

(1943) 09 MAD CK 0027
In the Madras High Court

Board of Commissioners for Hindu Religious Endowments

APPELLANT

Vs

Palaniandi Muthirian

RESPONDENT

Date of Decision : 17-09-1943

Acts Referred:

Citation : AIR 1944 Mad 351 : (1944) ILR (Mad) 534 : (1944) 57 LW 53

Hon'ble Judges : Mockett, O.C.J.; Mockett Offg., C.J; Krishnaawami Ayyangar, J

Bench : Full Bench

Judgement

Mockett Offg., C.J.—This is an appeal from the decision of the learned District Judge of Trichinopoly in a suit filed u/s 63 (4), Madras

Hindu Religious Endowments Act. The appellant is the Board of Commissioners under the Act by its president and the respondents are the four

hereditary trustees of seven temples in Pallapuram, Lalgudi Taluk. A scheme has been settled by the board after they have recorded their finding

by an annexure to their order No. 1287-A, of 4th March 1940, to the effect, to put it shortly, that there was evidence of considerable

mismanagement and chaos in the temples' affairs. The scheme contains 14 paragraphs and we are concerned with the second. It reads as follows:

The temples ... and their endowments shall" be administered by the hereditary trustees in rotation, each functioning for one fasli and two non-

hereditary trustees appointed by the board.

The effect of the scheme then was that the four hereditary trustees should in turn function once in four years in conjunction with two non-hereditary

trustees appointed by the board who were to be in that position permanently. The learned District Judge acceded to the contention of the plaintiffs,

namely, , that cl. (2) of the scheme was beyond the powers of the board. He

held that the board had no power to exclude any hereditary trustee even for a short period from taking an active part in the management of the trust. I agree with the learned District Judge's description of the effect of the clause, namely, that it did exclude three of the hereditary trustees in each year from taking an active part in the management of the trust. The question is whether under the law, statutory or otherwise, the board had power to frame a scheme which contained such a clause.

2. Section 63 provides for the framing of schemes and (1) states that a scheme settled by the board under this sub-section may contain provision for (a) fixing the number of non-hereditary trustees; (b) appointing a new trustee or trustees in addition to the existing trustee or trustees; (c) associating one or more persons with the trustee or trustees or constituting a separate body, for the purpose of participating or assisting in the whole or any part of the administration of the endowments connected with such math or temple; provided that where the board considers it necessary to associate any person or persons with the trustee or trustees of a math or to constitute any separate body for participating or assisting in the administration of a math such person or persons or the members of such body shall be chosen from persons having interest in such math. (d) is not relevant, and (e) defines the powers and duties of the trustee or trustees.

3. Section 63 is contained in Chap. 6 which deals with maths and excepted temples. I have already stated that the effect of el. (2) is to suspend three of the hereditary trustees in rotation for a period of three years. Is there any provision in the Act which enables the board to do that in the case of an excepted temple? In the case of a non-excepted temple Section 53 gives the committee power to suspend, remove or dismiss the trustees of a temple for certain specified reasons. There does not appear to be any provision in the Act with regard to trustees of excepted temples being suspended. Section 73 enables the board to sue for a decree appointing or removing the trustee of an excepted temple, but nowhere is there any provision in the Act which directly provides for the suspension of a hereditary trustee. Mr. Subba Rao who appears for the board which has appealed against the order of the learned District Judge has been unable to direct our attention to any such provision. He relies however instead

on the decision of this Court in *Ramanathan Chetti v. Murugappa Chetti* (1904) 27 Mad. 192, but the institution there concerned has been later

described by the Judicial Committee in *Sethuramaswamier v. v. Meruswamier* AIR 1917 P.C. 190, as a private charity. This is important because

dealing with that class of charities at p. 201 in *Ramanathan Chetti v. Murugappa Chetti* (1904) 27 Mad. 192, the learned Judges of the Madras

High Court stated:

It could hardly be denied that the author of a trust who appoints several co-trustees might (as in *Attorney General v. Holland* (1837) 47 R.R. 476

already referred to) provide that each trustee in rotation should be the acting trustee for a year and that it would be competent for a Court in the

exercise of its equitable jurisdiction to settle a scheme for the management of a public religious or charitable trust by the various co-trustees in

rotation, if such management would be more beneficial to the interests of the trust than the joint and concurrent management thereof by a large

number of co-trustees.

A reference to *Attorney General v. Holland* (1837) 47 R.R. 476 shows that a trust in regard to which a provision was made for the trustees to act

in rotation was contained in a will. That decision when examined is of no assistance to us and it must be observed that the learned Judges in

Ramanathan Chetti v. Murugappa Chetti (1904) 27 Mad. 192 were dealing with the powers of the Court to be derived from the exercise of its

equitable jurisdiction in connexion with the broad topic of trusts. As already stated their Lordships of the Judicial Committee in *Sethuramaswamier*

v. v. Meruswamier AIR 1917 P.C. 190, expressly relegate the charity in *Ramanathan Chetti v. Murugappa Chetti* (1904) 27 Mad. 192 to the

position of a private charity as to which they say:

If there is no contrary provision in the original grant, the right of management passes to the natural heirs of the original grantee, and, if there be no

other ! arrangement or usage and no scheme settled by the Court, will be exercised by the managing member of the family before partition, or in

turn by the several heirs after partition.

But their Lordships' attention has not been drawn to any ease in which these decisions as to management have been applied to lands which

constitute the endowment of such a charity as those in question in this suit.

The lands in question in this suit were lands the subject of a grant in connexion with a math or public charity. I understand the observations of their

Lordships as meaning that when there is no other control over the charity by means of an arrangement or usage or scheme, the Court may well

have recourse to its general powers. In the case before us there is a statute which is expressly intended for the control of temples and generally for

the provision of machinery for the purpose of that control. No other decisions have been cited to us which are in point. I am therefore constrained

to examine the provisions of the Act itself to see whether any power is given to the board by which they can suspend- because that is what it

comes to-hereditary trustees in the manner in which they seek to do in the scheme before us.

4. It must be remembered that there are only four trustees. There might have been (as in other cases) many more, as many as eight to ten. Such a

provision as this would virtually amount to the extinction of the rights of some of such hereditary trustees to function at all. I take the view that

Section 63 by its amendment in 1935 by Act 12 of that year does, so far as non-hereditary trustees are concerned, define the board's powers.

The number of non-hereditary trustees may be fixed. New trustees may be appointed. But nowhere is there to be found in Section 63 any

provision for the suspension or removal of hereditary trustees. The board have a right to come to Court u/s 73 for the removal of a trustee, but it

does not provide that they can pray for his suspension. The scheme therefore seems to be in contravention of the Act, so far as hereditary trustees

are concerned. They continue to function unless they are removed by a suit. Taking the view, as I do, that the effect of this clause is to remove

them for a definite period, I consider that the learned Judge quite rightly decided that it was not within the powers of the board. It follows that this

appeal should be dismissed with costs.

5. Mr. Subba Rao who has appeared for the board, asks us not to send the matter back as that will merely lead to further litigation but here and

now to direct that the four hereditary trustees should function in each year. That, however, is entirely inconsistent with the agreement of the parties

in the lower Court set out in para. 7 of the learned Judge's judgment. The parties appear to be quite in accord with the view that if this clause was

held to be beyond the powers of the board it was necessary that a new scheme would have to be framed.

Krishnaawami Ayyangar, J.

6. I agree.