

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.A.No.233 of 2013
and M.P.No.1 of 2013

Raman Ravi Appellant/Petitioner

Vs.

1. The Commissioner
The Hindu Religious and Charitable
Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 34.
2. The Joint Commissioner
The Hindu Religious and Charitable
Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 34.
3. R.Kuttan Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent, against
the order of this Court, dated 19.12.2012 made in W.P.No.12996
of 2012.

Prayer in WP.NO.12996/2012:

This Writ Petition under Article 226 of the Constitution of
India praying this court to issue a Writ of Certiorari Calling
for the records relating to the impugned order passed by the
Commissioner (Admn), HR & CE, Chennai in A.P.No.12 of 2012 D2,
dt.17.04.2012 confirming the order of the Joint Commissioner
(admn) HR & CE Chennai passed in I.A.NO.3 of 2011 in OA.NO.4 of
2010 dated 14/03/2012 and quash the same as illegal.

For Appellant : Mr.A.Thiyagarajan, Senior Counsel
for Mr.W.C.Sridhar

For Respondents : Mr.M.Maharaja, Spl. Gp (HR & CE)
for R1 and R2

Mr.B.B.Sendhil Kumar for R3

JUDGMENT

(Judgement of the Court was delivered by P.KALAIYARASAN, J)

This Intra Court Appeal is against the order passed by the learned single Judge of this Court, dated 19.12.2012 in W.P.No.12996 of 2012, dismissing the writ petition seeking to quash the order of the Commissioner, HR & CE, whereby the third respondent was ordered to be impleaded in O.A.No.4 of 2010.

2. The facts relevant for disposal of this writ appeal in brief is as follows :

(i) The appellant / writ petitioner constructed a prayer hall in his personal land measuring about 3 grounds situated at Old No.6, New No.21, Malavia Avenue, 2nd Street, Thiruvannamiyur, Chennai-41 for himself and his family personal worship. The prayer hall is not a religious institution coming under Section 6 (18) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (herein after referred to as "the Act"). It is also not a temple under Section 6 (20) of the Act. He filed Original Application under Section 63(a) of the Act in O.A.No.4 of 2010 on the file of the Joint Commissioner (second respondent) to decide the character of the institution.

(ii) During the pendency of the said Original Application, one T.R.Anandapadmanaban and L.Krishnakumar filed two Interlocutory Applications for impleading themselves. The said applications were dismissed and that order was confirmed by the Commissioner, HR & CE.

3. The third respondent filed Interlocutory Application in I.A.No.3 of 2011 in the above O.A, seeking to implead himself as a party in May 2011. The second respondent allowed the said I.A and the same was also confirmed by the first respondent, Commissioner, HR & CE.

4. Challenging the said order, the writ petition in W.P.No.12996 of 2012 has been filed as there was no other efficacious or alternative remedy.

5. The learned single Judge after analysing divergent contentions of both sides, dismissed the writ petition. Aggrieved by the same, the present writ appeal has been filed.

6. The learned Senior counsel appearing for the appellant contends that the petitioner filed an application before the Joint Commissioner to decide the character of the Institution in question under Section 63 (a) of the Act and the Joint Commissioner represents the interest of the public and he is the only person who is entitled to take proceedings on behalf of the religious and charitable trust. It is further contended that if any one is aggrieved by the order, the right to file a suit is conferred under Section 64 of the Act and therefore, the individual has no locus standi in the proceedings.

7. The learned counsel appearing for the contesting third respondent per contra contends that the third respondent is in possession of several documents as to the existence of idol, deployment of paid poojari and offerings etc., and therefore, the order impleading the third respondent in the Original Application is correct. It is further contended that the learned single Judge has rightly dismissed the writ petition and the same does not warrant any interference and that the dismissal of earlier two Interlocutory Applications are on different footing and because of that it cannot be construed that two different yardsticks were followed in allowing the application to implead the third respondent.

8. The learned Special Government Pleader (HR & CE) appearing for the first and second respondent contends that the first respondent as well as the second respondent passed orders impleading the third respondent in the Original Application to decide the character of the Institution as per procedure established by law and therefore, the order passed in the writ petition confirming the impugned order of the Commissioner need not be disturbed.

9. There is no dispute that the appellant / petitioner filed O.A.No.4 of 2010 under Section 63 (a) of the Act to decide the character of the Institution on the basis that he constructed prayer hall in his personal land measuring about 3 grounds situated at Old No.6, New No.21, Malavia Avenue, 2nd Street, Thiruvanmiyur, Chennai-41 for himself and for his family personal worship.

10. The true character of the particular temple or institution is to be decided on the basis of various circumstances including the circumstance as to whether the members of the public are entitled to worship in that temple as of right.

11. As per Section 63 (a) of the Act, the Joint Commissioner or Deputy Commissioner is vested with the power to inquire into

and decide as to whether an institution is a religious institution. Section 69 provides Appeal to the Commissioner against the order passed by the Joint Commissioner or Deputy Commissioner. Any party aggrieved by an order passed by the Commissioner under Section 69 (1) (2) and relating to any of the matters specified in Sections 63, 64 and 67 has right under Section 70 of the Act to institute a suit in the Court against such order.

12. The learned Senior counsel appearing for the appellant cited the Constitutional Bench Judgment of the Hon'ble Supreme Court in Paramananda Mahapatra v. The Commissioner of Hindu Religious Endowments, Orissa and others reported in AIR 1966 SC 1544 and contended that third party has no locus standi in a proceedings before the Joint Commissioner to decide the Character of the institution. In the above Judgment, it has been held as follows :

"5. Section 64 of the Act states :

64. (1) If any dispute arises as to whether an institution is a math or temple as defined in this Act or whether a temple is an excepted temple, such dispute shall be decided by the commissioner.

(2) Any person affected by a decision under sub-s (1) may, within one year, institute a suit in the Court to modify or set aside such decision; but subject to the result of such suit, the order of the commissioner shall be final.

6. The right of instituting a suit conferred by S.64 (2) on any person affected by the decision of the commissioner is a statutory right and there is nothing in that Section which makes it incumbent upon the plaintiff to make the public as party-defendants to the suit or to take recourse to the procedure prescribed under O.1 R.8, C.P.C. It was conceded by the Solicitor-General on behalf of respondent No.1 that there is also nothing in the rules framed under S.52 of the Act requiring the commissioner to give public notice and invite objections from the members of the public interested in the temple in a proceeding under S.64 (1) of the Act. If the Commissioner is not required to give public notice or to grant a hearing to members of the public before making an order under S.64(1) of the Act, there is no reason why the person affected by the decision of the Commissioner should be compelled to implead members of the public as party-defendants in a suit brought under S.64(2) of the Act. In our opinion, the

suit brought under Section 64(2) is not a suit of the nature contemplated by O.1, R.8, of the C.P.C. Having regard to the scheme and object of the Act it is manifest that the commissioner represents the interest of the public and he is the only person who is entitled to take proceedings on behalf of the religious and charitable trust and individual members of the public have no locus standi in the matter..."

13. The Hon'ble Supreme Court has held in the above Judgment that third party has no locus standi in a dispute arisen as to whether an institution is a temple as defined in the Act with reference to the provisions of Orissa Hindu Religious Endowment Act, analogous to the provisions under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Thus as per the decision of the Hon'ble Supreme Court, members of the public have no locus standi to get impleaded in the application filed by the appellant / petitioner under Section 63 (a) of the Act, seeking to decide the character of the institution.

14. For the aforesaid reasons, this Court holds that this appeal is to be allowed and the order of the learned single Judge has to be set aside.

In the result, this writ appeal is allowed without cost. The order, dated 19.12.2012 passed in W.P.No.12996 of 2012 by the learned single Judge of this Court is set aside, thereby the writ petition is allowed. The order passed by the Commissioner, HR & CE, Chennai in A.P.No.12 of 2012, dated 17.04.2012, confirming the order of the Joint Commissioner, HR & CE passed in I.A.No.3 of 2011 in O.A.No.4 of 2010, dated 14.03.2012, impleading the third respondent is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

tsvn
To

1. The Commissioner
The Hindu Religious and Charitable
Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 34.

2. The Joint Commissioner
The Hindu Religious and Charitable
Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 34.

+ 2 cc to Mr.B.B.Sendhil Kumar Advocate, SR.8116

+ 1 cc to Mr.W.C.Sridhar Advocate, SR.7294

+ 1 cc to The Govt.Pleader, SR.7690

W.A.No.233 of 2013

sj(co)
nr 23/02/2018



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