Thirugnanam Pillai Vs Thuluva Vellala Munnetra Sangam, Villianur, Pondicherry State and Others

Court: Madras High Court

Date of Decision: July 19, 1990

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 92
Constitution of India, 1950 â€" Article 226
Trusts Act, 1882 â€" Section 73

Hon'ble Judges: A.S. Anand, C.J; D. Raju, J

Bench: Division Bench

Advocate: G. Masilamani, for the Appellant; T.R. Rajagopalan, K.S. Ahmed, Govt. Pleader (P), Mr. A. Bala Pajanur and Mr. R. Gopalakrishnan, for the Respondent

Final Decision: Allowed

Judgement

Dr. A.S. Anand, C.J.
This Writ Appeal is directed against the judgment of the learned single Judge in Writ petition No. 324 of 1986

decided on 25-9-1986. Shorn of details, the writ appeal has arisen under the following circumstances: The writ Petitioner is the Thuluva Vellala

Munnetra Sangam, Villianur. Pondicherry. A lady by name Anandammal, wife of Venkataswami Mudaliar established a trust called ""Anandammal

Adheena Dharma Stabanam"" situated at Villianoor, Pondicherry. She provided also the manner and means by which the office of the administrator

of the trust was to be filled up. The administrator nominated under her will died in 1932. An administrator was not appointed in terms of the trust

deed by the community, and the Government, it appears, vide: G.O.Ms. No 75 dated 17-10-1975 appointed certain persons as trustees of the

aforesaid trust. The notification of the Government was challenged in Writ Petition No. 6754 of 1975. While disposing of the Writ Petition, certain

directions were given, and the same led to the filing of O.S. No. 124 of 1975 before the Sub Court. Pondicherry for a declaration that

Anandammal Adheena Dharma Stabanam was a private charitable trust and that the Hindu Religious & Charitable Endowments Act (Pondicherry

Act 10 of 1972) was not applicable to the private trust. An injunction was also sought in the said suit restraining the Union of Pondicherry from

interfering with the running and management of the property of the trust. The suit was decreed. It was declared that the trust was a private

charitable trust. It was also held that Pondicherry Act 10 of 1972 did not apply to the trust. Notification in G.O.Ms. No. 75 dated 17-10-1975

was set aside as illegal and a decree for permanent injunction was granted. Against the judgment and decree of the Sub-Court, an appeal was

preferred before the district court at Pondicherry which was, however, compromised and a decree was passed to the following effect:

1. The appellant consents the rights of the respondents that only the members of the Thuluva Vellala Community had the right to be appointed as

Trustees.

2. The Administration and management of the Anandammal Adheena Dharma Stabanam is a public charity and is subject to the control of the

Government as per the Ordinance and approval dated 3-1-1982.

3. The appellant consents that the suit public charity does not come under the Hindu Religious Institutions Act, 1972 and therefore, withdraws the

earlier order of appointment of trustees dated 17-10-1975 in G.O.Ms. No.75.

2. Subsequently also, it appears that the Government of Pondicherry by Notification G.O.Ms. No. 37 dated 12-8-1985 decided, to appoint an

Administrator to manage the trust. That notification was questioned by means of a Writ Petition No. 8790 of 1985, on various grounds. By an

interim order passed in W.M.P. No. 13208 of 1985 in Writ Petition No. 8790 of 1985, the operation of G.O.Ms. No. 37 dated 12-8-1985 was

stayed, but it was clarified that the pendency of the writ petition would not preclude any appropriate proceedings being taken by the competent

person if the trust was not properly administered by the third respondent to the Writ Petition. A writ appeal came to be filed against the interim

order which was disposed of along with the writ petition. It was held by the bench that the Government of Pondicherry had no power to appoint

an Administrator. Certain other proceedings followed thereafter, but it is not necessary for us to deal with those matters at this stage. Writ Petition

No. 324 of 1986 came to be filed by the Thuluva Vellala Munnetra Sangam praying for a writ of certiorari or any other appropriate writ, order or

direction in the nature of a writ calling for the records of the second respondent in No. 444-A1/1 dated 19-2-1965. In substance, what the writ

petitioner pointed out was that the third respondent had not been validly appointed as a trustee and that since the Government had no jurisdiction

to appoint trustees in the trust the order published in the Government gazette on 27th of February, 1965 was without jurisdiction and since the third

respondent along with others had been appointed as a trustee on the basis of that order, his appointment was void ab initio. Allegations of

mismanagement were also levelled against the third respondent.

3. On behalf of the third respondent, the writ petition was resisted, and it was submitted that the third respondent had not been appointed pursuant

to the so-called order dated 27th February, 1965 which was published in the gazette but that he had been appointed in accordance with the terms

of the trust deed by the 12 respectable members of the community. It was pointed out that the so-called order was in effect no order and that the

third respondent did not owe his appointment to the order but to the decision of the community in accordance with the terms of the trust deed. The

case of the third respondent was that the so-called order was a mere intimation of the names of the trustees published in the Government gazette

and not any order of the Government appointing him and others as trustees of the Trust.

4. The learned single Judge allowed the writ petition and directed respondents 3 and 4 to hand over the charge of the trust property to the 7th

respondent, who, pursuant to the interim directions given by the court had been elected as the administrator in the election held on 26-3-1986. The

learned single Judge noticed that he could not go into the question of alleged mis-management by respondent No.3 to the writ petition as the same

involved adjudication of disputed questions of fact. We also notice from the observation of the learned single Judge while disposing of W.M.P.

Nos. 479 to 481 of 1986 in the aforesaid writ petition that he was aware that the dispute raised in the writ petition with regard to the validity or

otherwise of the appointment of respondent No. 3 was a factual question on which the parties were at variance and that the same could not be

decided in exercise of the writ jurisdiction under Art.226 of the Constitution of India. However, despite these observations, the learned single

Judge proceeded to allow the writ petition and grant the relief as noticed above.

5. There is serious controversy between the parties with regard to the source of power under which respondent No. 3 came to be appointed.

There is also dispute between the parties as to the actual status of the notice which was published in the Government gazette; whereas according to

the writ petitioner it was an order constituting a trust committee, according to the learned counsel for respondent No. 3 it was merely an intimation

given to the public at large of the names of the trustees who had been elected by the community in accordance with the provisions of the trust deed

There is, however, no dispute on one fact that it was respondent No. 3 along with the other trustees who were in possession of trust property. The

writ petitioner, through the writ petition was, therefore, in fact seeking a declaration about the status of respondent No. 3 as usurper and not validly

elected or appointed trustee by invoking the writ jurisdiction of this Court. Undoubtedly recourse to writ jurisdiction for resolving such disputes is

not permissible. The trust being a public trust, the dispute raised in the writ petition, in the pleadings as well as on the basis of the submissions made

before the learned single Judge and before us require adjudication through the machinery provided under S. 92 of the Code of Civil Procedure.

Since the learned single Judge himself noticed while disposing of the W.M.P. No. 479 to 481 of 1986, noticed above, that the writ petition

involves disputed questions of fact and repeated that observation with regard to the allegation of mismanagement while disposing of the writ

petition, it is obvious that writ jurisdiction was exercised in the face of S.92 C.P.C., which provides not only the method and manner but also the

procedure and the machinery for having the disputes of the type raised in the writ petition resolved. It is not merely a question of alternative remedy

being available but it indeed is a case where the alternative proper remedy has been provided by the statute itself in S.92 C.P.C. No effective relief

could be granted in exercise of the writ jurisdiction without going into the disputed questions of fact which the learned single Judge rightly refrained

from going into. Recourse to the writ jurisdiction in resolving those disputes which had essentially to be decided through civil suits was not the

proper course to be adopted by the writ petitioner. It has been vehemently argued before us by Mr. Masilamani, appearing for the third

respondent that the so-called notice which has been treated as the impugned order of appointment of the third respondent and others by the

learned single Judge was only a consequence and without having called in question and sought quashing of the order by which respondent No. 3

and others had been appointed to the trust, the writ issued had created confusion. According to him as long as the order of appointment stood, the

mere quashing of the intimation was of no consequence and the learned single Judge was not justified in granting the relief in the terms in which it

had been granted to the writ petitioner, and that too even beyond the prayer made by him. We, however, would not like to express any opinion on

this question because, in our opinion, the entire controversy which was raised in the writ petition can only be resolved through proper proceedings

initiated in proper forum and it is neither proper nor desirable for this Court in exercise of the writ jurisdiction to adjudicate on those questions. The

learned single Judge before whom the lack of maintainability of the writ petition on the ground that disputed questions of fact had been raised did

not advert to the provision of S. 92 of the CPC but proceeded to reject the argument by reference to S.73 of the Trusts Act. In our opinion,

reference to S.73 of the Trusts Act was not justified or called for because Trusts Act is applicable only in respect of private trusts when admittedly

the trust in question was a public trust and had also been judicially so recognised. In our opinion, the learned single Judge should have refrained

from entering into the area, which is reserved by S.92 of the CPC for the Civil Court, in exercise of his writ jurisdiction. Thus, for what we have

said above, we allow this appeal and set aside the judgment of the learned single Judge. We, however, clarify that it is open to the parties to agitate

the matter, if so advised, before the appropriate forum and in case the matter is so agitated through appropriate proceedings in an appropriate

forum, it shall be open to that forum to decide the case on its merits uninfluenced by any observations made by the learned single Judge with regard

to the nature and status of the so-called order and the other matters as also uninfluenced by the observations made by us hereinabove. It shall be

open to the parties to raise all such contentions as are permissible in law in support and defence of their respective claims. No costs.