

(1974) 03 MAD CK 0028

In the Madras High Court

Case No : Writ Appeal No. 560 of 1971

Area Committee, Hindu Religious and Charitable Endowments
(Administration Dept.), Nagapattinam

APPELLANT

Vs

K. Kasinathan Padayachi and Others

RESPONDENT

Date of Decision : 27-03-1974

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 118(2),
47, 64(5)

Citation : AIR 1975 Mad 6 : (1974) ILR (Mad) 526 : (1978) 87 LW 716 : (1974)
87 LW 716

Hon'ble Judges : K. Veeraswami, C.J.; Varadarajan, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; R.G. Rajan, for the
Respondent

Final Decision : Allowed

Judgement

K. Veeraswami, C.J.—The Court of the Subordinate Judge of Thanjavur at Mayuram, in O. S. 14 of 1919, settled a scheme for

management of Sri Viswanathaswami temple at Devanaoor village. A Board of Trustees was constituted under this scheme which inter alia

provided that, if any vacancy occurred by death or resignation or removal, it should be filled up by the majority of the resident villagers of

Devanaoor. In 1961, three persons were elected by the residents, of whom one Veeramuthu Padayachi was the managing trustee. He died in

February, 1961, and it was said that, on 5-3-1961 the first respondent was elected in that vacancy. The other two trustees relinquished office due

to old age and the Assistant Commissioner, Hindu Religious and Charitable Endowments appointed respondents 2 to 5 as trustees of the temple.

Alagiriswami, J. quashed this order. The learned Judge took the view that, so long as the scheme stood unamended, the Assistant Commissioner had no power to appoint any trustees of the temple. He was also of the view that Section 118(2)(b)(ii) could not be relied on by the Assistant Commissioner, as it was irrelevant to the consideration of the question that arose in the case. Hence this appeal by the Assistant Commissioner, Hindu Religious and Charitable Endowment.

2. It seems to us that the view of the learned Judge as to the application of Section 118(2)(ii) cannot be sustained. Section 118 is one of the transitional provisions. At the time the Tamil Nadu Hindu Religious and Charitable Endowments Act was enacted, there were schemes settled by the erstwhile Hindu Religious and Charitable Endowments Board and also by courts u/s 92, Civil P. C. The 1950 Act and 1959 Act brought about drastic changes in the control and administration of temples and specific endowments. The power to appoint trustees for temples, both listed and non-listed, was vested in the Commissioner or Assistant Commissioner Hindu Religions and Charitable Endowments , and the period for which they could function is also fixed. The schemes which were settled by court, provided for appointment of trustees by it or by election or by other means, recognised by custom or usage. In view of this, the transitional provisions in Chapter XII were enacted, in order that uniformity could be achieved. Clauses (i) and (ii) of Section 118(2)(b) go together. The first of them deals with repugnancy between any provision in any scheme settled or deemed to have been settled -- in the present case u/s 92. Civil P. C, 1908 -- and in force immediately before 30-9-1951, and the provision relating to the particular matter in the Act. In such an event, Clause (i) of Section 118(2)(b) declares that the provision in the scheme shall be void to the extent of repugnancy and pro tanto the corresponding provision in the Act will prevail. Clause (ii) is the consequential provision. By enactment of Section 47 relating to appointment of trustees, the elective principle applied to the constitution of a Committee of trustees has been done away with. The Tamil Nadu Hindu Religious and Charitable Endowments Act is intended to be a comprehensive Code which amended and consolidated the law relating to the administration and governance of Hindu Religious and Charitable institutions and endowments in the State of

Tamil Nadu, so that, notwithstanding the provisions of the Act, it is not possible to hold that, even after the coming into force of the Act, Trustees

of temples could be appointed by election. There being a specific provision in the Act, namely, Section 47, for appointment of trustees to temples

and the power to make the appointment being vested in the authority named by the section, the provision in the scheme in this case to elect trustees

is repugnant and, therefore, that provision is void. If it is void and the provision in the Act is to prevail, then it becomes clear that there is no longer

any scope for the argument, namely, that, unless the scheme is amended, the elective principles will hold the field and the Assistant Commissioner

has no power to appoint trustees.

3. But it is contended that, since Section 64(5)(b) states that, if the Deputy Commissioner is satisfied that any such scheme referred to in Clause (a)

is inconsistent with the Act and the rules made thereunder, he may, at any time, after consulting the trustee and the persons having interest, modify it

in such manner as may be necessary to bring it into conformity with the provisions of the Act and the rules made thereunder, the scheme should

continue to have force until it is amended. In our opinion, this provision will have to be read in conjunction with Section 118(2)(b)(ii). Section

64(5)(b) applies to a case where the scheme is inconsistent with the Act and Section 118(2)(b)(ii) applies to a provision in the scheme repugnant

to a provision in the scheme of Act. In the latter case, Section 118(2)(b)(ii) specifically renders the repugnant provision in the scheme void. The

effect is that the provision in the scheme because it is void, can have no longer any force and no amendment of the scheme is necessary in order to

bring out the effect which is declared by the statute. It seems to us, therefore, that the scope of Section 64(5)(b) will have to be confined to the

amendment of the scheme not covered by Section 118(2)(b)(ii) .

4. On that view, the appeal is allowed with costs. Counsel's fee Rs. 100/-.