

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/11/2002

CORAM

THE HON'BLE MR. JUSTICE R. JAYASIMHA BABU
AND
THE HON'BLE MRS. JUSTICE PRABHA SRIDEVAN

L.P.A.No.2 of 1998

1. The Commissioner
H.R. & C.E. (Admn. Department)
Nungambakkam High Road, Madras-34.

2. The Assistant Commissioner
H.R.& C.E., Kumbakonam
Thanjavur District. ... Appellants

-Vs-

K. Nagarajaodayar ... Respondent

Prayer: Letters Patent Appeal against the judgment and decree dated 21-03-1996 made in A.S.No.180 of 1983 by His Lordship Hon'ble Mr. Justice Govardhan in so far as reversing the judgment and decree dated 27-01-1983 made in O.S.No.23 of 1981.

!For appellants :: Mr. S. Sathiamurthy,
Government Advocate

^For respondent :: Mr. R. Subramanian

:JUDGMENT

(PRABHA SRIDEVAN,J.)

The dispute is whether certain properties belong to a Temple called Dharmaraja Temple also known as Drowpathi Amman Temple in Swamimalai, Kumbakonam or to the respondent. One Narayanasamy Odayar had been performing the charities for this temple from and out of the income of his agricultural lands. By a Will dated 06-03-1960, Narayanasamy Odayar directed that his brother-in-law, the respondent herein should continue to do the charities as the trustee of the temple.

2. The Temple is bound to pay annual contribution to the Government in accordance with Section 92 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 ("the Act" in short).

3. The appellant, who is the Commissioner, H.R. & C.E.

passed an order on 11-10-1980 rejecting the respondent's case that the properties at Velakudi are not temple properties. This order was challenged by the respondent by filing a suit, O.S.No.23 of 1981 under Section 70 (2) of the Act, for cancelling or modifying the above order.

4. The Trial Court dismissed the suit as not maintainable on the ground that an order passed under Section 94(2) of the Act cannot be set aside by a suit under Section 70(2) of the Act and that Section 108 of the Act bars the filing of suits or legal proceedings except according to the provisions of the Act. The learned Single Judge took a contrary view and therefore, the Commissioner has filed the appeal.

5. The learned counsel for the appellant pointed out that the bar under Section 108 of the Act is very clear and therefore, the only remedy open to the respondent was to file a revision before the Government under Section 114 of the Act. Reference was made to the decision of a learned Single Judge in W.P.No.5350 of 1973(D. Kandaswami & 5 Ors. Vs. The Commissioner, H.R & C.E., & Anr.) dated 15-10-1973 which was dismissed on the ground that the Government has the power under Section 114 of the Act to revise the order of the Commissioner, whether the same was passed by him in the first instance or in revision under Section 21 of the Act.

6. The learned counsel for the respondent relied on Sri Vedagiri Lakshmi Narasimha Swami Temple Vs. Induru Pattabhirami Reddi (AIR 1967 SC 781) to show that the bar of suits is not absolute and it is confined to such disputes for which the Act provides a remedy. In Sri Vallaba Ganesar Devasthanam Vs. Kailasa Mudaliar (1980 I MLJ 140) cited before us, a learned Judge of this Court held that if the Deputy Commissioner in exercise of his power could not have granted the relief of recovery of possession, the suit cannot be dismissed as not maintainable.

7. The only question then is the maintainability of the suit.

8. On facts it has been found that the property referred to in the impugned order belongs to the respondent. In the Will there are specific recitals regarding the lands in Layam Village to the effect that they have to be enjoyed by the widow of Narayanasamy Odayar, the testator for her life time and thereafter, to vest in the suit-temple. But the recitals regarding the property in Velakudi village are not clear. In order to hold that the endowment is in favour of the temple there must be specific recitals to the effect. Exs-A16 to A24 and A30 to A32 are kist receipts. The disputed properties are in patta No.99. The respondent himself admits that only the lands in Survey No.91/2 in patta No.127 Velakudi Village, Papanasam Taluk of an extent of 60 cents belongs to the Temple. He claims title to the lands covered by patta No.99. In the kist receipts for the lands covered in patta No.99 the name of the pattadar is either the respondent or minor Mohan, who is the respondent's son. But for the property in Survey No.127, the pattadar is described as Nagarajaodayar Trustee, Drowpathi Amman Temple or Dharmaraja Temple by the Trustee Nagarajaodayar. In Ex-A22, which relates to fasli 1380 as regards patta Nos.99, 126, 114 and 60, the pattadar was shown as Nagaraja

Odayar and for patta No.1 27, as Drowpathi Amman Temple. The disputed properties are in patta No.99. In Exs-B1 to B3, communications from the Department, the lands of an extent of 60 cents are shown as covered by patta No.127 and the nanja lands (15.34 acre) and punja lands (2.17 acre) are shown in patta No.99. So the factual finding of the learned Single Judge regarding ownership are only reinforced by these documents.

9. In the impugned order, the Commissioner has declared that an extent of 0.25 acres of punja land and 15.34 acres of nanja land belong to the temple. The respondent has disputed this. Therefore, the question actually is whether the property is a religious endowment or not.

10. The Deputy Commissioner has the power to decide this question under Section 63(c) of the Act. Unless this decision was arrived at, the Commissioner could not have called upon the temple to pay contribution. The manner in which the Commissioner has decided this issue is not quite satisfactory and even the learned Trial Judge has commented about it as follows:

"Further when Ex-N3 recites that the Karnam's certificate are enclosed alongwith the report of D.W.1 after perusal of the files, D.W.1 concedes that the report of the Karnam is not on records. It can be said that D.W.1 had not conducted the enquiry properly with all seriousness. His report cannot be said that the report is based on correct facts. Consequently, it can be said that the impugned order Ex-A2 based on Exs-B3 and 4 reports consequently suffer with the same defect."

11. The rules framed under Clause 3 and 5 of Section 162 of the Act provides for the manner in which enquiries should be held. Detailed procedure is laid down regarding service of summons, recording of oral

evidence and production of documents. Rule 20 provides for the applicability of the Code of Civil Procedure as far as practicable. The Commissioner on the other hand has decided the title to the properties summarily.

12. Section 108 of the Act bars the filing of suits or legal proceedings in respect of administration or management of a religious institution or any other matter or disputes for determination or deciding which provision has been made in the Act.

13. The dispute whether the property is a religious endowment has been decided by the Collector while passing orders under Section 94(2) of the Act with regard to levy of contributions. If the Deputy Commissioner had decided this dispute, the respondent would have had the appellate remedy before the Commissioner and from that order, the suit under Section 70 of the Act would have been filed. In this case, the Commissioner himself has decided the issue and the respondent aggrieved by it, has filed the suit under Section 70(2) of the Act, which deals with the filing of the appeal against any order passed by the Commissioner under those various sections stipulated there. It is futile now to send the respondent to file an application under Section 63(c) of the Act to decide this question when already the question has been

decided by the authority, who would otherwise have been the Appellate Authority.

14. The respondent cannot be left without a remedy. In these circumstances we hold that the suit is maintainable. But the relief sought for by the respondent is restricted only to that portion of the order of the Commissioner which includes the properties included in patta No.99 being an extent of 15.34 acres of wet lands and 2.17 acres of dry lands in Velakudi village, Papanasam Taluk for the purpose of contribution.

15. The plaint also refers to the inclusion of the temple in the list under Section 46(3) of the Act. That issue is not decided in this appeal and it is open to the department to deal with that issue. It is also made clear that the cancellation of the impugned order will not affect the appellants' right to claim contribution in respect of 6 0 cents of wet land in survey No.91/2 in patta No.127 Velakudi Village, Papanasam Taluk, since the respondent himself has referred to that property and has stated that excepting the above land the temple has no other property.

15. With these observations, the letters patent appeal is dismissed. No costs.

Index: Yes

Website: Yes

glp

□