

(2009) 03 MAD CK 0202

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 1960 of 2009 and M.P. (MD) No. 1 of 2009

T. Ramesh Babu

APPELLANT

Vs

The Assistant Commissioner,
Hindu Religious and Charitable
Endowments and The Executive
Officer

RESPONDENT

Date of Decision: March 17, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 - Section 21A, 21A(4), 46, 49

Citation: (2009) 4 CTC 320

Hon'ble Judges: K.K. Sasidharan, J

Bench: Single Bench

Advocate: T. Ramesh Babu, Party in Person, for the Appellant; K.M. Vijayakumar, Additional Government Pleader, for the Respondent

Judgement

K.K. Sasidharan, J.

Heard the petitioner, who appeared as party-in-person as well as Mr. K.M. Vijayakumar, learned Additional Government Pleader appearing on behalf of the respondents. By consent, the Writ Petition itself is taken up for final disposal during the time of admission and is being disposed of by this order. The challenge in the Writ Petition is to the order passed by the first respondent as per his proceedings No. Se.Mu.Na.Ka. No. 7160/2006/A2 dated 09.03.2009, whereby the second respondent was appointed as a Thuckkar for A/M Deivaparai Bala Dhandayudhapani and A/M Prathyangira Devi Temple at Narasingam, Othakadai and directed the petitioner to hand over charge to the appointee.

Factual Matrix:

Petitioner"s Version:

2. The ancient Temple known as Sri Bala Dhandayuthapani and Arulmigu Prathyangira Devi Temple at Narasingam Village were built by the paternal grand father of the petitioner about 70 years back out of his own contribution apart from collecting little contribution from the members of Sowrastra Brahmin Community. The Temple is a denominational Temple belonging to the Sowrastra Brahmin Community of Madurai. The founder of the Temple Mr. Vidhyanandha Bagavadhar executed a registered settlement deed dated 30.03.1955 prescribing the line of succession for the purpose of administering the Temple and also for the purpose of Poojas and other religious ceremonies. Since the grand father of the petitioner, the said Vidhyanandha Bagavadhar was himself the Archagar of the Temple, he was known and recognized as the Sthanigar, Archagar and Managing Trustee of the Temple. As per the settlement deed dated 30.03.1955, his sons and their male heirs were named to act as Hereditary Trustees for the administration of the Temple and performance of other Temple Kaingariyams by turn system. The settlement deed contains various clauses indicating the mode and manner in which the religious functions of the Temple are to be performed and the powers and duties of the Managing Trustee. Subsequently, the father of the petitioner took charge of the Temple affairs as its hereditary trustee and he was conducting daily poojas and other religious ceremonies. The said situation continued for more than half a century without there being any dispute with reference to the Temple affairs and administration from any circle. The Temple land measuring about 10 acres which was used as part of the Temple were also administered by the father of the petitioner.

3. Subsequently, the petitioner"s father executed a Will in his favour to succeed to the hereditary trusteeship. Even during the life time of his father, the petitioner was performing the Poojas and other religious ceremonies in accordance with the rituals and religious faith followed by Sowrastra Brahmin Community. By virtue of the Will, the petitioner became the hereditary trustee of the Temple after the death of his father in 2005. Accordingly, the affairs of the Temple has been managed by the petitioner without any objection from any circle. The affairs of the Temple was managed by the petitioner with the income which he received from performing Yagam and special Poojas for the elite class and other important people of the area. There was no Hundial kept in the Temple for the purpose of collecting donation from the devotees. The Temple is neither a listed Temple as contemplated u/s 46 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the HR & CE Act") nor a Temple which was brought under the purview of the said Act. Therefore, the petitioner has been managing the Temple without any interference from the official machinery.

4. While so, the first respondent inspected the Temple during January, 2009 and subsequent to his visit, a notice dated 19.01.2009 was issued to the petitioner u/s 49

of the HR & CE Act. In the said notice, the petitioner was asked to submit his explanation with regard to certain irregularities, the first and foremost being the non-maintenance of accounts with regard to the income and expenditure of the Temple. In response to the said show cause notice, the petitioner submitted his reply and he also appeared before the first respondent on 02.02.2009. In the said meeting, the petitioner explained to the first respondent the factual position. However, the first respondent, as per communication dated 23.02.2009, informed the petitioner that the explanation submitted by him was not acceptable and as such, he was asked to comply with the directions of the HR & CE Department by submitting the accounts. Immediately, the petitioner submitted a reply on 07.03.2009. However, without considering the explanation submitted by the petitioner in its proper perspective, the first respondent has issued the impugned order dated 09.03.2009 appointing the second respondent as Thuckkar for the Temple. As per the said order, the second respondent was appointed as Thuckkar to administer the Temple and on the strength of the said order, the second respondent has directed the petitioner to hand over the affairs of the Temple at 11.00 a.m. on 17.03.2009. Aggrieved by the proceedings dated 09.03.2009 on the file of the first respondent, the petitioner has come up with the present Writ Petition.

Submissions:

5. The petitioner who appeared as party-in-person contended that the first respondent has no jurisdiction to pass the impugned order, as according to him, the show cause notice issued by the first respondent refers to the fact that the Temple in question has been treated as one brought under the purview of the HR & CE Act. According to the petitioner, the Temple was neither a listed Temple within the meaning of Section 46 of the HR & CE Act nor a notified Temple and as such, the exercise of power purporting to be u/s 49 of the HR & CE Act was clearly without jurisdiction. The petitioner also submitted that the impugned order was passed without taking into consideration the explanation submitted by him both in writing as well as during the time of personal enquiry.

6. Thiru K.M. Vijayakumar, learned Additional Government Pleader appearing on behalf of the respondents would submit that the Writ Petition challenging the order passed by the first respondent is clearly not maintainable, as the petitioner has got an alternative remedy of Revision before the Joint Commissioner u/s 21A of the HR & CE Act. The learned Additional Government Pleader also justified the action taken by the first respondent which culminated in passing the impugned order dated 09.03.2009, as according to him, there was utter mismanagement of the affairs of the Temple as well as financial irregularities in the matter of the affairs of the Temple.

Analysis:

7. The affidavit of the petitioner has dealt with the conduct of the Temple affairs by the grand father of the petitioner, the settlement deed executed by his grand father, prescribing the line of succession for the purpose of administration of the Temple as well as for the purpose of Poojas and other religious ceremonies," the subsequent administration of the Temple by the father of the petitioner, the execution of Will in favour of the petitioner by his father and the performance of Poojas and administration of the Temple by the petitioner ever since the death of his father in the year 2005 as well as the details of the administration of the Temple, its income and various other details. The impugned order passed by the first respondent was on the basis of the show cause notice issued to the petitioner on 19.01.2009 and the explanation submitted by the petitioner to the said notice as well as the subsequent proceedings.

8. The maintainability of the Writ Petition was taken on the ground that the order could be taken up in Revision before the Joint Commissioner of HR & CE Department, as Section 21A of the HR & CE Act provides such a Revision against the orders passed by the Assistant Commissioner. The Revisional authority was also vested with powers to pass interlocutory orders with respect to the execution of the impugned order during the pendency of such Revision. When an alternative remedy is pleaded as a bar of jurisdiction, the Court has to consider as to whether the said alternative remedy is an effective and efficacious one.

Alternative Remedy:

9. Article 226 of the Constitution of India confers jurisdiction on the High Court to issue prerogative writs. These writs are issued for various purposes and the ultimate aim is to see that there should be no failure of justice. A Writ of Certiorari is one among such prerogative writs issued for the purpose of correcting errors of jurisdiction. The corrective jurisdiction cannot be termed as an Appellate jurisdiction to correct any kind of errors. It is trite that the judicial review is mainly concerned with the decision making process.

10. There are certain well recognized principles governing the issue of prerogative writs. The rule with regard to exhausting alternative remedy is one among such self-imposed limitations on the power of the High Court. The availability of alternative remedy is not an absolute rule but it is essentially a rule of discretion in exercise of the power to issue such writs. Since the Writ jurisdiction is discretionary and equitable jurisdiction, it is always open to the Court to consider the alternative remedy available to the party and to verify as to whether it was effective and efficacious. In case the Court was of the opinion that the alternative remedy was an effective one, in the facts and circumstances of a particular case, the Court is obliged to relegate the parties to the Appellate forum to redress their grievances.

11. However, the question of resort to the alternative remedy would be unwarranted in cases wherein the order impugned in the Writ Petition was passed

without jurisdiction, or in flagrant violation of the Principles of Natural Justice. Similarly, in the event of the Court coming to the conclusion that the alternative remedy was not effective and efficacious, it would also enable the Court to consider the issue on merits instead of directing the party to go before the Appellate forum. Similarly, in matters involving interpretation of the provisions of the Constitution or interpretation of a particular statute with reference to a Constitutional provision, it would be a futile exercise to direct the parties to approach the alternative forum which has no jurisdiction to decide the Constitutional issues. Therefore, the bar of jurisdiction on the ground of alternative remedy is not an absolute rule and it all depends upon the facts of each case.

Statutory Revision - Effective Remedy:

12. Section 21A of the HR & CE Act provides a Revision to the Joint Commissioner against an order passed by the Assistant Commissioner. The Joint Commissioner is also vested with the powers to pass interlocutory orders, in view of sub-clause (4) of Section 21A of the HR & CE Act. The aggrieved parties are entitled to lead evidence in support of their case and thereby factual adjudication of the matter would be possible in the hands of the Joint Commissioner. It is also possible for balancing the equities during the pendency of the proceedings. The Revisional jurisdiction before the Joint Commissioner is an effective and efficacious remedy. Therefore, I am of the view that the petitioner should be directed to avail the alternative remedy of Revision.

13. As per the order passed by the second respondent in furtherance of the impugned order issued by the first respondent dated 09.03.2009, the petitioner has to hand over charge of the Temple at 11.00 a.m. on 17.03.2009. In case the second respondent takes charge of the Temple, as per the proceedings issued by him dated 12.03.2009, it would seriously prejudice the case of the petitioner, as there would be nothing to be stayed during the pendency of the revision by the Joint Commissioner in exercise of the powers conferred on him u/s 21A(4) of the HR & CE Act. Therefore, I am of the view that the impugned order has to be kept in abeyance for a reasonable period so as to enable the petitioner to file a statutory Revision before the Joint Commissioner.

Conclusion:

14. Accordingly, the petitioner is permitted to file a revision before the Joint Commissioner, HR & CE Department, Madurai u/s 21A of the HR & CE Act with an interlocutory application as provided u/s 21A(4) of the HR & CE Act and in the event of filing such Revision and Interlocutory Application, the same has to be considered by the Revisional Authority on merits and as per law. In view of the consequential proceedings issued by the second respondent, the Revisional Authority is directed to pass orders in the Stay Petition within two weeks from the date of receipt of such Application. The impugned order dated 09.03.2009 as well as the consequential

order dated 12.03.2009 shall be kept in abeyance for a period of three weeks from today so as to enable the petitioner to file the statutory Revision. It is made clear that the Joint Commissioner has to decide the Revision purely on merits and as per law without in anyway being influenced by any of the observations made in the present order. The Writ Petition is disposed of with the above direction. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.