
(1967) 06 MAD CK 0006
In the Madras High Court

V. Solamalayan Poojari (deceased) and Others APPELLANT
Vs
The Commissioner, Hindu Religious and Charitable Endowments and Others RESPONDENT

Date of Decision : 29-06-1967

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 63(e)

Citation : (1968) 1 MLJ 105

Hon'ble Judges : P. Ramakrishnan, J

Bench : Division Bench

Judgement

P. Ramakrishnan, J.—In this writ petition, the petitioner attacks the finding of the first, respondent, Commissioner, Hindu Religious and

Charitable Endowments, in Appeal No. 37 of 1962 filed against the order of the Deputy Commissioner, Hindu Religious and Charitable

Endowments, Madurai, the second respondent in O.A. No. 5 of 1961 and prays for the issue of a writ of certiorari to quash the abovesaid order.

2. The brief facts necessary for consideration of this writ petition are the following:

The petitioner was appointed by the Executive Officer of the Sri Kallalagar Koil Devasthanam, Melur Taluk, Madurai district, respondent No. 10,

as poojari in one of the temples attached to the Devasthanam, on 13th June, 1941. Respondents 3 to 8 filed a claim u/s 63(e) of the Madras Hindu

Religious and Charitable Endowments Act (XXII of 1959) before the Deputy Commissioner, Hindu Religious and Charitable Endowments stating

that they were the persons who by hereditary right became entitled to the aforesaid poojariship and also to the emoluments attached to that office

and they prayed for a declaration of such a right and the consequential relief of

payment of emoluments. The Deputy Commissioner, however, declined to exercise jurisdiction on the principal ground that a declaration as to their hereditary right to succeed to the poojariship on which the respondents 3 to 8 based their relief for emoluments, was outside the purview of Section 63(e) and dismissed the claim. Respondents 3 to 8 took the matter in appeal u/s 69 to the Commissioner for the Hindu Religious and Charitable Endowments. The Commissioner held that the decision about the right of the petitioner to succeed to the hereditary office of Poojari was necessary to enable the grant of the further relief in respect of emoluments which they sought u/s 63(e). The Commissioner drew a distinction in this respect between 63(e) and Section 63(b). While the Act has provided for a special provision in Section 63(b) for deciding a dispute about a right to succeed to the hereditary office of trustee, the Act is silent in respect of the right to succeed to an hereditary office like that of an archaka which carries with it certain emoluments. Because there is such a distinction according to the Commissioner, the special provision in Section 63(e) conferring jurisdiction to decide a dispute about the right to receive emoluments was sufficient to confer also jurisdiction to decide a dispute regarding succession to the office of poojari and other employees under the religious institution to which those emoluments are attached. The Commissioner allowed the appeal and directed the Deputy Commissioner to enquire into the claim. This writ petition is filed by the petitioner, aggrieved against the abovesaid order of the Commissioner for Hindu Religious and Charitable Endowments.

3. The word "emolument" has been defined in the Concise Oxford Dictionary as "'profit from office or employment, salary '". It is therefore clear that when Section 63(e) of the Act speaks of a person being entitled by custom or otherwise to an emolument in any religious institution, and he seeks for relief in respect of such an emolument u/s 63(e) before the Deputy Commissioner, and if his right to receive the emolument is disputed because it is urged by the opposite party that he is not the proper person entitled to the office which carries that emolument, it will be within the jurisdiction of the Deputy Commissioner to decide that right as a preliminary step before giving him the relief which he seeks in respect of the emoluments. In other words, when the right to the office and the right to the

emoluments are both inter-linked, the Deputy Commissioner, while exercising jurisdiction regarding the right to the emoluments cannot refuse to exercise jurisdiction for deciding the right to the office which is a condition precedent to the applicant being entitled to the emoluments.

4. It is represented before me that there is no reported decision covering this point. But the learned Counsel for the respondents 3 to 8 has referred

me to an unreported decision of Krishnaswami Nayudu, J., in Second Appeal No. 1143 of 1951. That was a case where a certain person filed a

suit in the civil Court for a declaration that she was entitled to Poojari rights in certain temples. The trial Court decreed the suit but the appellate

Court dismissed the suit holding that the provisions of Section 79(A) of the Hindu Religious and Charitable Endowments Act (II of 1927) (as

amended by Act V of 1944 and Act X of 1946) barred the jurisdiction of the civil Court. Section 79 read:

Save as otherwise expressly provided in or under this Act nothing herein contained shall effect any established usage of a math or temple or the

rights, honours, emoluments and perquisites to which any person may by custom or otherwise be entitled in such math or temple.

Section 79-A(1) provided:

If any dispute arises in regard to any of the matters mentioned in Section 79, such dispute shall be decided by the Board.

Section 79-A(3) gave a remedy to a person affected by the order of the Board to apply to the Court within three months to modify or set aside the

same, but subject to the result of such application the order of the Board shall be final. The learned Judge in the abovesaid unreported decision

considered Sections 79 and 79-A(1) and Section 79-A(3) and held that, that particular suit was barred in the civil Court as exclusive jurisdiction

to deal with the dispute about the hereditary poojariship, was conferred on the tribunals constituted under the Hindu Religious and Charitable

Endowments Act. Section 79-A was in wider terms than Section 63(e) of the present Act because it referred to rights besides honours and

perquisites whereas Section 63(e) of Act XXII of 1959 refers only to honours, emoluments or perquisites. But both the provisions have this in

common that they deal with honours, emoluments or perquisites. In the present case, there is not merely a dispute raised about the right to succeed

to a hereditary office, but as already mentioned the dispute also covers the right to receive the emoluments attached to that office. In view of the

above-said considerations, I am of opinion that the view of the Commissioner that the Deputy Commissioner had jurisdiction to entertain the claim

u/s 63(e) is right and calls for no interference.

5. Learned Counsel for the petitioner urged that the respondents 3 to 8 ought to have filed a claim soon after the Devasthanam appointed the

petitioner on 13th June, 1941, as Poojari, and that long delay of 20 years in filing the present claim must be considered as a bar against their getting

the present relief. The plea of limitation raised in this manner cannot be dealt with in this writ proceeding. If raised, it can be considered and dealt

with by the Deputy Commissioner in accordance with the relevant provisions of the Act and Rules.

6. The Writ Petition is dismissed with costs. Advocate's fee Rs. 150.