
(1940) 04 MAD CK 0030
In the Madras High Court

Sri Kallalagar Devasthanam

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 02-04-1940

Acts Referred:

Madras Hindu Religious Endowments Act, 1926 — Section 44B

Citation : AIR 1940 Mad 811 : (1941) ILR (Mad) 36 : (1940) 51 LW 735 : (1940) 1 MLJ 891

Hon'ble Judges : Alfred Henry Lionel Leach, C.J.; Krishnaswami Aiyangar, J

Bench : Full Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The petitioner is the trustee - of the Sri Kallalagar Devasthanam, Madura. He applied to the Revenue

Divisional Officer, Melur, for orders u/s 44B of the Madras Hindu Religious Endowments Act, 1926, directing the resumption of certain service

inams granted by the temple. The Revenue Divisional Officer rejected the applications and the petitioner then filed appeals to the Collector of

Madura, who held that there was no right of appeal and consequently passed an order dismissing them all. The petitioner has now asked this Court

to quash the order of the Collector and to direct him to hear the appeals.

2. Section 44-B(2)(a) of the Madras Hindu Religious Endowments Act states that the Collector may resume the whole or any part of an inam

granted for the performance of a charity or service connected with a math or temple on one or more of the following grounds: (i) that the holder of

the inam has made an exchange, gift, sale or mortgage of it or any portion of it or has granted a lease for a term exceeding five years; or (ii) that the

holder of the inam has failed to perform or make the necessary arrangements for performing, in accordance with the custom or usage of the math

or temple, the charity or service for performing which the inam had been made; or (iii) that the math or temple has ceased to exist or the charity or

service in question has become impossible of performance. The allegation of the petitioner was that the holders of the inams had failed to perform

the services required of them. Clause (d)(i) of Sub-section (2) says that a party aggrieved by an order of the Collector under Clause (a) may

appeal to the District Collector, who may, after giving notice to the parties concerned and after holding such inquiry as may be prescribed, pass an

order confirming, modifying or cancelling the order of the Collector. In dismissing the appeals the District Collector gave no reasons for holding

that there was no right of appeal in these cases, but it must be assumed that in his opinion there could only be an appeal under the section from an

order of resumption.

3. If the orders of the Revenue Divisional Officer dismissing the applications were orders under Clause 2(a) of Section 44B appeals do lie. In

Venкатasami v. Stridevamma I.L.R.(1886)Mad. 179, a Full Bench of this Court held that an order rejecting an application for the appointment of

a receiver was an order passed u/s 503 of the Code of Civil Procedure, 1882 and was appealable u/s 588, Clause 24 of that Code. While the

Code expressly provided for an appeal against an order appointing a receivers nothing was said about an appeal from an order refusing to appoint

one. The corresponding provision of the present Code to Section 503 is Order 40, Rule 1, and Section 588(24) is now embodied in Order 43,

Rule 1(s). The decision of the Full Bench was that a negative order was just as much within the section as an affirmative order, and unless there is

something in Section 44-B of the Madras Hindu Religious Endowments Act, 1926, which prevents its application the same principle must be

applied here. I can see nothing in the section which prevents the application of the principle. In my opinion the words:

May...pass an order confirming, modifying or cancelling the order of the Collector

are not intended to be confined to an order of resumption. An unqualified right of appeal is given and if the Collector passes an order dismissing an

application, the District Collector can confirm it or cancel it, and as he has the power to cancel an order refusing to resume an inam, it must follow

that he has the power to grant appropriate relief.

4. For the respondent the recent decision in T.S. Pichu Ayyangar Vs. Sri Perarulala Ramanuja Jeer Swamigal, Dharmakarthha and Manager of Sri

Alagia Nambirayar Temple, , has been relied on. In that case my learned brother and I held that a suit did not lie to set aside an order of the Hindu

Religious Endowments Board refusing to settle a scheme for the administration of the endowments of a temple u/s 63 of the Act. There is nothing in

common between Section 63 and Section 44-B. Sub-section (1) of Section 63 empowers the Board to settle a scheme after inquiring into the

question whether a scheme is necessary. Sub-section (3) gives the Board power to modify or cancel a scheme which it has settled and Sub-section

(4) gives the right to an interested party to institute a suit in the Court to modify or set aside an order of the Board modifying or cancelling a

scheme. Before the Board can modify or cancel there must, of course, be a scheme and the right of suit only arises when the Board has decided to

modify or cancel a scheme which it has settled under Sub-section (1). The wording of Section 63 makes it quite clear that the power of settling a

scheme in the first instance vests exclusively in the Board which may refuse to exercise the power. The right of suit is given in order to provide a

safe-guard against improper modification or cancellation-of a scheme already settled by the Board. The decision in T.S. Pichu Ayyangar Vs. Sri

Perarulala Ramanuja Jeer Swamigal, Dharmakarthha and Manager of Sri Alagia Nambirayar Temple, , did not turn on the question whether an

order of the Board refusing to settle a scheme under Sub-section (1) was an order under that sub-section. That question did not really arise. The

question was with regard to the interpretation of Sub-sections 3 and 4 and it was held that they only gave a right of suit in a case where the Board

has modified or cancelled an existing scheme.

5. Holding as I do that the principle in Venkatasami v. Stridevamma ILR (1886)Mad. 179 is applicable to Section 44-B it follows that I am of

opinion that the Collector of Madura ought to have heard the appeals and not have dismissed them on the ground that he had no jurisdiction to

entertain them. His order should be quashed and he should be directed to hear and decide the cases according to law. I consider that the petitioner

is also entitled to his costs.

Krishnaswami Aiyangar, J.

6. I concur. At first sight it might seem that we are here accepting a construction of the words "'an order...under Clause (a)'" occurring in Section 44-B(2)(d)(i), different to that which we adopted in *T.S. Pichu Ayyangar Vs. Sri Perarulala Ramanuja Jeer Swamigal, Dharmakarthha and Manager of Sri Alagia Nambirayar Temple*, . In that case the Court distinguished the decision of the Full Bench in *Venkataswami v. Stridevamma* ILR (1886) Mad. 179 and held in spite of the similarity of the language, that the same, or practically the same, words in Section 63(4) should receive a different interpretation on account of the special considerations which we held were applicable in the context. As in Section 63 so in Section 44-B(2) the character of the order which the section authorises the Collector to make is positive, that is, to make an order resuming the whole or any part of an inam of the nature specified in Clause (1). That order he may make on his own motion or on the application of the trustee, the Committee, the Board or any other person having an interest. Before making an order of resumption the Collector has to satisfy himself that one or more of the grounds mentioned in Sub-section 2(a) are proved to exist. If no such proof is forthcoming, he cannot make the order, and must dismiss the application. The power to dismiss is self evident, though not expressly mentioned. Clause (b) makes it obligatory on the Collector to give notice of the enquiry to the trustee, the Committee, or the Board, and also to the inamdar concerned. It is somewhat curious that among the persons to whom notice is to go, mention is not made of an applicant whose right to apply is derived from his interest in the math Or temple only. It is difficult to imagine that having taken the trouble, to move the Collector, he is to drop out and take no part in the enquiry which he himself set on foot. Clause (d) provides a right of appeal to any, that is, every party, aggrieved by the order of the Collector under Clause (a). It is plain, that a party may be aggrieved as much by a negative as by a positive order, and unless there is good reason to the contrary express or implied, both kinds of orders would be comprehended by the word "under". An applicant u/s 44-B comes forward with the case that an inam is being enjoyed by a person whose title to it has become extinguished. If an order of resumption is made, the inamdar may feel aggrieved by the order. On the contrary if the enquiry results in a negative order, the applicant, or any of the persons specified in the section, or to whom notice has gone may be

dissatisfied with the order, or in other words may be an aggrieved party, and to him a right of appeal is expressly given. I find no difficulty in

holding that the District Collector is empowered by Clause (d)(i) to make the order of resumption in a case where the Collector refuses to make it

in the first instance. Not only are the words "confirming, modifying or cancelling" in the clause under consideration, of sufficient amplitude, but it is

an ordinary incident of the powers of an appellate tribunal to make the order which the tribunal of first instance failed to make. I agree that this case

is not governed by the decision in T.S. Pichu Ayyangar Vs. Sri Perarulala Ramanuja Jeer Swamigal, Dharmakarthha and Manager of Sri Alagia

Nambirayar Temple, , which really proceeded on special grounds, which find no place in the present case.

7. Memo of costs will follow.