IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2112 of 2014
& M.P.No.1 of 2014

V.Kuppusamy ... Petitioner

Vs.

A/M.Prasanna Vinayagar Thirukoil
Represented by its Executive Officer
Pudupet, Chennai-14. ... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 21.02.2014 made in I.A.No.14068 of 2013 in O.S.No.7284 of 2012 on the file of the XVII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.S.Sivaraman

For Respondent : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 21.02.2014 made in I.A.No.14068 of 2013 in

O.S.No.7284 of 2012 on the file of the XVII Assistant Judge, City Civil Court, Chennai.

2. The petitioner is defendant and respondent is the plaintiff in O.S.No.7284 of 2012. The respondent filed the said suit for permanent injunction restraining the petitioner or his men or any person claiming through his or under him from putting up any kind of new constructions over the suit schedule property. The petitioner filed written statement and is contesting the suit. The petitioner filed I.A.No.14068 of 2013 under Order VII Rule 11 of C.P.C. for rejection of the plaint.

3. According to the petitioner, the plaint does not disclose any cause of action. The Executive Officer filed the suit without any authority and without any valid grounds and therefore, there is no cause of action for filing the suit against the petitioner. The petitioner also contended that the Executive Officer of the temple is appointed by the Department only for administration and maintenance of the temple. As per HR and CE Act, the Executive Officer does not have power to initiate any action against the petitioner. The Executive Officer as per the definition of the Act is a

person who is appointed to exercise such powers and discharge such duties with regard to the administration of the religious institution assigned to him by or under the Act or the Rules framed thereunder and exercise such power and discharge such duties as may be assigned to him by the Commissioner. In view of the same, the suit filed by the Executive Officer without authority is not maintainable. In the plaint, there is no averment as to on what authority the respondent/Executive Officer has filed the present suit, when there is a clear bar under the law to file the suit.

4. The respondent filed counter affidavit and opposed the said application and submitted that the cause of action for the suit arose in November, 2012, when the petitioner was taking illegal steps over the suit property. The Executive Officer is a fit person to file the suit and has passed resolution dated 23.11.2012 to file the case against the petitioner. The resolution was brought to the knowledge of the Joint Commissioner, HR and CE Department. Hence, the Executive Officer of the temple is fully competent to file the present suit. There is no illegality or irregularity to avail the legal remedy through Court of law.

5. The learned Judge considering the averments made in the plaint, affidavit, counter affidavit and materials on record, dismissed the application holding that the Executive Officer has not obtained any specific permission to file the case, but that will not be the reason for rejection of plaint and it can be cured at any point of time.

6. Against the said order of dismissal dated 21.02.2014 made in I.A.No.14068 of 2013, the present Civil Revision Petition is filed by the petitioner/defendant.

7. The learned counsel for the petitioner referred to Section 45(2) and 6(9) of HR and CE Act (definition of the Executive Officer) contended that the Executive Officer has power only to administer and maintain the religious institution and has no power to initiate any legal proceedings. Only trustee can sue or be sued. The Executive Officer must obtain prior permission from the Commissioner for filing the suit. Only when the Executive Officer obtains permission to file the suit from the Commissioner of the Department, the cause of action for the suit arises. In the present case, the respondent in his counter stated that he passed a resolution dated 23.11.2012 to file the present suit and forwarded the resolution to the Joint

Commissioner. In the plaint, he has not stated about the resolution and forwarding the same to the Joint Commissioner as well as the cause of action portion in the plaint. It is not the case of the respondent that the Joint Commissioner granted permission to file the suit. In support of his contention, the learned counsel for the petitioner relied on the following judgment passed by the Division Bench of this Court reported in ***2003 (1) LW 386 (Sri Arthanareeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy v. T.M.Muthuswamy Padayachi, etc and others);***

> "20. Insofar as the Executive Officer's suit is concerned, it is seen that 'Executive Officer' has been defined under Section 6(2) of the H.R. & C.E. Act. According to this definition, Executive Officer is a person who is appointed to exercise such powers and discharge such duties appertaining to the administration of a religious institution as are assigned to him by or under the Act or the Rules framed thereunder. 'Trustee' has been defined under Section 6(22) of the Act as any person or body in whom the administration of a religious institution is vested. Section 45 of the Act deals with the appointment and the duties of an

Executive Officer. Sub-section (2) to Section 45 says that the Executive Officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner. The proviso says that only such powers and duties as appertaining to the administration of the properties of the religious institution shall be assigned to the Executive Officer. The powers and duties of the Executive Officer shall be defined by the Commissioner. Section 28 of the Act empowers the trustee of every religious institution to administer its affairs and to apply the funds and properties of the institution. He shall be entitled to exercise all powers incidental to the provident and beneficial administration of the religious institution.

21. In this case, the Executive Officer, in his chief-examination as P.W.1, has stated that for the purpose of filing the suit, he sought permission from the Commissioner and got the order under Ex.A.12. On a perusal of Ex.A.12 dated 24.6.1970, it is seen that instructions were issued to the Executive Officer and the Board of Trustees to obtain legal opinion to enforce the charges mentioned in the settlement deed dated 1.11.1897 executed by one Thiru Venkatachala Gounder and his wife. A copy of these instructions was issued to

the Executive Officer as well as to the Chairman, Board of Trustees. The above instructions did not authorise the Executive Officer to file a suit. As a matter of fact, the instructions were addressed to both the Executive Officer as well as to the Chairman, Board of Trustees in order to obtain legal opinion in reference to the enforcement of the settlement deed. Thereafter, the Inspector, H.R. & C.E. Department held an enquiry on 1.10.1971 on the petition by T.P. Ardhanari Padayachi (the first plaintiff in the Community's suit). Ex.B.107 is the report of the Inspector dated 24.1.1972 wherein he has stated that he found on his enquiry, that from the date of the gift/settlement deed dated 1.11.1897, no such Nandavanam and its performance was conducted. It was further noted that in reference to this property, there was already an enquiry by the Commissioner on 26.5.1970 and an order dated 24.6.1970 had been passed directing the concerned to take legal opinion. From the above, it is clear that the Executive Officer is not the authority competent to initiate legal proceedings and that he had not been assigned with the power of filing a suit. It is only the Board of Trustees in existence at that time which was competent to initiate the legal proceedings. The trustees are not made parties to the suit and therefore, the finding insofar as the Executive Officer's suit is concerned, that it is filed without authority has to be upheld."

8. Though notice was served on the respondent and name of the respondent is printed in the cause list, there is no representation on behalf of the respondent either in person or through counsel.

9. Heard the learned counsel for the petitioner and perused the materials available on record.

10. The contention of the learned counsel for the petitioner is that cause of action for filing the suit on behalf of the temple arises only when the Executive Officer obtained permission under Section 45(2) of HR and CE Act. To appreciate this contention, Sections 6(9) and 45(2) of HR and CE Act are extracted hereunder:

"**Section 6(9) "Executive Officer"** means a person who is appointed to exercise such powers and discharge such duties appertaining to the administration of a religious institution as are assigned to him by or under this Act or the rules framed thereunder or by any scheme settled or deemed to have been settled under this Act.

45.Appointment and duties of Executive Officers.__(1) Notwithstanding anything contained in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an executive officer for any religious institution other than a math or a specific endowment attached to a math.

(2) The executive officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner:

Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred in sub-section (1) shall be assigned to the executive officer. ”

11. As per the above provision, the Executive Officer has power to administer and maintain the religious institutions and discharge all the duties assigned to him. As per the provisions of the Act and the Rules framed thereunder, the duties are assigned to him by the Joint Commissioner under Section 45(2) of the Act. It is an admitted fact that the Executive Officer is not empowered by the provisions of the Rules and Act framed thereunder to file the suit on behalf of the temple. The Executive Officer has power to file the suit only when the Commissioner permits him to file the suit by exercising the power conferred on the Commissioner under Section 45(2) of the Act.

12. In the present case, it is admitted by the respondent that

the Joint Commissioner has not granted permission to the respondent to file the suit. On the other hand, the respondent has stated in the counter affidavit that he has passed a resolution to file the suit against the petitioner and forwarded the same to the Joint Commissioner. In such circumstances, the Division Bench judgment of this Court relied on by the learned counsel for the petitioner is squarely applicable to the facts of the present case. The learned Judge having held that the respondent has not obtained permission from the Joint Commissioner to file the suit erred in holding that it is not a ground for rejection of plaint and it can be cured at any point of time. The learned Judge failed to consider that the Executive Officer has no authority to file the suit except when the Commissioner grants permission to file the suit. The contention of the learned counsel for the petitioner that cause of action for the Executive Officer to file the suit arises only when the Commissioner specifically empowers the Executive Officer to file the suit and in the absence of such permission, no cause of action has arisen, has considerable force and is acceptable. For the above reason, the order of the learned Judge is liable to be set aside and it is hereby set aside.

13. In the result, the Civil Revision Petition is allowed. No

costs. Consequently, connected Miscellaneous Petition is closed.

01.11.2017

Index : Yes/No
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To

XVII Assistant Judge, City Civil Court, Chennai.

V.M.VELUMANI, J.

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