
(1996) 08 MAD CK 0117
In the Madras High Court
Case No : S.A. No. 658 of 1996

Subramanian and 2 Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-08-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80, 9

Citation : (1996) 08 MAD CK 0117

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Advocate : N. Krishnaveni, for the Appellant; P. Krishnamoorthy, Government. Pleader for Respondent Nos. 1 to 3 and Mr. S. Jothiraman for Respondent No 4, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Lakshmanan. J.

1. This Second Appeal is admitted and the following substantial questions of law arose for consideration-

a) When the plaintiffs had brought the action in heir individual capacity for a declaration that the order cashed by the 3rd respondent appointing the 4th respondent as Special Officer, is the learned Principal Districted right in holding that the plaintiffs had filed the an in the capacity as members of the Board of Trustees they ought to have taken the permission of the Government before proceeding to initiate the proceedings"

b) When the plaintiffs had prayed that a declare on be made entitling Them to continue as members of be Board of Trustees, is the learned Principal I District edge right in construing the same to mean that the suit as filed as members of the Board of trustees and the me was hit by Sec. 26 of the Pondicherry Hindu Regions Institutions Act, 1972?

By consent of both the sides, the main Second Appeal itself is taken up for final hearing.

2. Heard Mrs. N. Krishnaveni, learned counsel for the appellants Mr. P. Krishnamoorthy, learned Government Pleader, appearing for the respondent Nos. 1 to 3 and Mr. S. Jothiraman, learned Counsel for the fourth respondent.

3. The above Second Appeal is directed against the judgment and decree dated 29.11.1995 made in AS. No. 131/94 on the file of the Principal District Judge, Pondicherry, reversing the judgment and decree dated 18.7.1994 made in O.S. No. 798/93 on the file of the I Additional District Munsif, Pondicherry. The plaintiffs are the appellants in this Second Appeal. The respondent No. 1 is the Union of India and the Respondent Nos. 2 and 3 are the authorities of the Hindu Religious Institutions and the respondent No. 4 is the Special Officer appointed in the place of the appellants.

4. The appellants filed the suit for the following reliefs:-

1) to declare that they are entitled to continue in the capacity of the members of the Board of Trustees of Shri Muthuvinaayagar, Sri Subramania Samy, Sri Nagamulhu Mariamman Devasthanam of Saram, Pondicherry.

ii) to declare that the order said to have been passed by defendant No. 3 on behalf of 1st and 2nd defendants dated 5.3.1993 appointing fourth defendant as Special Officer of the abovesaid temples is void ab initio and inoperative-.

iii) to grant permanent injunction restraining the defendants from, in any way, interfering with the management and administration of the above temples, together with costs"

5. The appellants averred that they along with one Annamalai Pillai were appointed as members of the Board of Trustees of the temples in question, by virtue of GO. Ms. No. 67/CHRI/TI/87 dated 28th August 1987. which was notified in the Gazette No.44, dated 5 11.1987. They were functioning in such capacity. When Annamalai Pillai, who was the nominated as President of the Board, resigned from the said post, the first plaintiff, who was the Vice-President, was given charge of the post of President as per order dated 11.12.1987 of the third respondent. The plaintiffs Nos. 2 to 4 were respectively; Secretary. Treasurer and Member of the Board of Trustees. The tenure of office ended on 19.8.1990. However, they were allowed to hold the office for a further period of three years. According to the appellants, the third respondent gave an oral assurance that they would be allowed to continue in office However, the third respondent, contrary to the oral promise, issued an order on 5.3.1993 that the fourth respondent/fourth defendant was appointed as Special Officer to take over from them in view of the expiry of the tenure of the Board on 19.8.1990. It is contended that the respondents are barred from issuing that order. When the defendant Nos. 1 to 3 seek to disturb the possession, the appellants filed the suit in the lower court.

6. The third defendant filed a written statement, which was adopted by the first, second and fourth defendants. A preliminary objection was raised stating that the suit is not maintainable because the dispute raised does not come u/s 9 of CPC and that pre-suit notice u/s 80, C.P.C. was not issued. This apart, the suit as framed is not maintainable u/s 26 of the Pondicherry Hindu Religious Institutions Act, 1972 (hereinafter referred to as "the Act"), because the prayer is for a decree to declare them as Board of Trustees to the above Devasthanam. The appellants did not have any right to continue in office as Board of Trustees after the expiry of the period of three years. Their appointment is governed under the Act and the Rules framed there under. They did not have an independent right to continue beyond the period of three years. Therefore, it is contended that the Court has no jurisdiction to decide whether the GO. issued by the third respondent herein was valid or not and that u/s 4 of the Act the third respondent has the right to permit the Board of Trustees to continue or appoint a new Board of Trustees or appoint a Special Officer. Hence, the plaintiffs have no right to continue in office.

7. The First Additional District municipal Pondicherry has framed five issues and answer the preliminary issue regarding maintainability of the suit. The Court held that the maintainability the suit is not hit u/s 26 of the Act.

8. The unsuccessful defendants 1 to 4 filed the appeal before the Principal District judge Pondicherry in AS. No. 131/94 and urged the following grounds:

1. Section 26 of the Act will show that no legal proceedings can be instituted by any Board his because plaintiffs claimed themselves to be the Board of Trustees, that the appellant raised the plea u/s 26 of the Act.

2. When the plaintiffs themselves claimed be Board of Trustees and sought a declaration and injunction, then the Board of Trustees has no right to file a suit without obtaining necessary permission from the Government.

9. Under Ex.A1, the plaintiffs in the suit were appointed as Board of Trustees One Annamalai Pillai tendered the resignation from the post of President and the Board continued for period of three years under Ex. A1 It is to be seen that the Government constituted the Board Trustees consisting of four persons for the administration of Sri Muthuvinnayagar, Sri Subramaniaswamy. Sri Nagamuthu Mariannam Devasthanam. Saram, Oulgarni community Pondicherry, in exercise of the power conferred u/s 4 of the Act Learned District Munsif held that the suit has been filed by the appellants in their individual capacity for a declaration that they are entitled to continue as Board of the trustees and therefore, no prior permission is necessary to launch the litigation Therefore, she held that Section 26 of the Hindu Religious Institutions Act, 1972, has no application to the present case. and therefore, the suit is not hit by the said Section. Learned Principal District Judge Pondicherry, reversed the said finding and held that Section 26 of the Act is mandatory and admittedly ,no previous sanction was obtained by the appellants in the suit to file the suit and therefore the suit is not maintainable u/s

26 of the Act.

10. Therefore, the question now arising for consideration is whether notice u/s 26 of the Act is a pre-condition and the suit filed by the appellants without issuing the said notice u/s 26 of the Act is maintainable in law. Before proceeding to consider the question of law arising in this Second Appeal, it is beneficial to look into the certain provisions of Pondicherry Hindu Religious Institutions Act, 1972. The Board is defined as follows:-

2.(a) "Board" means a Board of Trustees appointed by the Government u/s 4.

Section 4 deals with the appointment of Board of Trustees, which runs thus:

(1) Every institution shall be administered by a Board of trustees, which shall consist of five trustees, (hereinafter in this section referred to as members) appointed by the Government, by notification in the official Gazette, out of whom the Government shall nominate a President, Vice-President, Secretary and a Treasurer; Provided that the Government may, pending the constitution of a Board for any institution, appoint a Special Officer to perform the functions of the Board.

(2) Subject to the provisions of this Act, the President, Vice-President, Secretary, Treasurer and the member shall perform such functions as may be prescribed.

(3) Subject to the provisions of section 5, every member of the Board shall hold office for a term of three years from the date of publication of the notification appointing him as member and the other conditions of his service shall be such as may be prescribed.

(4) Any member may resign his office by giving notice in writing, for such period as may be prescribed, to the Government, and, on such resignation being notified in the Official Gazette by the Government, such member shall be deemed to have vacated his office.

(5) A casual vacancy caused by the resignation of a member and sub-section (4) or otherwise may be filled by fresh appointment and the persons so appointed shall hold office for the remaining period for which the member in whose place he is appointed would have held office.

(6) Every Board constituted before the commencement of this Act for the purpose of the administration of any institution and existing at such commencement shall be deemed to be a Board constituted under the provisions of this Act for the purposes of administration of such institution and the members thereof shall continue to hold office as such for a period of three years from the date of the notification by which they were appointed.

(7) Every member shall, on his ceasing to hold office as such, hand over any property, document or cash which was under his control or in his possession by virtue of any of the provisions of the Rules made under this Act within such time as may be prescribed, successor in office or such other person as the

Commissioner may, by order, direct.

Section 26 of the Act reads as follows:-

No suit, prosecution or other legal proceeding by any Board shall be filed or commenced before any Court without the previous sanction of the Government and no suit, prosecution or other legal proceeding shall be withdrawn or compromised by the Board except with the previous sanction of the Government.

It is seen from the Section 4 that the Board of Trustees are appointed and constituted for the administration of the temples. As rightly pointed out by the learned Government Pleader, once the appointing authority had invoked Section 4 (1) of the Act to constitute the Board of Trustees, Section 26, which is mandatory, in the nature, in my opinion, gets automatically attracted. We have already seen the relief asked for by the appellants, which is to pass a decree declaring that the plaintiffs are entitled to continue in the capacity of Members of the Board of Trustees. Thus, the appellants/plaintiffs have claimed that at the time of the institution of the suit, they were members of the Board of Trustees, and therefore, they asked for a declaration of entitlement to continue with the capacity of the members of the Board of Trustees. Learned District Munsif, in my opinion, is not right in holding that it is not the Board, which filed the suit and that the individuals were seeking declaration of the status of the Board of Trustees. Learned District Munsif, in my opinion has erred in holding that the appellants had filed the suit as individual. The appellants have specifically claimed in the plaint that they are not served with any such order of appointment of the fourth respondent/fourth defendant and till date, they are continuing their work and that the fourth defendant/fourth respondent also did not make any claim to assume office on the basis of the impugned appointment. In paragraph 6, it is stated as follows:-

1) Section 26 of the Act will show that no legal proceedings can be instituted by any Board. It is because plaintiffs claimed themselves to be the Board of Trustees, that the appellant raised the plea u/s 26 of the Act.

2) When the plaintiffs themselves claimed to be Board of Trustees and sought a declaration and injunction, then the Board of Trustees has no right to file a suit without obtaining necessary permission from the Government.

Section 26, which has been reproduced above, clearly contemplates that no suit or other legal proceedings, by any Board, shall be filed or commenced before any Court without previous sanction of the Government and no suit or other legal proceedings shall be withdrawn or compromised by the Board except with previous sanction of the Government. The Section, in my opinion, is mandatory.

11. Admittedly, in this case, the appellants j have not obtained any previous permission or I sanction from the Government, which is a condition precedent to maintain the suit. I, therefore, hold that the suit framed is not maintainable u/s 26 of the Act. I am unable to accept the contention of the learned Counsel for

the appellant, Mrs. N. Krishnaveni, that the prayer in the suit was only to declare the order of the third defendant/third respondent, dated 5.3.1993, appointing the fourth defendant fourth respondent as Special Officer, as void ab initio and inoperative. The prayer is not only to declare the order of the third defendant as void and inoperative, but a further relief is also asked for in the suit to declare that the plaintiffs were entitled to continue in the capacity of the Members of the Board of Trustees of the temples in question. Therefore, I am unable to accept or countenance the contentions of the learned, Counsel for the appellant that the appellants need not obtain the necessary permission from the Government to bring the above legal action.

12. Learned counsel for the appellant also not right in her submission that the learned District Judge has erred in misconstruing the prayer in the suit to mean that all the plaintiffs were members of the Board of Trustees and asked for a declaration of entitlement to continue; members of the Board of Trustees. The plaintiffs have specifically stated in paragraph No. 4 that they are continuing their work as Trustees and the fourth respondent may seek to disturb the work of the appellants-plaintiffs on the basis of the impugned order and hence, the suit for declaration. to the status of the plaintiffs and for an injunction became necessary. The reasons assigned by the learned District Judge in support of his conclusion are perfectly in order and sustainable in law therefore hold that the suit filed by the appellant, is not maintainable and also hit by the provision of Section 26 of the Act. Therefore, the Second Appeal fails and is dismissed. However, there will be no order as to costs. The dismissal of the appeal will not preclude the appellants herein from launching fresh suit in accordance with the provisions of the Pondicherry Hindu Religious Institutions Act 1972.