

(1968) 01 MAD CK 0047
In the Madras High Court

T.K. Santhanagopala Chettiar and Others	APPELLANT
Vs	
Thimmi M. Seetharama Chettiar and Others	RESPONDENT

Date of Decision : 29-01-1968

Acts Referred:

Citation : (1968) 2 MLJ 41

Hon'ble Judges : Ismail, J

Bench : Division Bench

Judgement

Ismail, J.—Respondents 1 and 2 herein instituted O.S. No. 359 of 1965 on the file of the Court of the District Munsif, Kumbakonam, for " (a) declaring that Sri Rajagopalaswami Temple set out in Schedule " A" and its properties set out in Schedules " B " and " C " exclusively belong to Pattusaluvar community residents of Solamaligai Village and directing the defendants 1 to 3 to put the plaintiffs in possession of the same; (b) directing the defendants 1 and 2 to render a true and proper account of their management as trustees of the suit temple from the date of their appointment, viz., 14th April, 1959 till this date (date of plaint) and pay plaintiffs for the use of the said temple such amounts as may be found due by them on taking of account." The basis of this prayer was that the temple belonged to members of Pattusaluvar community exclusively and they alone owned the temple and were worshipping the deities of the temple; it is a private temple which belonged to that community residents of the village and nobody else had any right of worship or in the properties acquired for the said temple; the Pattusaluvar community people are the hereditary adeenakarthars of the said temple and the members of the community nominated by them are the hereditary trustees of the suit temple. Defendants 1 and 2 (appellants 1 and 2) were appointed as trustees for the suit temple by the members of the Pattusaluvar community residents of the said village for a period of three years ending with 14th April, 1962; subsequently defendants 1 and 2 nurturing some grievance against other members of the community got themselves, along with the 3rd defendant, (3rd appellant) appointed as trustees of the temple by the Area Committee under the provisions of the Madras Hindu

Religious and Charitable Endowments Act, 1959; the 3rd defendant does not belong to Pattusaluvar community, he is a Padayachi and he has no right to worship in the suit temple or in the administration of the affairs of the temple. On these allegations and on the basis of the contention that the provisions of the Hindu Religious and Charitable Endowments Act are not applicable to the said institution, the suit was instituted. To the suit, in addition to the defendants 1, 2 and 3, a lessee in respect of certain properties was impleaded as the fourth defendant and the Area Committee was impleaded as the fifth defendant and the Commissioner, Madras Hindu Religious and Charitable Endowments, was impleaded as the sixth defendant.

2. In the written statement filed by the defendants, a plea was raised as to the maintainability of the suit. On the basis of the said plea, the learned District Munsif framed two questions for the purpose of preliminary determination, they being (1) whether the suit is entertainable in the civil Court in View of the provisions of the Madras Hindu Religious and Charitable Endowments Act? and (2) Whether the suit is bad for want of notice u/s 80, Civil Procedure Code, to defendants 5 and 6? The learned District Munsif, by his judgment and decree dated 17th September, 1964 found in favour of the appellants on both these points. He came to the conclusion that whether the suit temple was a religious institution coming within the scope of the Act or not was a matter left to the exclusive jurisdiction of the Deputy Commissioner u/s 63 (a) read with Section 108 of the Act and the absence of notice u/s 80 of the CPC to defendants 5 and 6 rendered the suit not maintainable.

3. Against this judgment of the learned District Munsif, the plaintiffs preferred A.S. No. 103. of 1964 on the file of the Court of Subordinate Judge, Kumbakonam. The learned Subordinate Judge by his judgment and order dated 26th July, 1965, set aside the judgment and decree of the learned District Munsif and remanded the suit for fresh disposal according to law and in the light of his observations in the judgment. With regard to the first question, the learned Subordinate Judge, relying upon a Bench decision of this Court reported in *Dr. Ananda Baliga v. Ananteswar Temple* (1952) 1 M.L.J. 678, came to the conclusion that the suit was maintainable in the civil Court. With regard to the second point, though the learned Subordinate Judge expressed his opinion that a notice u/s 80, Civil Procedure Code, was not necessary to defendants 5 and 6, since the sixth defendant was a Corporation sole and the Hindu Religious and Charitable Endowments Act was a self-contained enactment laying procedure for all contingencies and that Act does not contain any provisions stipulating the issue of a notice as a condition precedent, still he stated that he refrained from giving a finding on this point in view of the order of remand he was passing.

4. It is against this order of remand, the defendants 1 to 3 in the suit have preferred the present Civil Miscellaneous Appeal.

5. Mr. K. S. Desikan, the learned Counsel for the appellants contended that the finding of the learned Subordinate Judge on the first point is erroneous, in view

of the decision of the Supreme Court reported in *State of Madras Vs. Kunnakudi Melamattam and Another*, the decision of the Madras High Court in *Dr. Ananda Baliga v. Ananteswar Temple* (1952) 1 M.L.J. 678, is no longer good law, in view of the said decision of the Supreme Court. The learned Counsel further contended that even with regard to the second point the decision of the Supreme Court reported in *Govinda Menon Vs. Union of India (UOI)*, , clinches the issue in favour of the conclusion that the Commissioner under the Hindu Religious and Charitable Endowments Act is a Government servant and therefore a notice u/s 80 is necessary.

6. In order to appreciate the contentions advanced, it is necessary to refer to certain statutory provisions. Section 6, Clause 18 of the Hindu Religious and Charitable Endowments Act, 1959 defines a "religious institution" as a math, temple or specific endowment. Clause 20 of the section defines " temple " thus:

a place, by whatever designation known, used as a place of public religious, worship, and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof, as a place of public religious worship.

7. Section 63 so far as is relevant for the purpose of this case provides as follows:

Subject to the rights of suit or appeal hereinafter provided, the Deputy Commissioner shall have power to inquire into and decide the following disputes and matters:

(a) whether an institution is a religious institution;

8. Section 69 of the Act provides for an appeal against the order of the Deputy Commissioner to the Commissioner. Section 70 enables an aggrieved party to file a suit against the orders of the Commissioner under certain provisions, one of them being an order of the Commissioner passed in an appeal against the order of the Deputy Commissioner u/s 63 of the Act.

9. Section 108 of the Act states that no suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of law, except under, and in conformity with, the provisions of this Act.

10. Along with these provisions, reference may be made to a few other provisions under which defendants 1 to 3 have been appointed as trustees of the temple by the Area Committee. u/s 47 the Commissioner has got the power to constitute a Board of Trustees in respect of certain religious institutions. The same power is available to the Area Committee u/s 49 of the Act in respect of certain other religious institutions; and in this case the Area Committee exercised its power of appointing defendants 1 to 3 as trustees only u/s 49. One other fact that has to be noticed is, that in the present case, against the order appointing defendants 1 to 3 as trustees, the respondents herein preferred a revision petition to the Commissioner (sixth defendant) u/s 21 of the Act and the sixth

defendant declined to interfere with the order of the Area Committee.

11. It is against the background of these statutory provisions, the maintainability of the suit for the relief claimed by the respondents 1 and 2 herein has to be considered. As I have pointed out already, one of the contentions of the respondents 1 and 2 in the plaint is that the provisions of the Hindu Religious and Charitable Endowments Act do not apply to the suit temple. If that be the case, there is a specific provision made in Section 63 (a) of the Act for determining that question. Only in relation to this, the learned Subordinate Judge relied on the decision of this Court in *Dr. Ananda Baliga v. Ananteswar Temple* (1952) 1 M.L.J. 678, (already referred to) and came to the conclusion that the suit is not barred. In that case which dealt with the provisions contained in Madras Hindu Religious and Charitable Endowments Act (II of 1927), a Bench of this Court had to consider the scope of Section 84 and the related provisions. Section 84 of that Act had provided as follows:

If any dispute arises as to:

- (a) Whether an institution is a math or temple as defined in this Act,
- (b) Whether a trustee is a hereditary trustee as defined in this Act, or not, or
- (c) Whether any property or money endowed is a specific endowment as defined" in this Act or not,

such dispute shall be decided by the Board and no Court in the exercise of its is original jurisdiction shall take cognizance of any such dispute."

12. In that Act also Section 9, Clause (12) had defined a " temple" as follows:

"Temple" means a place, by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof, as a place of religious worship.

With reference to these provisions, the learned Judges have, in that case, stated:

The argument is, if a question arises whether a temple is owned by the Hindu community as a whole or whether it is owned only by a section of that community the dispute would then be one which can aptly be described as raising the question whether the institution is a temple or not within the meaning of Section 84 (1) of the Act. In our opinion, if the section is so construed, it would be placing a strained construction upon it and we think that the language of the section does not warrant such an interpretation. The section is intended to give jurisdiction to the Board to decide a dispute, when a dispute is raised, whether a particular institution is a math or temple as defined by the Act; and not a dispute which admits the institution to be a temple but that the temple is exclusively owned by a particular religious denomination such as the Gowd Saraswat Brahmin community and not by the Hindu community as a whole. Section 84 (1) (a) of the Act, therefore, in our opinion, does not cover the dispute raised in the present suit, and therefore, the prohibition against the

exercise of the jurisdiction by the Civil Court u/s 84 (1) does not come into operation.

Thus it will be seen that this decision of this Court supports the stand taken by the respondents herein that when they are challenging the applicability of the Act itself to the temple in question it cannot be said that the Deputy Commissioner u/s 63 (a) of the Act has jurisdiction to decide that question and consequently the suit at the instance of respondents 1 and 2 is barred. However the contention on the part of the appellants is that the decision above referred to is no longer good law in view of the decision of the Supreme Court in *State of Madras Vs. Kunnakudi Melamatam and Another*, (already referred to). In that case a suit was instituted praying for an order of injunction restraining the Madras Hindu Religious Endowments Board from levying any contribution under sections 69 and 70 of Madras Act II of 1927 on the allegation that the institution was outside the purview of the Act and the levy was otherwise illegal. During the pendency of the suit, the Madras Hindu Religious and Charitable Endowments Act 1951 (XIX of 1951) came into force and in view of the provisions contained in Section 103 (j) of the said Act, the suit was continued against the Commissioner of the Hindu Religious Endowments. The prayer portion of the plaint was also amended by inserting a claim of injunction restraining the third defendant from levying any contribution under Act XIX of 1951. The Supreme Court had to consider the two reliefs claimed by the respondent in that case, namely, (1) an injunction restraining the levy of contributions and audit fees under Act III of 1927 and (2) an injunction restraining the levy of contributions and audit fees under Act XIX of 1951. With regards of the claim for the first injunction the Supreme Court upheld the contention of the respondent on the ground that the Hindu Religious Endowments Board had decided that the respondent institution was outside the purview of Act II of 1927 and that the decision was binding for the purpose of that Act on both the parties. With regard to the second injunction : the Supreme Court referred to the definition of a " Math " contained in Section 6 (10) of the Act of 1951 and also the provisions contained in Sections 57 and 93 of that Act corresponding to sections 63 and 108 of the present Act and observed:

Now, one of the disputes in this suit is whether the institution is a religious institution within the meaning of Act XIX of 1951. Specific provision is made in Sections 57, 61 and 62 of the Act for determination of that dispute by the Deputy Commissioner, the Commissioner and eventually by a suit instituted in a Court u/s 62. The present suit is not brought under or in conformity with Section 62 and consequently, in so far as the suit claims the relief of injunction restraining the levy of contribution and audit fees under Act XIX of 1951, it is barred by Section 93 of the Act.

I may point out that Section 61 of the Act 1951 corresponds to Section 69 of the present Act providing for an appeal to the Commissioner and Section 62 of the Act of 1951 corresponds to Section 70 of the present Act providing for a right of suit. In my opinion, this decision of the Supreme Court concludes the question in

favour of the appellants for two reasons : (1) As I already pointed out, the provisions of the Act of 1951 construed by the Supreme Court are the same as the relevant provisions in the present Act; and (2) In the case before the Supreme Court also the basis of the claim made was that the institution was outside the purview of the Act. Consequently this decision of the Supreme Court is decisive on the point in controversy in favour of the appellants.

13. Mr. Govindachari, the learned Counsel for the respondents contended that it is not the case of the respondents 1 and 2 that the Madras Hindu Religious and Charitable Endowments Act has no application at all to the suit temple and his case was that the temple is one owned by a religious denomination coming within the scope of Article 26 of the Constitution and the main object of the suit was to obtain a declaration that the suit temple is a denominational temple entitled to the protection conferred by Article 26 of the Constitution. I am unable to agree with the contention of Mr. Govindachari that the suit in the present case claims only such limited reliefs. I have already referred to the averments contained in the plaint for the purpose of showing that the claim of respondents 1 and 2 is that the suit temple is outside the purview of the Act. It is only on that basis they sought delivery of possession of the temple and its properties from defendants 1 to 3 thereby challenging the order of the Area Committee appointing defendants 1 to 3 as trustees. My decision in this case holding that the present suit is barred by the provisions contained in the Madras Hindu Religious and Charitable Endowments Act is based solely on the ground that the respondents 1 and 2 had claimed the relief on the basis of the contention that the suit-temple is outside the purview of the Act. Whether the respondents will be entitled to file a suit in a civil Court for a declaration that the suit-temple is a denominational temple entitled to the protection conferred by Article 26 of the Constitution of India and that the provisions contained in the Madras Hindu Religious and Charitable Endowments Act, 1959 can be applied only subject to the constitutional right is recognised by Section 107 of the Act itself and that in any particular matter the authorities under the Act have not kept within their limits With reference to the rights of the denomination under Article 26 of the Constitution, does not arise for my consideration in the present suit and therefore my decision in this case will not affect any such question.

14. With regard to the second question, as I pointed out already, the learned Subordinate Judge took the View that the Madras Hindu Religious and Charitable Endowments Act is a self-contained enactment and that enactment does not contain any provision stipulating for a notice to defendants 5 and 6 and also the Commissioner being a Corporation sole, no notice u/s 80, Civil Procedure Code, is necessary. Section 11 of the Madras Act XXII of 1959 states that the Commissioner shall be a Corporation sole and shall have perpetual succession and a common seal and may sue and be sued in his corporate name. "Section 12 provides that the Commissioner, Deputy Commissioners, Assistant Commissioners and other officers and" servants including executive officers of religious institutions employed for the purpose of this Act shall be servants of the

Government...." It is not denied before me that if the Commissioner is a Government servant Section 80 of the Civil Procedure Code, will apply. However the argument of Mr. Govindachari is that when the Commissioner is functioning in relation to matters as the one in question he is a judicial officer and consequently no notice to him is necessary. For this purpose, learned Counsel relied upon the provisions contained in Section 110 of the Act which are as follows:

Section 110 (1) :--Where a Commissioner or a Deputy Commissioner makes an inquiry or hears an appeal under Chapter V of Chapter VI, the inquiry shall be made and the appeal shall be heard, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Central Act V of 1908) to the trial of suits or the hearing of appeals, as the case may be;

(2) The provisions of the Indian Evidence Act, (Central Act I of 1872), and the Indian Oaths Act, (Central Act X of 1873), shall apply to such inquiries and appeals; and

(3) The Commissioner or a Deputy Commissioner holding such an inquiry or hearing such an appeal shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, (Central Act XVIII of 1850).

There are two answers to this submission of Mr. Govindachari. The first is that u/s 110, when a Commissioner or a Deputy Commissioner makes an inquiry, he is deemed to be a person judicially acting, only for the purpose of the Judicial Officers Protection Act, 1850. The second is that even this protection is available to the Commissioner or a Deputy Commissioner only when he is conducting an inquiry or hearing an appeal under Chapter V or Chapter VI. As I pointed, out already, the Area Committee exercised its powers, in appointing defendants 1 to 3 as trustees, u/s 49 which falls under Chapter III of the Act; and the Commissioner exercised his power of revision u/s 21 which falls under Chapter II of the Act. Consequently I am unable to accept this contention of Mr. Govindachari.

15. In relation to the Commissioner being a corporation sole, that question came up for consideration before the Supreme Court in Govinda Menon Vs. Union of India (UOI), . That case related to certain disciplinary proceedings taken by the Government against the appellant while functioning as Commissioner under the Hindu Religious and Charitable Endowments Act. A contention put forward in that case was that the Commissioner being a corporation sole, he was not a Government servant liable to the disciplinary proceedings of the Government. In dealing with that contention, the Supreme Court pointed out:

It is true that the Commissioner has been made a corporation sole u/s 80 of the Act which states that the Commissioner shall have perpetual succession and common seal and may sue and be sued in his corporate name. Section 81 (1) of the Act provides for the establishment of a Fund called " The Madras Hindu Religious and Charitable Endowments Administration Fund" and further states

that the Fund shall Vest in the Commissioner. It was argued for the appellant that the corporate entity created by Section 80 of the Act has a separate legal personality. But there is a juristic distinction between a corporation sole and a corporation aggregate and the corporation sole is not endowed with a separate legal personality as the corporation aggregate.

16. As Maitland said

If our corporation sole really were an artificial person created by the policy of man We ought to marvel at its incompetence. "Unless custom or statute aids it, it cannot (so we are told) own a chattel, not even a chattel real. A different and an equally inelegant device was adopted to provide an owning ""subject" for the ornaments of the church and the minister thereof adopted at the end of the Middle Ages by lawyers who held themselves debarred by the theory of corporations from frankly saying that the body of parishioners is a corporation aggregate. And then we are also told that in all probability a corporation sole " cannot enter into a contract except with statutory authority or as incidental to an interest in land.... Be that as it may, the ecclesiastical corporation sole is no "juristic person"; he or it is either natural man or juristic abortion." (See Selected Essays of Maitland pages 100 and 103).

17. Keeton has also observed as follows:

It was a device for transmitting real property to a succession of persons without the necessity for periodic conveyances. It was never intended that this device should be erected into a psychological person with a developed existence of its own .In dealing with a corporation sole, the Courts have never treated it as a conception similar in essential characteristics to a corporation aggregate. They have restricted its utility to the transmission of real, or exceptionally, by custom, as in *Byrd v. Wilford* 1596 78 E.R. 717, and now by statute, personal property from one holder of an office, lay or ecclesiastical, to his successor". (See " Elementary Principles of Jurisprudence" by Keeton, 2nd Edn. pages 155 and 162). We accordingly reject the contention of the appellant that the Commissioner has a separate legal personality as corporation sole u/s 80 of the Act and that he is exempt from disciplinary proceedings for any act or omission committed in his capacity as Commissioner. In our opinion, the object of the Legislature in enacting Sections 80 and 81 of the Act was to constitute a separate Fund and to provide for the Vesting of that Fund in the Commissioner as a corporation sole and thereby avoid the necessity of periodic conveyance in the transmission of title to that Fund.

Thus this decision and the provisions contained in Section 12 of the Act already referred to make it absolutely clear that the Commissioner while functioning under the provisions of the Act functions only as public officer or Government servant and as such the provisions contained in Section 80, Civil Procedure Code, will apply to him. I may point out that Section 80 of the Act of 1951 considered in the above decision corresponds to section II of the Act of 1959, referred to

already.

18. Therefore, in view of my conclusion on these two points, the result is, that in so far as the respondents 1 and 2 herein prayed for a declaration that the suit-temple falls outside the provisions contained in the Madras Hindu Religious and Charitable Endowments Act, 1959, and the Area Committee had no jurisdiction to appoint the trustees, on the ground that the temple belongs to a denomination, the suit is not maintainable in a civil Court. As I pointed out already, the suit also contains a prayer for rendition of accounts against defendants 1 and 2 only from the date of their appointment, namely, 14th April, 1959 as trustees. The basis of this relief is that defendants 1 and 2 were on that date appointed as trustees by the community and therefore they are answerable to the community. Such a relief cannot be said to come within the scope of the provisions contained in the Hindu Religious and Charitable Endowments Act, 1959 and therefore the action cannot be said to have been barred by any of the provisions contained in that Act. Consequently the learned District Munsif will have to consider the suit in relation to that prayer.

19. Under these circumstances I allow this appeal and set aside the judgment and order of the learned Subordinate Judge and remand the suit to the learned District Munsif for the purpose of proceeding with the suit further in relation to the prayer for rendition of accounts as mentioned by me. Since the suit for declaration based on the ground that the temple is outside the purview of the Madras Hindu Religious and Charitable Endowments Act, 1959 and for recovery of possession from defendants 1 to 3 on the same ground, is not maintainable in civil Court and since no notice u/s 80, Civil Procedure Code, has been given to the sixth defendant, the suit as against the fifth and sixth defendants will stand dismissed. No order as to costs in this appeal.

20. Leave to appeal granted.