

**(1941) 04 MAD CK 0013**  
**In the Madras High Court**

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| C. Thiruvengada Mudaliar | Vs | APPELLANT  |
| M. Rajabathar Mudaliar   |    | RESPONDENT |

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**Date of Decision :** 08-04-1941

**Acts Referred:**

**Citation :** AIR 1941 Mad 546 : (1941) ILR (Mad) 942 : (1941) 54 LW 12 : (1941) 2 MLJ 35

**Hon'ble Judges :** Alfred Henry Lionel Leach, C.J

**Bench :** Division Bench

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**Judgement**

Alfred Henry Lionel Leach, C.J.—This appeal raises the question whether the Madras Hindu Devasthanam Committee, created under the

Religious Endowments Act, 1863, is bound, in appointing a trustee to make the appointment for life or whether it can make the appointment for a

term of years. On the 8th March, 1929, the Committee appointed the appellant a trustee for life of the Sri Thiruvattesar temple in Madras. On

the 18th November, 1935, the Committee appointed the respondent a trustee of the same temple, but limited his appointment to a period of three

years. The appellant objected to the respondent entering upon the duties of his office. The reason given was that the appointment to be valid must

be for life. On the 5th December, 1935, the appellant filed in the City Civil Court the suit out of which this appeal arises for a declaration that the

respondent's appointment is invalid and for an injunction restraining him from interfering with the appellant's management. The principal City Civil

Judge who tried the case held that the Committee had power to appoint the respondent a trustee for a period of three years and dismissed the suit.

The appellant appealed to this Court, but without success. The appeal was heard by King, J., and the present appeal is from his judgment, under

Clause 15 of the Letters Patent.

2. For the purpose of appreciating the provisions of the Religious Endowments Act, 1863, it will be useful to refer first to the Madras Endowments and Escheats Regulation, 1817, which governed religious endowments in the Presidency until the passing of the Act of 1863 by the Government of India. Clause 2 of the Regulation vested in the Board of Revenue the general superintendence of all endowments in land or money granted for the support of mosques, Hindu temples or colleges, or for other pious and beneficial purposes. Clause 3 declared it to be the duty of the Board to take such measures as might be necessary to ensure that all endowments made for the maintenance of such establishments were duly appropriated to the purpose for which they were destined by the Government or the individuals by whom the endowments were made. To enable the Board the better to carry into effect the duties entrusted to it by the Regulation, power was given in Clause 7 to appoint local agents in each zilla. Clause 12 provided that in those cases in which the nomination had usually rested with the Government, or with the public officer, or in which no private person might be competent and entitled to make sufficient provision for the succession to the trust and management, it was the duty of the local agents to propose for the approval and confirmation of the Board, a person or persons for the charge of trustee, manager or superintendent. On the receipt of the report and information required by Clause 12, the Board was required by Clause 13 either to appoint the person or persons nominated for their approval, or to make such other provision for the trust, management or superintendence as might seem "right and fit" to them, with reference to the nature and conditions of the endowment. Therefore, by virtue of this clause, the Board had full power to make such arrangements as they considered to be necessary for the proper management of the trust.

3. The Religious Endowments Act, 1863, took away from the Board of Revenue the management of religious endowments, and the provincial Government was directed to appoint one or more Committees in every division or district to take the place and to exercise the powers of the Board and the local agents under the Regulation of 1817. The provincial Government duly appointed a Committee to function in the City of

Madras. Committees were also appointed to function in the mofussil, but only the Madras Committee now exists. So far as the mofussil is

concerned, Hindu religious endowments are now governed by the provisions of the Madras Hindu Religious Endowments Act, 1926. Section 9 of

the Act of 1863 provides that every member of a Committee appointed under the Act shall hold his office for life unless removed for misconduct

or unfitness, but there is no corresponding provision in respect of appointments made by the Committee to fill vacant trusteeships. The important

section so far as this case is concerned is Section 12 which reads as follows:

Immediately on the appointment of a committee as above provided for the superintendence of any such mosque, temple or religious establishment,

and for the management of its affairs, the Board of Revenue, or the local agents acting under the authority of the said Board shall transfer to such

committee all landed or other property which at the time of appointment shall be under the superintendence, or in the possession of the said Board

or local agents, and belonging to the said religious establishment, except as is hereinafter provided for,

and thereupon the powers and responsibilities of the Board and the local agents, in respect to such mosque, temple or religious establishment, and

to all land and other property so transferred, except as above, and except as regards acts done and liabilities incurred by the said Board or agents

previous to such transfer, shall cease and determine.

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under this

section may from the date of such transfer be exercised by such committee to whom such transfer is made.

4. The Committee has the same powers as the Board of Revenue had. As we have already indicated, there was nothing in the Regulation of 1817

which restricted the power of the Board of Revenue in respect of the appointment of trustees. On the contrary, it was left to do what it considered

right and fit. This can only mean that the Board had full power to appoint a trustee for a term of years unless the conditions of the endowment

prohibited it or there was some special reason which demanded an appointment for life. The Act of 1863 must be read in conjunction with what,

went before, the Regulation of 1817, and if this is done it will be seen that there

is no warrant for the assertion that the Devasthanam Committee of Madras can only appoint trustees for life. The learned advocate for the appellant has, however suggested that the decisions of this Court have interpreted the Act differently and therefore it is necessary to examine these decisions

5. The first judgment bearing on the question was delivered by Collins, C.J., and Parker, J., in 1895. This case has not been reported, but an

extract from the judgment is given in a footnote to the report of Pattikadan Ummaru v. Emperor (1902) 6 M.L.J. 14 : I.L.R Mad. 243. It was said

that the trustee or manager was not in the position of a clerk or servant, removable at the pleasure of the Devasthanam Committee and that he held

office permanently, though subject to removal for misconduct. Neither in this case nor in any of the subsequent cases was the question now before

the Court discussed. It would appear that until recent times, it was usual to appoint a trustee without limiting the term of his office, which, of course,

meant that he held the office for life. There is no reason to suppose that this was not the position in the case before Collins, C.J., and Parker, J. In

Seshadri Ayyangar v. Nataraja Ayyar I.L.R.(1898) Mad. 179 Shepherd, J., emphasised that a trustee was not a servant of the Devasthanam

Committee. He had what may be called a "freehold" in the office, and except for good cause shown, he could not be removed from it. This case

was concerned with whether the Devasthanam Committee had acted rightly in dismissing a trustee of a Hindu temple. There was no limitation of

the term of his appointment, and in such circumstances the word "freehold" would not perhaps be out of place.

6. The appellant has laid emphasis on the following passage from the judgment of Bashyam Ayyangar, J., in Vidyapurna Tirthaswami v. Vidyaniidhi

Tirthaswami (1903) 14 M.L.J. 105 : ILR Mad. 435:

The religious foundations known as debuther, devasthanams or temples are the most numerous in India and have the largest endowments,

especially in the shape of lands, assignment of public revenue and jewellery. These institutions have been established for the spiritual benefit of the

Hindu community in general or for that of particular sects or sections thereof. The management of these institutions is vested in one or more

persons variously known in this Presidency as dharmakartas, panchayats, urlans,

etc., but referred to in the Religious Endowments Act (XX of 1863) and in judicial decisions as trustees, managers or superintendents. Their office is either hereditary or for life and, as a general rule, they have beneficial interest in the endowments or their income.

7. Bashyam Ayyangar, J., is here merely giving a general description of religious endowments as he found them, and incidentally refers to the fact that they were under the management of trustees who held their office hereditarily or for life. This statement is true of the conditions then extant, but is not quite an accurate description of things as they now are. The Court was concerned with maths and not temples in that case and was really not called upon to decide, and did not in fact decide, whether the Temple Committee has the power to make a term appointment.

8. Another judgment relied upon by the appellant is the one delivered in Ganapathy Ayyar and Others Vs. Sri Vedavyasa Alagasinga Bhutter and Others, . There, the question was whether the Temple Committee, Trichinopoly taluk, had power to appoint two additional trustees to take part "temporarily" in the management of the temple. It was held that it had not. The Division Bench which decided this appeal considered that to lay down that the Committee had an unqualified power of making temporary appointments would give it a power liable to grave abuse. Such temporary managers would, it was considered, be merely servants removable at the will of the Committee, and would serve to give the Committee a control over the management inconsistent with the policy of 1863, namely, that the actual administration of affairs should be in the hands of the trustees, subject only to the supervision of the Committee. The finding that the Committee could not appoint additional trustees is not in accord with subsequent decisions to which reference will be made presently.

9. In T. Venkatachala Pillai (died) and Another Vs. The Taluq Board, , Sundararama Sastri v. Ananthakrishna Naidu (1916) 5 L.W. 672 and in Sundaresa Gurukkal v. Subramania Mudali (1920) 13 L.W. 212 the office of trustee was again spoken of as being "freehold", but these decisions cannot be taken as going beyond any of the earlier decisions.

10. While none of the cases already referred to render real support for the appellant's case, there are certain decisions of this Court which are distinctly against him. In Thiruvengada-thaiangar v. Ponnappaiengar (1914) 28

M.L.J. 209 : ILR Mad. 1176 a Division Bench of this Court

(Sadasiva Aiyar and Napier, JJ.), held that for the better management of a Hindu temple, a temple committee had power to appoint additional

trustees by virtue of the general power of superintendence over temples committed to the committee's care as successors to the Board of

Revenue, but this power must be exercised reasonably and in good faith in the interests of the temple. This decision was approved of in *Sitharama*

*Chetty v. Sir S. Subramania Aiyar* (1915) 30 M.L.J. 29 : ILR Mad. 700. In *Govindaraja Mudaliar v. Sabapathi Mudaliar* (1920) 13 L.W. 153

*Wallis, C.J.*, and *Sadasiva Aiyar, J.*, expressly recognised the power of the Committee to appoint a trustee temporarily, although *Sadasiva Aiyar,*

*J.*, considered that the appointment should only be made in an emergency. The fact that the Court had recognised the power to make a temporary

appointment even although to meet an emergency meant the recognition of a full power in the Committee to make suitable arrangements for the

management of a religious trust.

11. Consideration of the authorities reveals no restriction in the power of this Court to interpret the Act of 1863 in accordance with what it

considers to be the true intent of that measure, and we hold that the Devasthanam Committee of Madras has an unfettered discretion, subject to

the special conditions of a particular endowment. If it considers that it is better in the, interests of a particular trust that an appointment for life

should not be made, the Committee has, in the absence of some overriding factor, the right of making the appointment for a term of years. And this

is in effect the interpretation which the Calcutta High Court gave in *Golam Hossain Shah v. Altaf Hossain* I.L.R.(1933) Cal. 80. The Calcutta High

Court, however, was of the opinion that a trustee was a servant of the Committee and he could not have a freehold in the office. It has always been

the view of the Madras High Court that a trustee is not a servant of the Committee and that must now be accepted so far as Madras is concerned.

12. It has been urged that to recognise a right in the Devasthanam Committee of Madras to appoint a trustee for a limited term will result in the

Committee obtaining actual; control over the management of trusts. It must be assumed that the Committee will do its duty and if it does there is

nothing to be feared. If it does not, the arm of the law is long enough to reach

the Committee and compel it to do its duty. It may here be pointed out that the Madras Hindu Religious Endowments Act, 1926 recognizes that it is expedient to make limited appointments. Some day perhaps the desirability of having one Act instead of two, governing religious trusts in the Presidency may also be recognised.

13. For these reasons we consider that the case was rightly decided by King, J., and the appeal will be dismissed.

14. We thank Mr. N. Srinivasa Aiyangar for having acted as *amicus curiae*. The Court has received great assistance from him and from Mr. N.

Sivaramakrishna Aiyar who appeared on behalf of the appellant.