courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 05/09/2026

(1990) 01 MAD CK 0086

In the Madras High Court

Case No : Writ Petition No. 17806 of 1990

T.P. Radhakrishnan and 3 others — APPELLANT

Vs

The Assistant Commissioner, H.R. and C.E. Admn. Department, Nungambakkam High Road, Madras 34 and The Executive Officer, Sri Ekambareswarar Temple Mint Street, Madras — RESPONDENT

Date of Decision : 21-01-1990

Acts Referred:

Citation : (1990) 01 MAD CK 0086

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Advocate : P. Chidambaram, for Mr. K. Venkataraman, for the Appellant; P.M. Baskaran, Government Advocate on behalf of the Respondent 1 and of Mr. G. Rajan for the Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

Bakthavatsalam, J.—The petitioners who are brothers, performing the Vedarpari Mandagapadi in a vacant ground situated in Door No. 275, Suryanarayana Chetty St., Royapuram, Madras. It is stated the performance of the Vedarpari Mandagapadi will not come under the definition of a "religious institution" as per the Tamil Nadu Act 22 of 1959. The performance of Mandagapadi takes place on the 15th day of Brahmotsavam for Lord Kandaswami of Muthukumaraswami Temple, when the deity is taken out on procession for the performance of the "Mandagapadi" in the petitioner''s house. According to the petitioners, the utsavar deity is taken to the petitioner''s place on the way to Royapuram, where Valli Thirumanam is celebrated and in the journey from Temple to Royapuram, the deity is accommodated in the petitioner''s house and an abishekam is performed and prasadams are distributed to the public who come and attend the Mandagapadi. Therefore, according to the petitioners, the performance of mandagapadi is neither a specific endowment nor a religious institution as laid down under the provisions of the Act 22 of 1959. It is further averred in the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/tp-radhakrishnan-and-3-others-…

affidavit filed in support of this petition, as per the will dated 22-9-1977 by the petitioner''s father, a charge has been created for the performance of mandagapadi and the same cannot be construed as a specific endowment within the definition of S.6(19) of the Act 22 of 1959. On 17-9-1590, the 1st respondent has issued a show cause notice as to why non-hereditary trustees should not be appointed for mandagapadi, for which one of the petitioners sent a letter on 9-10-90, requesting the 1st respondent to give a months time to give a suitable reply to the said show cause notice, as the connected papers were handedover to the petitioner'' counsel. Thereafter the petitioner sent a reply on 27-10-90 to the 1st respondent indicating the private character of the institution. The 1st respondent, according to the petitioners, without conducting an enquiry into the real character of the mandagapadi has appointed the 2nd respondent as a Fit person for the mandagapadi contrary to law, ignoring the request of the petitioners to grant a months time to send a reply to the show cause notice. The 1st respondent has no jurisdiction to appoint a Fit person under Proviso to S.47(i)(c) of the Act 22 of 1959 for Mandagapadi. Questioning the action of the 1st respondent, the petitioners have filed an application under S.63(a) of the Act on the file of the Deputy Commissioner, H.R. & C.E. Department. Madras and the same is yet to be numbered. It is further submitted that the trustees of Sri Muthukumaraswami Temple have also filed UCS No. 131/90 on the file of this Court for a declaration that door No. 275, situate in Suryanarayana Chetty St., Royapuram, Madras would constitute an absolute endowment dedicated in favour of Lord Muthukumaraswami and the sine is pending. In the affidavit filed in support of this petition, a reference had been made to a decision of the Supreme ;Court in Hindu Religious Endowments and Others Vs. B. Samitra and Others, support of the petitioner''s claim. Therefore according to the petitioners, the action of the 1st respondent in appointing the 2nd respondent as a fit person to the Mandagapadi in question is ex-facie illegal and is liable to be set aside.

2. In the counter affidavit filed by the 1st respondent it is contended that this writ petition is liable to be dismissed on the ground of existence of an alternative remedy as provided under S.21-A, of the Tamil Nadu Act 22 of 1959. The 2nd respondent has assumed charge as the Fit person on 12-11-1990 and issued notice to the tenants under his control to pay the rents to him. Because of the interim order obtained by the petitioners in this writ petition, the Fit person could not continue to collect the rents from the tenants. The petitioners have suppressed the will dated 12-2-1986 of Paukum Kandasamy Chetty. Under which he created the religious Charity and certain properties were endowed for such religious purposes, Though the said will specifically barred any sale or mortgage of the property the petitioners sold a portion of the properties or mortgage of the property for a liquor shop business and also tried to demolish the mandapam and remove the deities installed there to cover it as a godown for the purpose of letting it out, but the local people prevented the same. It is further contended that the said paukum Kandaswamy Chetty executed a will on 12-2-1986 leaving a sum of Rs. 27,000 and Rs. 12.800 in the form of deposits and a bungalow and

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/tp-radhakrishnan-and-3-others-…

garden in Door No. 38-39. Suryanarayana Chetty St., Royapuram, Madras to perform nearly 48 items of religious charities. The petitioners have not maintained the accounts properly. Door No. 38-39, Suryanarayanan Chetty St. stands in the name of the trustee for religious charity attached to Kandaswami Temple and and the said property was used as the place for Vedarpari festival of Srikandaswamy Temple. In the said property, the testator or his fore-fathers erected a Sacred Silasasanam and a stone Idol of Lord Muruga with Valli in a platform. When the petitioners attempted to remove the same and converted the platform into a godown the trustees of Arulmighu Muthukumaraswamy Temple prevented the same by giving a complaint to the police. It is not correct to state that the petitioners are performing the Vedarpari Mandagapadi at No. 275 Suryanarayana Chetty St., Royapuram, Madras. It is not correct to state that the performance of Vedarpari Mandagapadi will not come under the definition of the religious institution as per the provisions of S.6(19) and 6(16) of the Art.22, 59, It is clearly stated in the will as well as in Document No. 1870/12 that it is a religious charity. In the interest of proper management of the property and also to perform the charity and festivals in proper manner as per the will, the 1st respondent appointed the Executive Officer, Arulmighu Ekambareswarar Temple, as a Fit person after giving an opportunity to the petitioners to send a reply to the show cause notice, there is no question of conducting any enquiry into the same. The appointment of the Fit person is in accordance with the provisions of the Act 22/59. The Fit person has already assumed charges and started to collect rents from the tenants. Therefore, the 1st respondent prays that the writ petition is liable to be dismissed.

3. In the counter affidavit filed by the 2nd respondent it is contended that the 2nd respondent was duly appointed as the Fit person to Muthukumaraswamy Devasthanam Madras by the first respondent and he assumed charge on 2-11-1990 before the Writ petition was filed. On assuming charge, the 2nd respondent sent notices to all the tenants and others concerned. According to the 2nd respondent, the petitioners seem to have let out the premises belonging to the temple, to the public to enrich themselves and thus committed mismanagement. The petitioners attempted to sell properties to third parties when there is a specific prohibition in the will. On various complaints about the mismanagement by the petitioners, a notice was sent to the petitioners. It is further contended by the 2nd respondent that the petitioners did not take any interest in festival or poojas but appropriating all the income for themselves. It is not correct to state that it is a specific endowment. It is a property dedicated to religious institution and therefore it comes under the purview of the Act 22 of 1959.

4. In the reply affidavit filed by the petitioners it is an erred that whether there is any dedication to Kandaswami Temple or not is a matter to be decided in C.S. No. 133/90, which is a suit instituted by the trustees of Sri Muthukumaraswami Devasthanam. According to the petitioners, there is no dedication as contended by the respondents, No fit person could be appointed before deciding the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/tp-radhakrishnan-and-3-others-…

jurisdiction of the 1st respondent in appointing the Fit person; The fact that the 2nd respondent has assumed charge as the Fit person cannot advance the case of the respondents. The petitioners are in possession of the property and enjoying the same: It is not correct to state that the order of interim stay was obtained subsequent to the 2nd respondent assuming charge as the Fit person; The 2nd respondent is not aware of the situation of the property. There is no complaint at all against the petitioners. There is no dedication to Kandaswami Temple. The temple did not at any time exercise any control over the properties and only the petitioners have been in possession and enjoyment of the same. It is not correct to state that the properties in question have been assessed to Urban Land Tax and Corporation Tax in the name of the Temple. It is not correct to state that the 2nd respondent has taken possession of the properties on his assuming charge as the Fit person.

5. Mr. P. Chidambaram, learned Senior counsel for the petitioners, by referring to S.49 and S.47 of the Act 22 of 1959, contended that the impugned order of the 1st respondent in appointing the 2nd respondent as the Fit person is arbitrary and the conditions prescribed in the S.49 and 47 of the Act have not been complied with. It was further contended by the learned Senior counsel that when one of the petitioners wanted time to send their reply to the show cause notice, without granting or refusing time to the petitioners, the 1st respondent has proceeded to appoint the 2nd respondent as the Fit person.

6. Though the learned senior counsel advanced arguments on many grounds attacking the impugned order, I do not think that it is necessary to decide the other issues. At this stage, since I am of the view that the impugned order has to go purely on the ground of violation of principles of natural justice.

7. Mr. P. Bhaskaran, learned Government Advocate for the Department strenuously contented that notice was given for the appointment of non-hereditary trustee to the petitioners and the Tamil Nadu Act 22 of 1959 empowers the respondents the appointment of a Fit person. With regard to the issue raised by the learned senior counsel for the petitioner regarding the principles of natural justice, the learned Government Advocate pointed out that though the request by the petitioners for grant of one month time for sending a reply to the show cause notice was not turned down or, granted, factually the order of appointment of Fit person was made on 25-10-90, and therefore, according to the learned Government Advocate, there is no violation of principles of natural justice, with regard to the appointment of non-hereditary trustee.

8. Though Mr. G. Rajan, Learned Counsel for the Fit person tries to argue on the merits of the case, I am not inclined to allow the Fit person to get into scene at this stage, since I am of the view, that the Fit person himself derives power only by the impugned order and when that impugned order itself is being questioned, I do not know how the Fit person could try to defend the impugned order. Admittedly a notice was issued to the petitioners for the appointment of a non-hereditary trustee on 17-9-90 and objections were called from the petitioners

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/tp-radhakrishnan-and-3-others-…

within 15 days from the date of receipt of the said notice. The file produced by the learned Government Advocate for the Department will clearly show that to the notice sent to the petitioners by registered post one of the brother of the petitioner wrote a letter dated 9-10-90 asking for one month time to send a reply to the show cause notice as the papers were all with their advocate. I do not find anything in the file that any reply was given to the said request of the petitioners. It is also seen from the file that the Assistant Commissioner has written to the Deputy Commissioner on 17-9-90 that kattalai has not been managed properly and as such a show cause has been issued with regard to the appointment of trustees will be appointed only after the receipt of the reply from the petitioners. Suddenly the impugned order came to be passed on 25-10-1990 appointing the Fit person; The scrutiny of the records will clearly show that the 1st respondent has not applied his mind in the matter of appointing the Fit Person. After issuing notice for the appointment of non-hereditary trustee u/s.47 and 49 of the Act, the 1st respondent proceeded to appoint the Fit person; When the character of the institution is in question non hereditary trustee cannot be appointed. To get over this situation, the 1st respondent thought to appoint the Fit person suddenly so that the properties could be taken possession by the respondents. The impugned order has been passed in gross violation of principles of natural justice. The 1st respondent had neither accepted nor rejected the request of the petitioner to grant time for sending reply to the show cause notice. In this view of the matter, the impugned order has to go on the ground of violation of principles of natural justice. Accordingly the impugned order is set aside and the writ petition will stand allowed. However, it is open to the respondents to take any other action in accordance with law if so advised. No costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/tp-radhakrishnan-and-3-others-…