

Commissioner, Hindu Religious and Charitable Endowments Administration Department, Madras

Vs

P. S. Sethurathinam

Civil Appeal No. 1379 of 1991

(S. Rajendra Babu, M. B. Shah JJ)

02.02.1999

JUDGMENT

S. Rajendra Babu J

1. The Deputy Commissioner, Hindu Religious and Charitable Endowments Department, exercising powers under Section 45(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 Tamil Nadu Act 22 of 1959), hereinafter referred to as 'the Act', made an order on February 10, 1965 modifying the scheme in relation to Sri Bhavani Amman Temple in Periapalayam Village in Chingleput district which had been settled by the District Court, Chingleput in O.S. No. 2 of 1949 framed on December 13, 1949. The Managing Trustee of the said Temple filed appeals and revision petitions before the statutory authorities unsuccessfully. Thereafter, he filed a suit being O.S. No. 74 of 1969 for setting aside the orders passed by the authorities under the Act. Two other suits were filed being O.S. Nos. 81 of 1969 and 74 of 1969. All the suits were decided by the Subordinate Judge, Kancheepuram by his judgment made on February 2, 1972 modifying the orders passed by the statutory authorities and decreed the suit to a limited extent. An appeal was preferred to the High Court. The Commissioner of Hindu Religious and Charitable Endowments Board also had filed an appeal to the extent that the Subordinate Judge had decreed the suit in favour of the Managing Trustee. These two appeals were heard along with other appeals and, following the decision of the court on *O. Radhakrishna and Anr. v. Manickam, and others, 1974(II) MLJ 179*, the High Court took the view that the Deputy Commissioner exercising powers under the Act had no jurisdiction to modify the scheme settled by a civil court in exercise of the powers conferred under Section 64(5). The result was that the High Court set aside the orders of the Deputy Commissioner and the Commissioner on appeal modifying the scheme in respect of Sri Bhavani Amman Temple. Thereafter, the Commissioner in proceeding dated June 24, 1978 defined the powers and duties of the executive officer and the hereditary trustee of the said Temple and challenging the same a writ petition was filed before the High Court. The learned single Judge who heard the matter found that the matter was fully covered by the earlier decision of the Court in A.S. No. 272 of 1973 between the same parties; that the matter stood concluded by the decision therein, and, that, therefore, it was no longer open for the Commissioner to modify the scheme. Thereafter, the learned single Judge compared the provisions of the scheme and the order made in the proceedings impugned before the High Court and found that they were inconsistent in material particulars with the clauses of the scheme and, therefore, he was of the view that it had only the effect of circumventing the order made by the Court in the earlier proceedings and on that basis quashed the order in question. On appeal filed against the said order by the Commissioner it was noticed that the provisions of Section 65 would not enable the Commissioner to modify the scheme framed by the Court. Though it has

expressed inability of the Commissioner to modify a scheme framed by the court, it was made clear that the Commissioner could deal with any scheme if it had been framed by the Deputy Commissioner or any scheme framed under the earlier Act. Thus the Division Bench was of the view that the scheme framed by a civil court could not be modified by the Commissioner and on that basis it dismissed the writ appeal. Challenging this view of the High Court this appeal has been filed before this Court.

2. The question for consideration is whether the Commissioner or the Deputy Commissioner has power under the Act to modify the scheme framed by a civil court under Section 64(5) read with Section 118 of the Act. This question is squarely answered by this Court in *T. Lakshmikumara Thathachariar v. Commissioner, H.R.C.E. and others, 1998(6) SCC 643*. In this decision this Court, after examining the scheme of the Act, has taken the view that the Deputy Commissioner exercising powers under Section 64 of the Act could modify a scheme and it includes modification of a scheme framed under Section 92 Civil Procedure Code by a Civil Court. Therefore, the view taken in *O. Radhakrishna and Another v. Manickam and others (supra)* has been overruled by this Court by holding that the interpretation of law therein is not correct. Therefore, it is no longer open to the parties to contend that the Deputy Commissioner has to jurisdiction to modify the scheme framed pursuant to a decree of a Civil Court in exercise of his power under Section 64(5) of the Act. Hence the judgment under appeal cannot be sustained.

3. However, the learned counsel for the respondent brought to our notice that the power exercised by the Deputy Commissioner in the present case is one under Section 45 while making appointments of executive officer which is ministerial in nature. Various clauses referred to in the order which were challenged before the High Court being inconsistent with the scheme could not stand unless scheme is modified. Therefore, appropriate course to be adopted in the case is to make it clear that the power could not be exercised under Section 45 of the Act modifying the scheme but such power could be exercised only in terms of Section 64(5) read with Section 118 of the Act. Therefore, we uphold that part of the order made by the High Court, quashing the order made by the Deputy Commissioner with this modification that the proceedings shall stand remitted to the Deputy Commissioner for fresh consideration of the matter in the light of the law declared by this Court in *T. Lakshmikumara Thathachariar v. Commissioner, H.R.C.E. and others (supra)* and as stated by us in the course of this order. We Order accordingly. In the circumstances of the case there shall be no order as to costs.