform ""Oonjal Sevai"" by ""Upayadharar"". There is such recommendation in favour of the petitioner to perform

Oonjal Sevai"" for the year 2000. Of course, in the absence of two Honorary Trustees, the recommendation of the Executive Trustee should be

considered by the Commissioner and orders are to be passed by him by permitting the petitioner to conduct ""Oonjal Sevai"" based on the

recommendation of the Executive Trustees. Such order has not been passed so far. This Court is obvious of the fact that in matters like this, Court

shall not issue directions to the Trustees administering the affairs of the temple to accord permission to any person to perform ""Sevai"" or ""Utsavam

which shall vests exclusively within the purview of the Trustees and the authorities empowered to consider the same under the provisions of the

Act. In fact, it is not in dispute that such Sevai is allowed on 2nd and 4th of ""Brahmotsavam:. Hence it is an accepted practice in the said temple.

Hence it would be appropriate for this Court only to direct the 2nd respondent Commissioner to consider the recommendation of the Executive

Trustee made on 12.5.2000 recommending the petitioner to perform ""Oonjal Sevai"" on the 6th day of ""Brahmotsavam"" and pass orders on the same. It is made clear that the second respondent shall consider the recommendation of the Executive Trustee only in the light of the observations

made in this Order, more particularly, in not treating the right of the petitioner either as customary or hereditary , but treating the same only as a

claim of a worshipper and ""Upayadharar"". Such order shall be passed within a period of one month from the date of receipt of copy of this order,

after affording an opportunity of being heard to the petitioner. Accordingly, the Writ Petition is allowed. No costs. Consequently,

W.M.P.Nos.3559/2001 and 18642/2002 are closed.

