

S. Marimuthu Vs. the Commissioner, Hindu Religious and Charitable Endowment Department and ors.

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Court : Chennai

Decided On : Sep-17-2008

Reported in : (2009)2MLJ1018

Judge : K. Chandru, J.

Acts : Tamil Nadu Hindu Religious Charitable and Endowments Act - Sections 26(1), 27, 28 and 54(3); Transfer of Property Act - Sections 6; Representation of People's Act, 1951 - Sections 7 and 9A; Ferries Act - Sections 8

Appeal No. : W.P. (MD) No. 420 of 2007 and M.P. (MD) Nos. 1 and 4 of 2007

Appellant : S. Marimuthu

Respondent : The Commissioner, Hindu Religious and Charitable Endowment Department and ors.

Advocate for Def. : K.M. Vijayakumar, Additional Government Pleader for R-1 and R-2, ;AR.L. Sundaresan, Sr. Counsel for ;AL. Gandhimathi, Adv. for R-3, ;Concious Elango and ;Velavadhas, Advs. for R-4 and ;R. Shanmugasund

Advocate for Pet/Ap. : T.R. Rajagopalan, Sr. Counsel for ;T.R. Rajaraman, Adv.

Disposition : Petition allowed

Judgement :

ORDER

K. Chandru, J.

1. Heard both sides and perused the records.

2. This writ petition raises two interesting questions of law. They are:

(i) Whether the Commissioner or any of his subordinates can decide the question of right to the office of trusteeship on the basis of a Will left by a testator?.

and

(i) Whether the meaning of the term acting 'adverse to the interest of the institution' as found in Section 26(1)(h) of the Tamil Nadu Hindu Religious Charitable and Endowments Act (for short HR&CE; Act) will include all institutions or only the particular institution concerned?

3. The writ petition is filed by one S.Marimuthu against the order passed by the first respondent (HR&CE; Commissioner) dated 27.11.2006 in allowing the appeal filed by the third respondent against the order passed by the Joint Commissioner, (second respondent) dated 31.03.2006. The matter relates to appointment of an hereditary trustee to the Arulmighu Mariamman Temple at Iruggangudi, Sattur Taluk, Virudhunagar District.

4. It is stated that one Ramasamy Poojari was one of the hereditary trustee of the said temple. He died on 06.08.1975 leaving three female heirs. After his death, the eldest daughter Mr. Seeni @ Sundarambal applied to the second respondent to register her name as the hereditary trustee in the place of her father.

5. The Arulmighu Mariamman Temple at Iruggangudi is a listed institution under the control of HR&CE; Board. The administration of the temple is governed by a scheme framed by the then HR&CE; Board, dated 04.05.1935. The said Scheme was modified by the Deputy Commissioner HR&CE; in O.A. No. 9/55 dated 31.05.1955 by which a provision for appointment of an Executive Officer was

made.

6. When one of the hereditary trustee by name Perumal poojari died, his elder son was included in the list of hereditary trustees. Thereafter, the Assistant Commissioner, HR&CE, Ramanatahapupram, called for a meeting of the trustees on 17.06.1975 for the purpose of electing a Chairman for the Board of Trustees. The meeting was attempted to be stalled by filing a writ petition and thereafter, through civil suit by one S.R.Muthuraman poojari. He also declared himself elected as the Chairman of the Board of Trustees. The other trustees filed a Revision Petition before the Commissioner. The Commissioner took up the petition as R.P. No. 169 of 75.

7. In that revision petition, the Commissioner held that by virtue of the scheme, a hereditary trustee can be succeeded only by the eldest son of the family and it does not include the other sons of the family. Therefore, when Ramasamy poojari died, Mrs. Seeni @ Sundaramabbal staking her claim for the hereditary trusteeship filed a civil suit being in O.S. No. 188/93 before the District Munsif Court, Sattur, for a declaration that she is entitled to succeed to her father's trusteeship in the Arulmighu Irugangudi Mariamman Temple. The suit was decreed in her favour by judgment and decree dated 13.11.1995. A declaration was given that she was entitled to succeed to the office of the hereditary trusteeship of the said temple.

8. The appeal against the said order filed before the Principal District Court, Srivilliputtur, in A.S. No. 27/96 was dismissed confirming the judgment and decree of the trial Court. Therefore, the second respondent, Joint Commissioner, recognised Mrs. Seeni @ Sundaramabbal as the hereditary trusteeship of the Arulmighu Irugangudi Mariamman Temple Temple by his order dated 29.01.1998.

9. The said Mrs. Seeni @ Sundaramabbal died on 02.09.2004 leaving three sons and one daughter as her legal heirs. The petitioner, third and fourth respondents are her three sons and also one Muthuramu was her daughter. Since the petitioner was the eldest son, he made an application to the second respondent to register his name as the hereditary trustee of the temple. In the mean while, the third and fourth respondents filed objections. But, however, the second respondent

registered the name of the petitioner by his proceedings dated 06.05.2005. He did not consider the objections raised by the third and fourth respondents.

10. The third respondent filed a writ petition being W.P. No. 4647 of 2005 challenging the said order. This Court by an order, dated 21.07.2005, allowed the writ petition and remitted the matter for fresh consideration by the Joint Commissioner. He was directed to give notices to all the parties in terms of Section 54(3) of the HR&CE; Act.

11. The Joint Commissioner by a proceedings dated 31.03.2006 once again recognised the petitioner as the hereditary trustee of the temple. Before the Joint Commissioner, objections was raised by the third respondent stating that the petitioner had suffered disqualification in terms of Section 26(1)(h) of the HR&CE; Act. This was because the petitioner had purchased lands belonging to the land endowed for Kandhasasti Surasamhara Pavadai Neyveidiyam to be performed in the Arulmighu Chidambareswarar Temple, at Sattur. Therefore, by the purchase of the land, he had acted 'adverse to the interest of the institution' and thus suffered a disqualification under Section 26(1)(h) of the HR&CE; Act.

12. On behalf of the petitioner, it was stated that the said land does not belong to Arulmighu Irugangudi Mariamman Temple and the word 'institution' found in Section 26(1)(h) of the HR& CE Act means only the institution in question, namely, Arulmighu Irugangudi Mariamman Temple and it cannot be given broad interpretation. It was also stated that at the time of registration of his trusteeship, he did not possess those properties as had already been disposed of.

13. The third respondent also submitted that her mother Mrs. Seeni @ Sundaramabbal has left a Will in favour of the third respondent in his favour. He has also filed a suit in O.S. No. 16/2004 for declaring him as the Trustee of the Arulmighu Irugangudi Mariamman Temple, which is pending. The Joint Commissioner took the opinion of the Government Pleader and rejected both the contentions raised by the private respondents.

14. The third respondent, aggrieved by the said order, filed an appeal under Section 54(4) of the HR&CE; Act before the Commissioner. The Commissioner

with reference to the disqualification, under Section 26(1)(h), recorded the following finding: The second respondent while not disputing the said purchase has raised a legal issue by interpreting that the disqualification under Section 26(1)(h) of the Act will arise only if a person has acted against the interests of that particular religious institution to which he is being considered for appointment as a trustee. The counsel for the second respondent interpreted the relevant portion of the section of the Act as has to mean that the person shall be disqualified for being a trustee of religious institution if he has acted adverse to the interest of the institution. i.e. the institution to which he is being appointed as trustee. I am not inclined to accept this argument. A careful reading of the entire Section 26(1)(h) read Section 28 of the Act where the duties and responsibilities of the Trustee have been spelt out, would indicate that the Act required the person holding the office of the Trustee should be above board and should enjoy good reputation and moral character. Section 28(1) of the Act requires a trustee to administer the affairs of the religious institution and apply its funds and properties as carefully as a man of ordinary prudence would deal with such affairs, funds and properties if they were his own. The intention of the Legislature appears to be that a person being considered for appointment of trustee should not have acted against the interests of any religious institution. A person who has committed sin against a religious institution cannot be considered as a Saint for another religious institution. If he has acted against the interest of a particular religious institution, he cannot be considered for appointment as trustee in any other religious institution. Therefore, if it is proved that the second respondent has acted against the interests of A/m Chidambareswarar Temple, he becomes disqualified for appointment of trustee in respect of any other temple.

15. Since the first respondent disqualified the petitioner on the above finding, he also embarked upon the next exercise as to who should succeed in the place of the petitioner. He found fault with the finding of the Joint Commissioner for not considering the said issue. He also observed that if the original Will was not produced before the Joint Commissioner, he could have demanded the original Will to be produced. He also found that he ought to have given a finding on the next line of succession. The Commissioner took exception to the Joint Commissioner receiving the opinion of the Government Pleader, as the basis for

his decision making. He castigated the Joint Commissioner for not following the rudimentary principles during his enquiry. In para 9, he has observed as follows:

9...The Joint Commissioner, while deciding the rival claims of the appellant and the second respondent should have first decided as to what is the method of succession that has been and is being followed in the suit temple. i.e.whether the succession devolves hereditary right or it is regulated by usage or it is specifically provided for by the founder. In the instant case, since there is a Will and General Power of Attorney executed by the erstwhile hereditary trustee in favour of the appellant and the fact remains that the second respondent being the next person in the line of succession, the determination of the method of succession in existence in the temple becomes all the more necessary.

16. On the strength of these findings, the Commissioner, by the impugned order set aside the order of the Joint Commissioner. He remitted the matter to the second respondent, the Joint Commissioner, setting out the following points of remand:

12. ...The Joint Commissioner has to verify whether the second respondent purchased the Kattalai properties of Chidambareswar Temple knowing fully that there were the properties of the temple, to decide as to who is the next in line of succession between the Appellant and the second respondent taking into account the existence of the Will and the fact that the second respondent being eldest son of the erstwhile hereditary trustee. With the above observations, the impugned order of the Joint Commissioner is set aside and the matter is remanded to the Joint Commissioner for fresh enquiry and orders on merits.

17. It is against this order of remand, this writ petition has been filed. This Court, while admitting the writ petition, on 19.01.2007 has also granted an interim-stay for a limited period, which was subsequently extended from time to time. A vacate stay application was also filed to vacate the interim-order. When that matter was listed, with the consent of the parties, the main writ petition was taken up for final hearing.

18. Before proceeding to decide, the issue before this Court, it is necessary to reject the intervention of the respondents 5 to 9, who have no direct interest in this matter, as the line of succession exclusively arose on the death of the said S.Ramasamy poojari only amongst his heirs. Besides that, there is a suit pending filed by R.Ramasamy poojari, who is the brother of the petitioner in O.S. No. 16/2004 wherein, all the parties herein have been made as respondents. Therefore, they can urge all the contentions before the Civil Court.

19. Mr.T.R. Rajagopalan, learned Senior Counsel, leading Mr. T.R. Rajaraman, submitted that the order of the Joint Commissioner, derecognising the petitioner from the hereditary poojariship was erroneous. If the basis of his disqualification under Section 26(1)(h) is removed, there will be no necessity for further remand, and the order of the Joint Commissioner will have to be approved. He further submitted that neither the Joint Commissioner nor the Commissioner or any authority under the Act can decide as to which of the competing claimants can a hereditary trustee.

20. In this context, the learned Senior Counsel relied upon judgment of the Division Bench of this Court in A. Krishnaswami Raja v. Krishna Raja and Anr. reported in : (1968)1MLJ119 and the following passage found in that judgment is usefully extracted below:

The jurisdiction of the Deputy Commissioner under Section 57(b) is confined to a decision whether a trustee holds or held office as a hereditary trustee. In other words, the Deputy Commissioner can only decide as to the status of the office of the trusteeship, namely, whether it is hereditary. He is not competent to go into the further question as to which of the competing claimants is a hereditary trustee or whether both are joint hereditary trustees. That is a matter not covered by Section 27 of the Act and has to be decided only by a separate suit.

21. The same view was echoed in Aviyur Mariamman Temple by Hereditary Trustee Parasuraman V. T.N. Sundaramoorthi Pillai and Anr. reported in : (1981)1MLJ392 . Therefore, he sought for the setting aside the order of remand.

22. Per contra, Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the third respondent submitted that the officer of hereditary ship can be a transferable right. For this purpose, he relied upon a Division Bench of this Court in L.S.Mariappan v. Kuppamuthu and 6 others reported in : 2000(3)CTC405 and the following passage found in para:20 of that judgment is extracted below:

20. ...To be more specific, the point is whether the enjoyment of the right of trusteeship and poojariship of the temple by each branch, in the absence of any restriction in any of the terms of the preliminary decree passed in O.S. No. 9 of 1943, dated 31.03.1944, can still be stated to be a restricted one without any right to transfer the enjoyment of trusteeship and poojariship of the suit temple in favour of any one of its descendents in the manner known to law or could it otherwise be held that the members of each branch are entitled to deal with their right of trusteeship and poojariship by way of transfer within the branch itself to any other member or members of the branch for reasons best known to them. In such circumstances, would it be open to the other members within the branch to question such transfer effected by one of its other members. In our opinion on a conspicuous reading of the whole material placed before us and the reading of the various pronouncements, and the principles set out under the Hindu law, exercises of such right by any one member within the branch would be unquestionable.

23. The Supreme Court confirmed the afore-said decision of the Division Bench in S.Rathinam @ Kuppamuthu and Ors. v. L.S. Mariappan and Ors. reported in (2007) 4 MLJ 424 (SC) and the following passages found in paragraph Nos. 33 and 34 may be reproduced below:

33.However, we need not enter into the said question as the law is now well-settled in view of the decision of this Court in Shyam Sunder V. Moni Mohan : AIR 1976 SC977 (See also Nandlal v. Kesharlal).

34.Such a nomination is also permissible being inter vivos. In view of the decisions of this Court, we are of the opinion that it is not necessary for us to consider the decision of the Madras High Court, on which Mr.Prabhakar has placed strong reliance, as the said decision revolves round the question as to whether such a right is transferrable or not. A Will being not a transfer, the bar contained in

Section 6(d) of the Transfer of Property Act, in our opinion, will have no application. We, therefore, agree with the findings of the Division Bench of the High Court that the Will is valid in law.

24. In the light of the above, it can be stated while there is no bar for a transfer of hereditaryship by way of an instrument, but at the same time, the authorities under the Act cannot decide the inter-se dispute between the rival claimants to the office of hereditary trusteeship. Any claim to trusteeship by way of an Will, will have necessarily go before the Civil Court. Only the Civil Court can examine such claims, in the light of the relevant legal provisions including the scheme under which such an hereditary trusteeship was sought for. The order of the Commissioner impugned in the writ petition directing the Joint commissioner to decide the issue regarding succession of the hereditaryship based on the Will is clearly out of order and the parties must be relegated to the appropriate civil suit.

25. This leaves out the next question regarding the disqualification allegedly suffered by the petitioner under Section 26(1)(h). Therefore, it is necessary to extract Sections 26(1)(e), (f) and (h), which have some bearing in this case.

26. Qualification of trustees: (1) A person shall be disqualified for being appointed as, and for being, a trustee of any religious institution.

(a), (b), (c) and (d) omitted

(e) if he is interested in a subsisting lease of any property of, or contract made with or any work being done for the religious institution or is in arrears of any kind due by him to such religious institution or endowment;

(f) if he is employed as a paid legal practitioner on behalf of or against the religious institution;

(ff) omitted

(g) omitted

(h) if he has acted adverse to the interest of the institution.

26. As can be seen from the above disqualificatory clauses, the word 'institution' occurs in the three sub-sections. If as argued by the learned Counsel for the respondents as well as found in the impugned order of the first respondent the word institution found in Section 26(1)(h) has not only that institution but all institutions under the HR&CE; Board come under that clause, it will be doing violence to the provision and will expand the disqualification to a wider range which the legislature had never intended to. Further, the same wider meaning cannot be given to the very same term found under Section 26(1)(e) & (f) of the HR&CE; Act.

27. The Supreme Court, while interpreting the disqualificatory clauses found under the electoral laws and contract laws have emphasised the need to restrict the meaning of the provisions providing for disqualification. They had also cautioned that if the term providing for disqualification is not ambiguous then the plain meaning should be given in construing such provisions. It is in this context, it is necessary to refer to the Supreme Court in P.B. Ram Padarath Mahto v. Mishri sinha and Anr. reported in . in the said judgment, the following passage found in para :8, may be reproduced below:

8...It may sound technical, but in dealing with a statutory provision which imposes a disqualification on a citizen it would be unreasonable to take merely a broad and general view and ignore the essential points of distinction on the ground that they are technical.

28. In that case, the Supreme Court considered a disqualification under Section 9(A) of the Representation of People's Act, 1951. The said section reads as follows:

9-A. Disqualification for Government contracts, etc- A persons shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.

29. The Supreme Court after interpreting the said provision, found it difficult to hold that when a person acquired the right to collect tolls at a public ferry under the

Ferries Act it was not said to be performing a contract for the execution of the works undertaken by the Government. The same view was reiterated by the Supreme Court in *Kartar Singh Bhjadana v. Hari Singh Nalwa and Ors.* reported in : [2001]2SCR790 .

30. Even while interpreting the amended provisions of Section 7(d) of the RP Act, 1951, in *Dewan Joynal Abedin v. Abdul Wazed alias Abdul Wazad Miah and Ors.* reported in , in paragraph 16, the Supreme Court framed the issue for its consideration as follows:

16. ...the question for determination is whether the contract to collect toll at a Government ferry entered into in accordance with the Ferries Act amounts to a contract for the execution of any works undertaken by the Government.

31. The said question was answered by the Supreme Court in the following lines:

18. ...It is, therefore, difficult to hold that when a person acquires the right to collect toll at a public ferry under Section 8 of the Ferries Act he is performing a contract of execution of works undertaken by the Government. It may have been perhaps different if the words 'in performance of any services' which were present in Section 7(d) of the Act, as it stood prior to its amendment in 1958 had been there in Section 9-A of the Act.

32. This view was reaffirmed by the Supreme Court in *Ranjeet Singh v. Harmohinder Singh Pradhan* reported in . In interpreting the disqualification clause found in the R.P. Act, in Paras:6 and 7, it was observed as follows:

6. We find ourselves unable to agree with the learned Counsel for the appellant that keeping in view the purpose for which Section 9-A of the Act was enacted, namely, to avoid any conflict between private interest and public duty, a broad interpretation should be placed on Section 9-A.

7. Section 9-A is a statutory provision which imposes a disqualification on a citizen. It would, therefore, be unreasonable to take a general or broad view, ignoring the essentials of the Section and the intention of the legislature. Purposive interpretation is necessary.

33. Another interesting question came before the Supreme Court with regard to challenge to selection made for Oil Dealership on the ground that the selected persons have relatives who were also having dealership/distributorship in other Public Sectors or in the same Public Sector Oil Company. In one case, it was pointed out that the selected person's father-in-law was already holding dealership and therefore, he should be disqualified. The successful person who got the dealership contended that the father-in-law do not come within the enumerated relationship.

34. When such was the position, the Allahabad High Court rejected the objection and held that the literal interpretation need not be given to the requirement, but the intention of such disqualification must be taken into account. The intention for prohibiting of awarding of dealership was that he was a close relation and he is already having a dealership and the relatives of such persons should not be given a dealership. Therefore, if the father-in-law is the close relation to the daughter-in-law, the reverse is also true. Therefore, the daughter-in-law is ineligible, if the father-in-law has already dealership and thus, disqualified the selected persons.

35. When the issue came up before the Supreme Court in the case relating to Sangeeta Singh v. Union of India reported in : AIR 2005 SC4459 , the Supreme Court had set out the principles of construction in construing the term 'relative' for disqualification as found in the notifications awarding dealership. The following passages found in paras:5, 8, 9 and 10 may be usefully extracted below:

5. It is well-settled principle in law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent.

8. In D.R. Venkatachalam V Dy. Transport Commissioner, it was observed that the courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

9. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See CST v. Popular Trading Co. reported in : 2000(117)ELT531(SC)). The legislative casus omissus cannot be supplied by judicial interpretative process.

10. Two principles of construction-one relating to casus omissus and the other in regard to reading the statute as a whole, appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.

36. In the light of the above, the term institution found in Section 26(1)(h) cannot be assigned wider meaning, as opined by the Commissioner in the impugned order or as contended by the learned Senior Counsels appearing for the respondents. The said Section can be pressed into service, only if an individual acted adverse to the interest of that temple or religious institution and not in any other temple or any other institution unconnected with the temple.

37. Therefore, the order of the Commissioner impugned in the writ petition is liable to be set aside. Even if the allegation made against the petitioner that he had purchased the land and later disposed it off is accepted, admittedly those lands belonged to an endowment attached to the another temple and not belonged to Arulmighu Irugangudi Mariamman Temple. Hence, the question of any remand setting out points for determination by the Joint Commissioner does not arise. If any aggrieved persons wants to stake his claim for hereditary trusteeship in the Arulmighu Irugangudi Mariamman Temple, based on any Will or other instrument, it is for him to seek for appropriate remedy before a Civil Court.

38. The writ petition stands allowed. However, there will no order as to costs. Consequently, connected M.Ps. are closed.

