

(1942) 08 MAD CK 0026
In the Madras High Court

Valliappa Chettiar

APPELLANT

Vs

Arandi and Others

RESPONDENT

Date of Decision : 11-08-1942

Acts Referred:

Madras Hindu Religious Endowments Act, 1923 — Section 44B

Citation : AIR 1942 Mad 706 : (1943) ILR (Mad) 402 : (1942) 55 LW 616 :
(1942) 2 MLJ 470

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

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—This is an application for the issue of a writ of certiorari to quash an order of the Collector of

Coimbatore. The application arises out of a petition filed u/s 44-B of the Madras Hindu Religious Endowments Act, 1926, asking for an order

directing the resumption of certain Devadayam mam lands granted to the Kariakaliamman, Athanur Amman and Mariamman temples in the village

of Alambadi. The petition was filed by the trustees of these temples. The petitioner now before us and six other persons were made respondents,

as they were in possession of the lands as alienees. The respondents raised the contention that the section had no retrospective effect and this was

accepted by the Revenue Divisional Officer. Consequently he held that the application filed by the trustees was not maintainable. Thereupon the

trustees appealed to the Collector of Coimbatore u/s 44-B(2)(d)(i) which says:

Any party aggrieved by an order of the Collector under Clause (a) may appeal to the District Collector within such time as may be prescribed, and

on such appeal the District Collector may, after giving notice to each of the persons and bodies mentioned in Clause (6) and after holding such

inquiry as may be prescribed, pass an order confirming, modifying or cancelling the order of the Collector.

Without issuing notice to the respondents in the proceedings before the Revenue Divisional Officer and despite the fact that they had obtained an

order in their favour, the District Collector directed the Revenue Divisional Officer to reopen the case and decide it on its merits. He disagreed with

the opinion of the Revenue Divisional Officer that the section had retrospective effect.

2. In passing this order the District Collector acted without jurisdiction. He has power to reverse an order passed by the Revenue Divisional

Officer u/s 44-B (2), but before he exercises this power he must serve notice on the respondents and give them an opportunity of being heard. In.

other words, notice to the respondents is a condition precedent to his right to exercise jurisdiction in the matter.

3. The learned Government Pleader, as he must, concedes that notice should have been issued, but he suggests that a writ of certiorari should not

issue as the order was substantially right. This is not the question. A party has a right to be heard and that right was denied to the respondents in

the proceedings instituted by the trustees of these temples.

4. The District Collector has emphasised his disregard of the law in the affidavit which he has filed in opposition to the application for a writ of

certiorari. In paragraph 4 of his affidavit he says:

As the appellate tribunal was of opinion that the first tribunal erred on a question of law, it was entitled in law to pass orders remanding the case for

fresh disposal, without sending notices to the respondents and without holding an enquiry.

In paragraph 5 he says:

No fundamental principles of natural justice have been violated, in the course of the proceedings in L. Dis. No. 7652 of 1941. The powers of an

appellate tribunal are wide enough to pass appropriate and suitable orders, according to the circumstances of each case.

Such an attitude cannot be allowed to pass without the strongest condemnation. The District Collector is there to administer the law and not to

ignore it. His action in deciding the appeal made to him u/s 44-B(2)(d) without notice to the respondents was most high-handed and he aggravates

the situation by claiming a right to act in this manner. The order of the District Collector will be set aside and he will be directed to hear the appeal

after proper notice has been given to the respondents in the proceedings before the Revenue Divisional Officer.

5. The petitioner is entitled to his costs and so are the trustee-respondents. As the Collector has chosen to oppose the application the order for the

payment of costs must be made against him as a public officer. The costs will be paid within two months.