

Commissioner Vs. Committee Management of the Jeeva Samadhi of Sri Yerriswami Tata

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Court : Karnataka

Decided On : Jun-14-1990

Reported in : ILR1990KAR2521; 1990(2)KarLJ201

Judge : Venkatachala and ;Murlidher Rao, JJ.

Acts : [Madras Hindu Religious and Charitable Endowments Act, 1951](#) - Sections 6(6), 57, 61, 62 and 103; Karnataka Civil Courts Act, 1964 - Sections 12(2)

Appeal No. : R.F.A. No. 66 of 1978

Appellant : Commissioner

Respondent : Committee Management of the Jeeva Samadhi of Sri Yerriswami Tata

Advocate for Def. : Jayavittal Kolar, Adv.

Advocate for Pet/Ap. : Umakanth, HCGP

Disposition : Appeal allowed

Judgement :

Murlidher Rao, J.

1. This is a defendants' appeal against the Judgment and decree of District Judge, Bellary, in O.S.1 of 1975. Respondents-plaintiffs filed a suit under Section 62 of the Madras Hindu Religious and Charitable Endowments Act of 1951, (hereinafter called Act of 1951), in respect of an institution called 'Yerriswami Samadhi' situated in village Chellagurki, Bellary District. Plaintiffs styled themselves as a Committee of Management; admittedly it is not a Committee constituted under any Statute or by any statutory authority. Vital prayers in the suit, which are relevant, are as follows:-

'(a) For cancellation of the order of the 1st defendant dated 8-10-1974 and for a declaration that the Jeeva Samadhi of Sri Yerriswami Thata situate at Chellaguriki is not a 'Temple' within the meaning of the Madras Acts of 1927 or 1951 and not subject to the purview of that Act;

(b) for an injunction restraining the defendants and their Officers under the H.R. and C.E. Act from in any way exercising any control or jurisdiction over the Jeeva Samadhi and interfering with the management of the same by the plaintiff's committee or its successors.'

2. Briefly narrated the relevant facts are:

Person called Yerriswamy Tata was said to have had divine or supernatural powers. His caste and community is unknown. His desire was to be buried in the place where he lived. Accordingly those who lived with him dug a pit and buried him alive, under the belief that he was in his last phase of life and would die any moment. A 'Samadhi' was constructed and in course of time the believed supernatural powers of the deceased seem to have attracted followers, who endowed their precious articles and money etc. This gave rise to the development of an Institution. Powerful among the followers, assumed Management and utilised these offerings and endowments for their use and for rendering services to the departed soul in the form of pooja, utsava, jatra etc. These activities caught the attention of the administrators in the Department of Religious and Charitable Endowments in the former State of Madras. The Statute governing the subject was Madras Hindu Religious and Charitable Endowments Act, 1927 (Madras Act II of 1927) (hereinafter referred to as 'Act of 1927'). The Inspector was directed to

conduct an enquiry. On the information then available, two persons were found to be in charge of Management namely, Basayya and Swamiji of Gavi Mutt. Notices were issued and got served. The Inspector conducted an enquiry and submitted a report on 29-2-1944 (Ext.XX-3). On the basis of the report, the Board of Commissioners for Hindu Religious Endowments constituted under the 1927 Act, issued notices and fixed the case for hearing on 27th July 1944. None appeared on the said date. The Commissioners perused the record including the aforesaid report of enquiry and concluded that it was not an 'excepted Temple' but a Public Temple; this was on 2nd August 1944 (Ext.XX-8). This adjudication was not assailed by the then existing devotees or any other person and it assumed finality.

3. In 1951, 1927 Act was repealed and got replaced by 1951 Act which came into force on 28th August 1951. In 1969, the authorities in the Department sought to collect contribution charges under Section 76 of the 1951 Act. The present plaintiffs protested. They questioned the right of the Department to collect the levy. They averred that it is not a Temple, as defined in the Act and they were- unaware of 1944 proceedings. They filed objections purporting to seek adjudication of the dispute under Section 57 of the 1951 Act. On 8th October 1974, their contention was rejected and it was held by the Deputy Commissioner that the status of the institution as 'Public Temple' stood concluded by the order of the Board vide order dated 2-8-1944. Their appeal to Commissioner was dismissed, affirming the order of Deputy Commissioner. They filed revision before the State Government on 31-1-1972. The finding regarding the status of the institution was affirmed in the following words:-

'...Learned Counsel for the petitioner however urged that this is an ex parte order which is not binding on him. If it is an ex parte order the petitioner should have taken appropriate steps at the proper time to get it annulled or modified and as long as the petitioner does not produce evidence to show that the said order has been modified or annulled it has to be held to be in force. The levy of the contribution will have to be on the basis that the institution is a temple as held in 1944.'

4. However the revision was allowed and demand notices were quashed, giving liberty to the Department to make a fresh demand vide order dated 31-1-1972 (Ext.D-2). On 17-12-1974, the plaintiffs filed the present suit under Section 62 of the 1951 Act. Defendants contested the suit; after appreciating the evidence, the learned Judges has decreed the suit, hence this appeal.

5. Before advertng to the rival contentions, it is necessary to refer to relevant provisions of the two Statutes.

6. In Act II of 1927 we get the following definitions:-

'(1) 'Board' means the Board as constituted under Section 20,

XXX XXX XXX(5) 'Excepted temple' means and includes a temple, the right of succession to the office of trustee or the offices of all the trustees (where there are more trustees than one) whereof has been hereditary, or the succession to the trusteeship whereof has been specially provided for by the fouders.

XXX XXX XXX(8A) 'Notified temple' means a temple notified by the Local Government under Section 65A.

(12) 'Temple' means a place, by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community, or any section thereof, as a place of religious worship.'

7. Section 10 requires the Local Government to issue Notification for constituting a Board for the whole Presidency or for any specified part thereof.

8. Sections 11, 12, 16, 19(b)(c)(j), 69(1)(2)(3) and 84(1)(2) read thus:

'Section 11:- A Board shall consist of a President and such number of other Commissioners not being less than two nor more than four as the Local Government may fix.

Section 12:- The Commissioners of a Board shall be persons professing the Hindu religion.

Section 16:- Every Board shall have an office at such place as the Local Government may fix for the transaction of business.

Section 19:-A Board may make bye-laws not inconsistent with this Act or the Rules made thereunder or with any other law as to -

XXX XXX XXX(b) the manner in which their decision shall be ascertained otherwise than at meetings;

(c) the procedure and conduct of business at meetings of the Board;

XXX XXX XXX(j) generally the conduct of all proceedings and business under this Act.

Section 69:- (1) Every math or temple and every specific endowment attached to a math or temple shall pay annually for meeting expenses of the Board such contribution not exceeding one and a half per centum of its income as the Board may determine;

Provided that every notified temple other than an excepted temple, and every specified endowment other than an endowment attached to an excepted temple shall pay annually to the Board such contribution not exceeding three per centum of its income as the Board may determine.

(2) Every temple other than an excepted or notified temple and every specific endowment attached to a temple other than excepted or notified temple shall pay annually for meeting the expenses of the committee such contribution not exceeding one and half per centum of its income as the committee may with the approval of the Board determine.

(3) Religious endowments the administration of which is governed by a scheme settled under Section 92 of the Code of Civil Procedure, 1908, shall notwithstanding anything to the contrary contained in such scheme, be liable to pay the contribution under this Section.

Section 84(1):- If any dispute arises as to whether an institution is a math or temple as defined in this Act or whether a temple is an excepted temple, such

dispute shall be decided by the Board.

(2) Any person affected by a decision under Sub-section (1) may, within one year, apply to the Court to modify or set aside such decision; but, subject to the result of such application, the order of the Board shall be final.'

9. These provisions make it clear that the Board shall consist of President, two Commissioners and business can be transacted at any meeting of the Board wherein two Commissioners are present. In other words, even in the absence of the President, the two Commissioners can conduct the proceedings. If there is a difference of opinion amongst the Commissioners, the senior member has a casting vote; in other words, the view of the senior member shall prevail as if it is the decision of the Board. In the instant case, the two Commissioners who constituted the Board gave a verdict on 2nd of August 1984 to the effect that the institution is not an excepted temple but a public temple. The remedy available to the aggrieved party was as provided in Sub-section (2) of Section 84 namely, to apply to the Court to modify or set aside the said decision. The word 'Court' in the context of definition (3) of Section 9 would obviously mean District Judge's Court having jurisdiction over the territory where the temple is situated. In the Instant case, the District Judge, Be Mary; therefore if any person was aggrieved against the Judgment of the Board, he could have made an application to the District Judge, Bellary within one year. Admittedly this has not been done.

10. Coming to the provisions of the 1951 Statute, it would be relevant to reproduce the following Sections:

'6(6) 'Court' means -

(i) in relation to a math or temple situated in the Presidency town, the Madras City Civil Court;

(ii) in relation to a math or temple situated elsewhere, the Subordinate Judge's Court having jurisdiction over the area in which the math or temple is situated, or if there is no such Court, the District Court having such jurisdiction.

(Emphasis added)

Section 57. Subject to the rights of suit or appeal hereinafter provided the Deputy Commissioner shall have power to inquire into and decide the following disputes and matters;-

(a) whether an institution is a religious institution;

(b) whether a trustee holds or held office as a hereditary;

(c) whether any property or money is a religious endowment;

(d) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what the established usage of a religious institution is in regard to any other matter;

(f) whether any institution or endowment is wholly or partly of a religious or secular character; and whether any property or money has been given wholly or partly for religious or secular uses; and

(g) where any property or money has been given for the support of an institution which is partly of a religious and partly of a secular character, or the performance of any service or charity connected with such an institution or the performance of a charity which is partly of a religious and partly of a secular character or where any property or money given is appropriated partly to religious and partly to secular uses, as to what portion of such property or money shall be allocated to religious uses.

Section 61(1) Any person aggrieved by any order passed by the Deputy Commissioner under any of the foregoing provisions of this Chapter may, within one month from the date of the publication of the order or of the receipt thereof by the party concerned, as the case may be, appeal to the Commissioner.

(2) Any order passed by the Commissioner on such appeal against which no suit lies to the Court under the next succeeding section, or in which no suit has been instituted in the Court within the time specified in Section 62, Sub-section (1) may be modified or cancelled by the Commissioner if the order has settled or modified a scheme for the administration of a religious institution or relates to any of the

matters specified in Section 59.

Section 62(1) Any party aggrieved by an order passed by the Commissioner may, within ninety days from the date of the receipt of such order by him, institute a suit in the Court against such order and the Court may modify or cancel such order, but it shall have no power to stay the Commissioner's order pending the disposal of the suit.

(2) Any party aggrieved by a decree of the Court under Sub-section (1) may, within ninety days from the date of the decree, appeal to the High Court.

(3)(a) Any scheme for the administration of a religious institution settled or modified by the Court in a suit under Sub-section (1) or on an appeal under Sub-section (2) or any scheme deemed under Section 103, Clause (d) to have been deemed or modified by the Court may, at any time, be modified or cancelled by the Court on an application made to it by the Commissioner, the trustee or any person having interest.

(b) Any party aggrieved by an order of the Court under Clause (a) may, within ninety days from the date of the order, appeal to the High Court.'

11. The above provisions are holding the field from 28th August 1951 enabling a person to raise a dispute regarding the nature of an institution before Deputy Commissioner if it had existed. In the Instant case as on 28-8-1951, there was no dispute regarding the nature of the institution since it stood concluded by the decision of the Board in August 1944. It is precisely for this reason, the Deputy Commissioner held that the nature of the institution is concluded and he had no competence to go into that question.

12. Section 62 provides for a suit being filed in the Court as defined in Sub-section (6) of Section 6 extracted above. Such a suit has to be filed within 90 days from the date of the receipt of the order made. The suit to be filed as contemplated under Section 62 is of a special nature and the only relief that can be granted by the Court is to modify or cancel such an order. In the background of these legal provisions the learned Judge framed the following issues:

- '1. Whether plaintiffs 2 to 9 are the members of the Committee of Management of the Jeeva Samadhi of Yerriswami Tata of Chellagurki?
2. Whether the 1st plaintiff Committee is validly constituted and has a right to file the present suit?
3. Whether the Board of Commissioner, Madras has by its order dated 2-8-1944 has held the plaintiff institution as a temple and whether the Commissioner for Endowments has upheld the said order?
4. Whether the order of the Board of Commissioner passed on 2-8-1944 was abandoned or treated as defunct?
5. If so whether the plaintiffs' suit as now brought is not maintainable?
6. Whether plaintiffs' suit is barred by res judicata?
7. Is plaintiffs' suit barred by time?
8. Whether the Deputy Commissioner, Bellary is justified in proposing to frame scheme to plaintiff institution?
9. To what reliefs are plaintiffs entitled?'

13. On behalf of the plaintiffs five witnesses were examined and on behalf of the defendants First Division Clerk of Deputy Commissioner's Office was examined. After appreciating the evidence, the following findings have been recorded by the Court below:

Plaintiffs being the members of the Committee of Management validly constituted they are entitled to maintain the suit;

That the order of the Board of Commissioners dated 2-8-1944 was illegal and ultra vires of the provisions of 1927 Act; it was a nullity and had no force in the eye of law and therefore liable to be set aside;

That the suit of the plaintiffs is not barred by principles of res judicata; and

The plaintiffs are entitled for a declaration that Jeeva Samadhi premises of Yerriswami at Chellagurki is not a temple within the meaning of Section 9(12) of 1927 Act or a Religious Institution under the provisions of Section 6(17) Madras Act 1951.

Thus holding the District Judge set aside the order of the Commissioner dated 8-10-1974, and decreed the suit.

14. In this appeal Mr. Umakanth, learned H.C.G.P. urged the following contentions:-

1. The finding that the order of the Board of Commissioners dated 8-2-1944 was a nullity and was ultra vires of the provisions of Act II of 1927 Act is incorrect;
2. The suit having been filed under Section 62 of the 1951 Act, it was not maintainable before the District Judge but had to be filed in the Court of the Civil Judge;
3. That in view of the special nature of the suit instituted under Section 62 of the Act, a declaration regarding the nature of the institution could not be made.

15. Mr. Jayavittal Kolar, learned Counsel for the respondents-successful plaintiffs, supported the findings and contended that the appeal be dismissed.

16. In view of the above contentions, the following questions arise for consideration:-

1. The scope and ambit of suit under Section 62 of the 1951 Act.
2. Whether the order dated 8-2-1944 by the Board of Commissioners is null and void, if not what is its effect on the nature of the institution?
3. Whether the District Judge at Bellary has the jurisdiction to entertain the suit under Section 62 of the 1951 Act?
4. Whether the findings and decree of Court below could be sustained?

17. POINT NO.I:- As extracted above, the suit under Section 62 is a special suit under the Statute. Unlike the suits under general law Court has no competence to grant relief other than the one contemplated by the Section. The limited power of the Court is to modify or cancel the orders of the Commissioner under Section 61. In the instant case, plaintiffs sought for a declaration to the effect that 'Jeeva Samadhi of Sri Yerriswami Tata' is not a temple within the meaning of Acts 1927 or 1951, and the institution does not come under the purview of the Act. It cannot be disputed that on 2-8-1944, the Board of Commissioners adjudicated that it is a public temple (the contention is that it was an invalid order or that the order is honest will be dealt with under point 2); it has proceeded on the assumption that it is a valid order passed by a statutory Board, the remedy open to the aggrieved party under the then existing statute was to file an application before the District Judge within one year. That remedy not having been availed of, the adjudication was allowed to hold the field for more than three decades and it became final. On the date the 1951 Act came into force, there was no 'dispute' which needed adjudication by the Deputy Commissioner. Being a successor authority to the Board, Deputy Commissioner could not have set aside the order nor could it have been ignored. Therefore, if the original authority under Section 57 could not grant such a relief, it is obvious that the Court, under Section 62 cannot grant. A new Statute, replacing the old one on the subject, does not clothe the parties with a right to agitate concluded matters unless it is so specifically provided. Prior to 1951, the Court had no competence to grant such a declaration as held by the Madras High Court in ISWARANANDA BHARATHI SWAMI OF EDNIR MUTT v. BOARD OF COMMISSIONERS FOR HINDU RELIGIOUS ENDOWMENTS, MADRAS AIR 1931 Madras 574. The learned Judges observed thus:

'But the well-established principle is that when by an Act of the Legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the jurisdiction of the ordinary Courts is ousted, and, in the case of injury, the party cannot proceed by suit. The mode of redress open to the plaintiff in respect of the interference with his rights by the Board's order is definitely provided by Section 84(2) of the Act, viz., an application to the District Court. In our opinion therefore it is not open to him to seek redress by means of this suit. His appeal is accordingly

dismissed with costs.'

18. Further, Section 103(a) of the 1951 Act provides that any proceeding or action taken under the repealed Act, in so far as they are not inconsistent, shall be deemed to have been settled or done by the appropriate Authority with the corresponding provisions of the Act. Therefore, it follows, that the order of Board of Commissioners should be considered as having been passed by the Deputy Commissioner. Clause (b) of Section 103 reads thus:

'103(b) If the Government are satisfied that any such Rule, Notification, Certificate, Order, Decision, Proceeding, Action, Scheme or thing, although not inconsistent with this Act would not have been made, issued, passed, taken, settled or done, or would not have been made, issued, passed, taken, settled or done in the form adopted, if this Act had been in force at the time, they shall have power, by order made at any time within one year from the commencement of this Act, to cancel or to modify in such manner as may be specified in the order, the said Rule, Notification, certificate, order, decision, proceeding, action, scheme or thing, and thereupon, the same shall stand cancelled or modified as directed in the said order, with effect from the date on which it was made or from such later date as may be specified therein:

Provided that before making any such order, the Government shall publish in the Fort St. George Gazette a notice of their intention to do so, fix a period which shall not be less than two months from the date of the publication of the notice for the persons affected by the order to show cause against the making thereof and consider their representations, if any.'

Admittedly no action is taken within one year, after the coming into force of new Act. Therefore a suit for declaration is not maintainable. It is misconceived and is liable to be dismissed.

19. POINT NQ.II:- It is contended that the order of Board passed on 8-2-1944 is void, it is nullity and honest. Supporting the finding it was contended that the order offends the principles of natural justice; no notice was issued to plaintiffs who were vitally concerned; the order is not a speaking order; it is passed by two

Commissioners and President is not a party to the proceedings and lastly the order having not been given effect to, as no steps or action was taken by authorities, it has lost its binding character. Further, it is contended that the order was not published or communicated, therefore it does not affect plaintiffs right to seek declaration under Section 57. Plaintiffs contention was till the passing of the order by Deputy Commissioner on 11-3-1974, they had no knowledge that there was a decision by the Board in 1944. According to them it is a 'Samadhi' and not a 'Temple'.

20. The learned District Judge has rightly held that documents marked as XX-1 to 3, 6 and 8 are public documents and they are admissible in evidence. But the finding of the learned Judge that Exhibits XX4, XX5 and XX7 are inadmissible cannot be accepted. These are original postal acknowledgments, evidencing service of notice. They bear postal stamp. There is no justification to hold them as inadmissible.. However, the finding of the learned Judge that they do not represent the true state of affairs, as they existed at the date of report and statement is unacceptable. The Court functioning under Section 62 has no competence to scrutinize these matters. The judicial scrutiny is restricted to find out the correctness of orders passed under Section 57 by the Deputy Commissioner and by the Commissioner under Section 61 of the Act. Indeed it was held in CHENGAZHISSEERI ALIAS PUTHILLOM ALIAS PUMMASSERI NARAYANA ALIAS PUNNASSERI NAMBI v. THE BOARD OF COMMISSIONERS FOR HINDU RELIGIOUS ENDOWMENTS 1961 Mad.L.J, 862, that it has no power of remand, in other words it is not Appellate Court. Further, whereas under Section 84(2) of the 1927 Act, application to modify or cancel the orders is to be made before the District Court, under the 1951 Act, an independent suit is provided before the Sub-Judge's Court. The Sub-Judge, entertaining a suit under Section 62 has no jurisdiction to decide the correctness or legality of proceedings, if they have become final before the 1951 Act came into force. The learned District Judge could not have gone into this question. It is beyond judicial scrutiny.

21. Further, the criticism that it is a void order, for the reasons mentioned above, cannot be accepted. Under the scheme of 1927 Act, the Board consists of President and two or more Commissioners. Sub-sections (2) and (3) of Section 16,

extracted above, deal with the procedure to be followed by the Board, for transacting the business. Two Commissioners, in the absence of President, can validly transact the business. Since their decision is unanimous, that becomes the decision of the Board. We have perused the originals and we do not find any infirmity in the procedure. The criticism that it is a non-speaking order is not factually correct. Indeed in Exhibit P-4 dated 13-8-1926, produced by plaintiffs, the institution is described as 'Yerriswami's Math'. In the said sale deed it is stated that the returns of the land should be utilised for the 'repairs of Math' and for lighting lamp and for other incidentals of pooja. In Ext.P-2 dated 28-6-1944, the executants have donated lands in favour of 'Math' and possession is delivered to 'Math'. Under Ext.P-3 dated 21-9-1956, a trust of five persons is constituted for the administration and Management of 'Yerri Tata's Math'. In Ext.P-5 dated 9th June 1958, the executant has donated the lands to 'Jeeva Samadhi Devasthan'. In the body of the deed, the institution is described as 'Devasthan'. Ext.P-8 dated 23-9-1957, is an extract of minute book. In these proceedings the institution is described as 'Math'. So also in Exhibit P-9 dated 1-7-1957. It is clear that plaintiffs have treated the institution as a 'Math'. The word 'Math' is defined thus in 1951 Act:

'(10) 'Math' means a Hindu Religious Institution with properties attached thereto and presided over by a person whose duty it is to engage himself in imparting religious instruction or rendering spiritual service to a body of disciples or who exercises or claims to exercise spiritual headship over such a body; and includes places of religious worship or instruction which are appurtenant to the institution.'

In 1927 Act, it is defined thus:

'9(7) 'Math' means an institution for the promotion of the Hindu religion presided over by a person whose duty is to engage himself in spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples and succession to whose office devolves in accordance with the directions of the founder of the institution or is regulated by usage; and includes places of religious worship other than a temple or places of religious instruction which are appurtenant to such institution.'

Further, Clause (15) of Section 6 in 1951 Act is a comprehensive definition of 'religious institution' which includes 'math' and 'temples'. Preamble in Ext.P-8 reads:-

22. By this resolution Chandramouli was authorised to collect 'Tasdik' from Taluk Office, Bellary; the resolution itself came to be passed on the advise of Tahsildar. Therefore the conclusion is inescapable that the institution is, a religious institution and comes under the purview of the Act. The prayer asked for cannot be granted.

23. POINT NO. III:- Under Section 62 of the 1951 Act read with Section 6(ii), the suit is to be filed before Subordinate Judge's Court, within one year. In 1953, Bellary District, which was formerly in Madras State, became part of Mysore State. In Mysore State the Civil court consisted of

1. District Court

2. Court of Subordinate Judge

3. Court of Munsiff

(Mysore Civil Courts Act, 1883)

On 1st July 1964, Karnataka Civil Courts Act 1964, was brought into force. Sub-section (2) of Section 12 provided that Court of Subordinate Judges shall be deemed to be Court of Civil Judges established under the Act. This Act is holding the field till today. Plaintiffs' suit in 1975 should have been instituted in the Civil Judge's Court and not in District Court. Subordinate Judge being a persona designata under Section 62, the District Judge had no jurisdiction to entertain the suit. Hence the decree is without jurisdiction.

For the aforesaid reasons, this appeal succeeds; it is allowed. Suit is dismissed. No costs.