IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.30017 of 2010
and
M.P. Nos.2 of 2010 & 1 of 2011

R.Sivaraman …Petitioner

Vs

1.The Commissioner,
HR & CE Department,
Chennai 600 034.

2.The Joint Commissioner,
The Tamil Nadu Hindu Religious and Charitable Endowments Department, Madurai.

3.The Assistant Commissioner,
The Tamil Nadu Hindu Religious and Charitable Endowments Department, Madurai.

4.The Fit Person/The Executive Officer,
A/M Moongilakai, Kamakshi Amman Thirukoil,
Devadanapatty, Periakulam Taluk,
Theni District.

5.R.Sakthivel
6.C.K.S.Naggaiah … Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the 1st respondent in RP.56/2009 D2 dated 23/11/2010 confirming the order of the 3rd Respondent in his proceeding in Na.Ka.5897/06/1 dated 30.11.2006 and quash the orders of the Respondents 1 and 3.

For Petitioner : Mr.T.M.Hariharan for Mr.T.Srinivasaraghavan

For Respondents : Mr.R.Venkatesh, (HR &CE) Government Advocate for R1 to R3
Mr.R.Amardeep for R4
Mr.K.Subhashini for M/s.Chennai Law Associates for R5
No Appearance for R6

O R D E R

Heard Mr.T.M.Hariharan, learned counsel for Mr.T.Srinivasaraghavan, learned counsel for the petitioner, Mr.R.Venkatesh, learned Government Advocate for R1 to R3, Mr.Amardeep, learned counsel for R4 and Ms.Subhashini, learned counsel for R5.

2. The petitioner challenges an order passed by the Commissioner, Hindu Religious and Charitable Endowments Department (HR& CE)/R1 dismissing a revision petition filed under Section 21 of the Hindu Religious and Charitable Endowments Act, 1959 (in short 'Act').

3. Two preliminary objections are raised by Mr.Venkatesh for maintainability of the present Writ Petition. Firstly, he points out that this petitioner had challenged the order of appointment of Thakkar/fit person passed on 13.11.2006 before this Court in W.P.No.614 of 2007. The said Writ Petition was dismissed on 08.08.2008 directing the petitioner to file an appeal as provided under statute. Writ Appeal No.42 of 2009, challenging the aforesaid order of the learned single Judge dated 08.08.2008, was also dismissed by the first Bench of this Court on 30.06.2009 confirming the order of the learned single Judge. The petitioner thus filed a revision petition (R.P.No.56 of 2009) that culminated in the order impugned in this Writ Petition.

4. He would state that since an efficacious alternate remedy lies by way of revision to the Government under Section 114 of the Act, bearing in mind the directions of the learned single Judge as well as the Division Bench of this Court in the first round of litigation, the petitioner ought to be relegated to revisional remedy and should not be permitted to pursue this Writ Petition.

5. I disagree for the reason that there has been an event that has transpired between the date of the order passed in Writ Appeal, which is 30.06.2009 and the date of filing of this Writ Petition, which is 27.12.2019, that is material for the purpose of deciding the challenge to maintainability. The endowment in respect of which the fit person has been appointed is stated to have been constituted under a Settlement Deed dated 02.02.1959. The aforesaid Settlement Deed has itself been held by the Civil Courts, by judgment and decree dated 28.02.1977, to be invalid. The judgment has been confirmed in appeal by this Court on 18.11.1998 and thereafter in Letters Patent Appeal (LPA) on 06.03.2004.

6. The impugned order has been passed on 23.11.2020, wherein R1 rejects the argument of the petitioner placing reliance upon the orders of the Civil Court, on the ground that the HR & CE Authorities were not party to that litigation. However, in 2017, the fit person has filed O.S.No.60 of 2017 which has been decreed on 05.09.2019 by the Additional District Judge, FTC, Theni, also confirming the judgment of the Civil Court in 1977. This is a material event that has transpired in 2017 which, in my view, obviates the necessity for recourse to statutory revision/appeal and which has a bearing on the merits of the matter. By the filing of suit in 2017, the fit person has displayed his knowledge of the entire events and has also been heard by the Additional District Judge, Theni in his arriving at a decision on merits.

7. The second argument on maintainability is that the petitioner is only the purchaser of the property and if at all any one could have been prejudiced by the impugned order, it would have been the vendor who has sold the property to the petitioner. This argument also does not impress for the reason the purchaser/petitioner before me, is equally affected by the impugned order. Moreover, legal issues relating to the validity of the endowment have been raised and thus it is immaterial as to which link in the chain, whether the vendor of the property or the purchaser, initiates the litigation. The present Writ Petition is held to be maintainable.

8. One Muthulakshmi Ammal was in possession of significant properties in Melmangalam Village, Periakulam Taluk, Theni District. She passed away on 01.04.1971. Immediately upon her demise, two Civil Suits came to be instituted before the Sub-Court Dindigul in O.S.No.285 of 1971 (first suit) and 75 of 1972 (second suit). Plaintiffs 5 and 6 in the first suit claimed to be trustees of an endowment created by Muthulakshmi Ammal and the prayer was for declaration of their title to properties set out in the suit schedule and for a permanent injunction restraining the defendants from interfering with their possession and enjoyment of the suit properties. The second suit also sought a declaration of the plaintiffs therein to the suit properties and recovery of possession of the same from the first defendant with costs.

9. In addition to several issues, a common issue that was framed in both suits was:

> *Whether the settlement deed executed by Muthulakshmi in favour of defendants 5, 6 and two others on 2.2.1959 is true, valid, accepted and acted upon?*

Whether items 1,2,4,5,6 7 and 8 of schedule A are trust properties?

10. By judgment and decree dated 28.02.1977, at paragraph 26, the Court found as follows:

> *26. The evidence adduced on behalf of the defendants 5 and 6 as to prove the truth of the trust is far from satisfactory. It is needless for me to reiterate that there is practically no proof whatever that the trust deed was accepted and acted upon and that the trustees have been and are in possession and enjoyment of the properties that are alleged to have been endowed to it at any point of time. Even holding that the settlement deed (Ex.C1) is true, it is not valid in as much as it has not been accepted and acted again. Hence I find these issues against defendants 5 and 6.'*

11. Hence, settlement deed dated 02.02.1959 executed in favour of D5, D6 and two others, was found to be invalid and consequently properties at S.Nos.1,2,4,5,6 7 and 8 of schedule A were held not to be trust properties. In the result, the first suit was decreed in favour of the plaintiffs. Appeal suits in A.S.Nos.438 of 1984 and 567 of 1982 and 412 of 1986 were filed and by order dated 18.11.1998, the appeals came to be dismissed. The findings as regards the Settlement Deed are at paragraph 30, reading thus:

> *'30. Pertaining to the claims made on the part of the defendants 5 and 6 to the suit, the Court below, dealing with the same under Issue Nos.5 to 7 in the context of Ex.P.1 and the oral evidence adduced on the part of D.Ws. 3 to 6, would find that from the evidence of D.W.5 it comes to be known that the lands mentioned in Ex.C.1 are under the cultivation of Easwaran (P.W.3) Guruvaiah and Chinnaraman. But, P.W.3 has denied it. The other alleged Lessees have not been called to speak nor is there any documentary evidence of the leases granted in favour of Guruvaiah and Chinnaraman. It is significant to note that patta for properties covered under Ex.C.1 was not changed in the name of anyone of the so called trustees in pursuance of the trust deed; that there are no accounts maintained regarding the income and expenditure of the trust and there is no evidence to show that the deceased- Muthulakshmi was performing the charities. D.W.5 being the son or the 5th defendant is not an attestor of Ex.C.1 nor he in any way connected with the alleged trust and its properties and hence he is not at all a competent witness to speak about the affairs of the trust. Even the receipts issued by the Hindu Religious and Charitable Endowments (Administration) Department, Madurai in favour of Muthulakshmi Ammal respectively on 26.6.1961 and 9.1.1964 towards contribution, which are relied on by the defendants 5*

and 6 could not be sufficient to establish that the trust deed was acted upon and since there is no reliable evidence coming forth for the enjoyment of the properties also by the trustees. Hence, it has been rightly held by the Court below that the claim of defendants 5 and 6 is wholly invented and inspite of Ex.C.1-settlement deed being true. It is not valid and thus deciding the relevant issues against the defendants 5 and 6.

12. LPA Nos.97, 98 and 131 of 1999 challenging the above order came to be dismissed as withdrawn on 06.03.2004 by a Division Bench of this Court.

13. The position was thus unambiguously clear that there was no Settlement Deed and no trust constituted thereunder in terms of which properties could be endowed to Arulmighu Moongilakai Kamakshi Amman Thirukoil, Devadanapatty.

14. On 31.05.2004, the petitioner purchased 1.36 acres in S.No.1039 of 2004 from C.K.S.Nagaiah, C.K.S.Padmanabhan, C.K.S.Mohan, T.R.Surendran and K.S.Sundaramoorthy, who are the legal heirs of the 1st plaintiff in O.S.No.285 of 1971 and states that he was in peaceful possession and enjoyment thereof till an order came to be passed on 30.11.2006 on the basis of a complaint that the trust properties of Muthulakshmi Ammal Dharmam, citing the Settlement Deed dated 02.02.1959, were being encumbered illegally. The Assistant Commissioner was appointed as Executive Officer to act as a fit person under Section 49(1) of the Act to assume charge of the trust, go through the necessary records and retrieve the assets said to have been alienated.

15. It is the aforesaid order that was challenged in the first round of litigation resulting in the passing of the order impugned now. The present Writ Petition prays for a certiorari calling for the orders of R1 dated 23.11.2010 and of R3 dated 30.11.2006 and seeking a quash of both the orders. Though order dated 30.11.2006 has already been the subject matter of a previous round of litigation, I take it that the same has been mentioned more in the nature of completion of reliefs sought, and thus, entertain the same.

16. Learned counsel for the petitioner takes me through the provisions of Sections 63(d) and 108 of the Act. Section 63 vests powers in the Joint/Deputy Commissioner to decide enumerated categories of disputes and clause (d) thereof is specific to disputes relating to property or money of a religious endowment. Section 108 imposes a bar on the filing of suits in respect of administration or management of religious institutions in any Court of law except under, and in conformity

with, the provisions of the Act. In this regard, he also places reliance on the following decisions:

1. *Sri Vedagiri Lakshmi Narasimha Swami Temple V. Induru Pattabhirami Reddy* (1967 AIR 781)

2. *Sri Venkataramanaswamy Deity at Kothur Village by its Trustee K.R.Sanjivi Chetty V. Vadugammal* (1974 MLJ 431)

3.*Sayarakshai Kattalai and Arthajama Kattalai attached to Arulmigu Kayaroganaswamy and Neelayadakshi Amman Thirukoil, Nagapattinam represented by its Executive Officer V. R.Radhakrishnan and another* ((2001) 3 MLJ 73)

4. *Sri Vallaba Ganesar Devasthanam V. A. Anandavadivelu Mudaliar* ((1980) 1 MLJ 140.

17. The above decisions are cited for the proposition that the bar under Section 108 will not apply in respect of a relief that cannot be granted by the Deputy Commissioner in terms of Section 63 (d) of the Act.

18. V.Shanmugam/R4 is a legal heir of one of the unsuccessful parties in the 1971 suits. He had, along with others, filed O.S.No.503 of 2004 on the file of the District Munsif, Periyakulam, seeking a declaration that the land purchased by this petitioner along with other properties, belongs to a private trust. R3, M.Ramasamy had sought to implead himself as a defendant in that suit. The application to implead in I.A.No.11 of 2007 in O.S.No.503 of 2004 had been dismissed and the suit itself dismissed on 16.11.2017 by the District Munisf Court, Periyakulam. In any event, the Executive Officer has filed a separate suit in 2017 seeking the same relief, that of Declaration and recovery of possession and cost which has come to naught. R5 is the brother of the husband of Muthulakshmi Ammal and had sought impleadment in R.P.No.56 of 2009 as a person having interest in the affairs of the endowment. Despite objections raised by the petitioner, his request for impleadment was accepted and an order passed on 23.11.2010, challenged in this Writ Petition. R6 is one of the vendors of the property purchased by the petitioner.

19. The respondents, in one voice, state that Muthulakshmi Ammal had been engaged in varied acts of charity and had intended that the lands endowed by her, and constituting trust property under the Settlement Deed, was to be put to use for various charitable purposes. She herself had been engaged in various acts of charity and had been pious and religious.

20. Learned counsel for R5, who in my view, has very little status to speak on this matter, endeavours to argue that where the beneficiary of a trust has not been heard in litigation touching upon the validity of the trust itself, any order passed deciding the question would be void. There is no quarrel on this proposition. However, to a pointed question as to whether the temple has been named as a beneficiary, both learned counsel for R5 and learned counsel for the temple would agree that there is no mention whatsoever of the temple in the Settlement Deed.

21. They would also concede to the position that the 1977 suits have reached finality to the effect that there is no Settlement Deed and consequently, no trust or endowment and judgment dated 05.09.2019 in the suit filed by the fit person in 2017 has also reiterated the same conclusion.

22. To my mind, a discussion on the interplay between the provisions of Section 63 (d) and Section 108 of the Act is neither called for, nor necessary in the present matter. The Settlement Deed, based upon which the respondents claim the existence of an endowment in terms of Section 6(17), has been invalidated in civil litigation from 1977 till 2017 and, admittedly, there is no challenge to the judgment of the Additional District Judge dated 05.09.2019 passed in O.S.No.60 of 2017.

23. In the light of the Civil Court's judgment and decree dated 28.02.1977, there is, in my view, no necessity for the petitioner to have filed an application under Section 63(d) seeking determination of a religious factum and consequently, no requirement for a discussion of the cases cited by the petitioner.

24. For the above reasons and in the absence of there being any validation whatsoever for the existence of an endowment, the orders of appointment of fit person as confirmed by the impugned order in revision are set aside. This Writ Petition is allowed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner,
H R & CE Department,
Chennai 600 034.

2.The Joint Commissioner,
The Tamil Nadu Hindu Religious and Charitable Endowments Department, Madurai.

3.The Assistant Commissioner,
The Tamil Nadu Hindu Religious and Charitable Endowments Department, Madurai.

4.The Fit Person/The Executive Officer,
A/M Moongilakai, Kamakshi Amman Thirukoil,
Devadanapatty, Periakulam Taluk,
Theni District.

+1cc to M/s.Chennai Law Associates, SR.No.14147
+1cc to M/s.T.Srinivasaraghavan and Associates, SR.No.13540

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akm/17.04.21

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