

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.185 of 2020
and C.M.P.No.2741 of 2020

C.V.Chandrasekaran ... Appellant

-vs-

- 1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Vellore.
- 2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Kanchipuram.
- 3.The Executive Officer,
Sri Ekambaranathar Temple,
Kanchipuram 631 502. ... Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 05.11.2019 passed in W.P.No.25511 of 2008 on the file of this Court.

WP.No.25511 of 2008:This Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari calling for the records fo the 1st respondent relating to the impugned proceedings Na/Ka 8051/08 E1 dated 13-10-2008 of the 1st respondent and quash the same.

For Appellant : Mr.Kabilan Manoharan

For Respondents : Mr.R.Venkatesh
Govt. Advocate
for RR 1 and 2

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The order dated 13.10.2008 passed by the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Vellore, came to be assailed by the appellant in the writ petition giving rise to this appeal, on his suspension as a Trustee in the exercise of powers under Section 53 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

2.The first ground raised by the appellant was that the Hindu Religious and Charitable Endowments Act, 1959, does not apply in relation to the Trust in question, which is governed by a Scheme formulated under Section 92 of the Code of Civil Procedure, 1908, by a Decree and Order of the Court dated 07.09.1944. This argument need not detain us, even though Mr.Kabilan has tried to urge that the earlier round of litigation is per incuriam. We are not impressed by this argument as the earlier round of litigation is at least res judicata and the said decision having become final, this issue now cannot be raised by the appellant without there being any challenge to the earlier judgment dated 06.07.2010, copy whereof is on record. The said pronouncement by this Court in an application moved before this Court, therefore, binds the appellant and therefore, the learned single Judge in the impugned judgment dated 05.11.2019 was justified in arriving at that conclusion.

3.Mr.Kabilan has cited several decisions, but we find none of them to be applicable as those decisions were in respect of the binding nature of precedents having not been noticed in other cases where the per incuriam rule was attracted. In the instant case, it is a decision inter-parties and therefore, the appellant is bound by the said decision and therefore, it is not open to him to raise this plea on per incuriam or otherwise.

4.The second argument of the learned counsel is that since there is a Scheme already formulated in exercise of the powers under Section 92 C.P.C., therefore, unless the Scheme lapses,

there cannot be a parallel proceeding initiated by the Hindu Religious and Charitable Endowments Department for suspending the appellant. This argument is absolutely misconceived inasmuch as once the applicability of the 1959 Act is settled, then, the procedure to suspend a Trustee as prescribed under the said Act does not get eclipsed on the ground that the Scheme contemplates some action to be taken or action which can be taken by moving an application under Section 92 C.P.C.

5.The third argument of the learned counsel for the appellant is that on merits also the suspension of the appellant was unjustified keeping in view the grounds which have been stated in the impugned order dated 13.10.2008. The grounds may be tenable or otherwise, but such an order is subject to an appeal before the appropriate authority. The appellant can always raise these issues in appeal, but the argument advanced by the learned counsel for the appellant is that the remedy of availability of alternative remedy in the present case may not be a bar for approaching this Court under Article 226 of the Constitution of India, inasmuch as the procedure which is prescribed under Sub-Section (3) of Section 53 of the 1959 Act for suspending a Trustee has been ignored in its entirety and therefore, the impugned order dated 13.10.2008 cannot be sustained. Learned counsel has relied on the judgment in the case of Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others, (1998) 8 SCC 1.

6.The last argument advanced by the learned counsel for the appellant, Mr.Kabilan, therefore, deserves consideration. Sub-Sections (3), (4) and (5) of Section 53 of the Hindu Religious and Charitable Endowments Act, 1959, are extracted hereinunder:-

"53.Power to suspend, remove or dismiss trustees.

(1) ...

(2) ...

(3)When it is proposed to take action under sub-section (2), the appropriate authority shall frame charges against the trustee concerned and give him an opportunity of meeting such charges, of testing the evidence adduced against him and of adducing evidence in his favour; and the order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge with reasons therefor.

(4)Pending the disposal of the charges framed against the trustee, the appropriate authority may place the trustee under suspension and appoint a fit person to discharge the duties and perform the functions of the trustee.

(5)A trustee who is aggrieved by an order passed under sub-section (2), may within one month from the date of the receipt by him of the order of suspension, removal or dismissal, appeal against the order -

- i. where the order has been passed by the Commissioner, to the Government;
- ii. where the order has been passed by the Joint Commissioner or Deputy Commissioner, to the Commissioner; and
- iii. where the order has been passed by the Assistant Commissioner, to the Joint/Deputy Commissioner."

7. In the instant case, before the writ Court, the appellant stated in paragraph 19 of the affidavit filed in the writ petition that he was shocked to receive the impugned order all of a sudden and in ground nos. (j) and (k), the following assertion has been made:-

"j. That, the impugned order is passed in utter disregard and violation of the principles of natural justice as no notice was given to the Petitioner and an opportunity to be heard was denied.

k. That, the impugned order exercising power of suspension on the Petitioner without framing charges is without jurisdiction, as S.53 (4) can be invoked only after charges have been framed and not in contemplation, and it is a fact that no notice of charges framed on the Petitioner has been given to the Petitioner."

8. The respondents, while filing their counter-affidavit, in paragraph 12 have stated that in view of the urgency and in a situation quite warranted, the appellant came to be suspended. There is no denial of the assertion of the appellant about the order having been passed in violation of principles of natural justice, that too, even particularly in violation of Sub-Sections (3) and (4) of Section 53 of the 1959 Act.

9. The appellant, while filing his reply affidavit before the learned single Judge, again reiterated this stand in paragraph 27, which is extracted hereinunder:-

"27. I respectfully submit that the Impugned Order of Suspension issued against the Petitioner by the 1st Respondent, under Sec.53 of TN HR & CE Act, 1959, was without the required preceding framing of charges against the Petitioner and providing the Petitioner the opportunity of meeting such charges, testing of evidence against and adducing evidence in favour and

the Impugned Order of Suspension was also without any statement of Charges framed, Petitioner's explanation made and the findings against each charge with reasons recorded therefor, in all in utter violation of Sec.53 (3) as required before issuing an Order of Suspension like the Impugned Order."

10.It is, thus, evident from the pleadings before the learned single Judge that the order dated 13.10.2008 was passed without being preceded by the procedure prescribed under Sub-Section (3) of Section 53 of the 1959 Act.

11.This issue was raised before the learned single Judge, who, in paragraphs 8 and 11 of the impugned judgment, without advertng to it, has simply stated that since it is only a suspension in contemplation of framing of charges, it will be still open to the respondents to proceed with the framing of charges and pass an appropriate order. We are unable to subscribe to the said view of the learned single Judge after having found that the ground raised in this regard factually stood uncontroverted and unrebutted by the respondents. Thus, there is a clear violation of principles of natural justice, as statutorily engrained in Sub-Section (3) of Section 53 of the 1959 Act. This being the position, the impugned order dated 13.10.2008 cannot be sustained.

12.It is further submitted by Mr.Kabilan that pursuant to the impugned judgment, notices were issued, but the proceedings have not yet concluded.

13.In view of what has been concluded by us hereinabove, the order dated 13.10.2008 is quashed, with a direction to the Joint Commissioner to pass orders afresh in accordance with law as expeditiously as possible, preferably within three months from the date of production of certified copy of the order.

14.It may be pointed out that during the pendency of the writ petition before the learned single Judge, an interim order was passed on 24.10.2008, which came to be continued until further orders vide order dated 05.01.2009. The certified copies of the said orders have been placed before the Court and shall be kept on record.

15.Accordingly, as a consequence of the quashing of the impugned order, the status quo as was existing on the date of the impugned judgment of the learned single Judge dated 05.11.2019 shall continue till the matter is finally decided.

It is further directed that the appellant shall not undertake any transaction with regard to the properties of the Trust, unless the matter is finally decided as directed above.

The Writ Appeal is, accordingly, allowed, in terms aforesaid. No costs. Consequently, C.M.P.No.2741 of 2020 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sra

To

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Vellore.

2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Kanchipuram.

+1 cc to Mr.P.Raja Advocate sr31022

W.A.No.185 of 2020

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