

(1962) 07 MAD CK 0007
In the Madras High Court
Case No : Writ Petition No. 172 of 1960

C.M. Rama Nayar

APPELLANT

Vs

The Deputy Commissioner, Hindu Religious and Charitable
Endowments and Another

RESPONDENT

Date of Decision : 03-07-1962

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 10, 10(2), 100(2), 45, 45(1)

Citation : AIR 1963 Mad 205 : (1963) 76 LW 36 : (1963) 1 MLJ 225

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : A.K. Sreeraman, for the Appellant; Addl. Govt. Pleader, for the
Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—This petition, is to quash the order of the Commissioner, Hindu Religious and Chartable Endowments, as well as the order

of the Deputy Commissioner, Hindu Religious and Charitable Endowments, dismissing the petitioner from the trusteeship of a trust known as

Diwan Rama Rayar Mandapam Trust"" in Madurai taluk. This is stated to be a specific endowment attached to Kallalagar Temple in Madurai

district, which is a listed temple. The petitioner claims to be the hereditary managing trustee of the trust. The Deputy Commissioner, by his

communication dated 19th April 1958, directed the petitioner to lease out the lands at Mannadimangalam, belonging to the trust, by public auction

in the presence of departmental staff, and after wide publicity and to intimate the date, time and place of auction ten days before it was to be held

to the Assistant Commissioner to enable him to depute a member of the staff to be present at the auction. The same communication added that in the event of failure of auction, resort to private negotiations might be considered. In issuing this communication, the Deputy Commissioner apparently acted under Rule 9(1) of the rules framed u/s 100(2)(m) of the Madras Hindu Religious and Charitable Endowments Act, 1951. To that communication the petitioner replied on 30th May 1958, stating that there was a lot of agrarian unrest in the village, that the tenants were claiming the benefits of the Fair Rent Act and that if the lands were leased out in public auction the villagers would create a lot of disturbance and the auction would not be successful. The petitioner, therefore, felt that in the interests of the trust it was better that he himself cultivated the lands from Fasli 1368 with hired labour. He accordingly wanted his proposal to be approved. By another communication, dated 4th June 1958, the Deputy Commissioner drew the attention of the petitioner to his earlier communication and reminded him that the lands should be leased out by public auction. In the meantime he had received some petitions from certain villagers alleging that the petitioner was attempting to lease out the lands himself by private negotiation. The Deputy Commissioner, again, on 24th June 1958 wrote to the petitioner asking him to show cause why disciplinary action should not be taken against him for not leasing out the lands in public auction and not carrying out his orders. In reply, the petitioner mentioned that his action was in the interests of the trust. On 11th August 1958 the Deputy Commissioner framed two charges, one of them being that the petitioner had disobeyed his orders passed under the rules framed u/s 100(2)(m), and the other accusing the petitioner of having caused loss to the trust by leasing out the lands by private negotiations. Following an enquiry, the Deputy Commissioner passed his order on 31st July 1959, holding that the two charges were proved. He said, Taking into consideration all the materials available, I have no hesitation to come to the conclusion that the respondent, by his callous and irresponsible conduct in disregarding the lawful directions of the Deputy Commissioner, has rendered himself unfit to hold the high and sacred office of the trustee. Having regard to the serious nature of the first charge, namely, wilful disobedience of lawful order issued by the Deputy

Commissioner the numerous opportunities given to him to correct himselfI feel that the respondent justly deserved the extreme punishment

of his removal from the office of trustee. I therefore order the removal of the respondent from the office of trustee.

2. Against this order the petitioner unsuccessfully filed an appeal to the Commissioner, who dismissed it in limine by his order dated 16th January 1960.

3. Before this Court four points have been taken, none of them urged either before the Deputy Commissioner or before the Commissioner. They

are: (1) the trust being a specific endowment attached to a listed temple, the Deputy Commissioner has no jurisdiction to pass the order of

dismissal and that the Commissioner could not properly delegate his power u/s 45 of the 1951 Act to the Deputy Commissioner to deal with the

matter, (2) even if the delegation was lawful, inasmuch as the Deputy commissioner had failed to consult the Area Committee, and thus to comply

with the proviso to Sub-section (2) of Section 45, his order was vitiated; (3) as his hereditary office of trustee is property within the meaning of

Article 19(1) of the Constitution, the directions of the Deputy Commissioner to the petitioner to lease out the trust lands by public auction were

illegal in the sense that they amounted to an infraction of the fundamental right to hold property, and (4) the punishment of dismissal is excessive.

4. As I said, none of these points have been agreed before the authorities. They cannot, therefore, be allowed to be taken for the first time in a

petition under Article 226 of the Constitution. The petition will merit dismissal on this ground alone. But, since the points have been argued by the

learned counsel for the petitioner, they may be dealt with briefly.

5. Section 45(1) of Madras Act XIX of 1951 corresponding to Section 13(2) of Madras Act XXII of 1959 provides power to suspend, remove

or dismiss trustees. This power is given to the Deputy Commissioner in the case of any religious institution over which an Area Committee has

jurisdiction and to the Commissioner in the case on any other religious institution. This read in the light of Section 28, means that in the case of

those temples which are listed, the power is with the Commissioner and in other cases it is with the Deputy Commissioner. Section 10 of Madras

Act XIX of 1951 corresponds to Section 13(2) of Madras Act XXII of 1959 provides for power to the commissioner to make delegation of any

of the powers or duties conferred or imposed, as the case may be, by or under the Act. Section 10(2) reads:

The Commissioner may delegate any one of the powers conferred or duties imposed on him by or under this Act (including the powers and duties

of an Assistant Commissioner which may be exercised by the Commissioner under the proviso to Section 11, Sub-section (2), but not including

the powers and duties of the Commissioner under Sections 18, 19, 38, 39, 52, 67, 64 or 76(2)) in respect on any area or of any class or group of

institutions in the State or any area therein to a Deputy Commissioner subject to such restrictions and control as the Government may, by general

or special order, lay down and subject also to such limitations and conditions, it any, as may be specified in order of delegation.

6. The argument is that inasmuch as the power to dismiss is entrusted to the Commissioner specifically, the general power of delegation provided

for by Section 10(2) does not enable him to delegate such powers to the Deputy Commissioner. In support, reference is made to Section 58(8),

which says that the power of enquiry conferred by that section in respect of maths may be exercised by the Commissioner or by a Deputy

Commissioner, to whom powers in that behalf have been delegated by the Commissioner u/s 10(2). It is said that wherever power has been given

to a particular named authority and that power is subject to delegation to another officer, it is specifically mentioned in the section and Section

58(8) is an. instance of that kind. It seems to me that the entire argument proceeds under a misconception of the scope and ambit of Section 10(2).

The scheme of the Act makes it quite clear that the power in matters of discipline leading to suspension, removal or dismissal of trustees is divided

between the Deputy Commissioner and, the Commissioner with a power to the Commissioner to delegate any of his powers specifically conferred

upon him by or under the Act. Instead of providing for enabling the commissioner to delegate his powers under each of the sections conferring the

power on him, Section 10(2) has been enacted as a general provision providing for a power for him to delegate. Section 10(2) itself contains

indications that where such delegation is not intended it is specifically mentioned. The sub-section says that the powers and duties under Sections

18, 19, 38, 39, 52, 61, 64 or 76 are not subject to the power of delegation. The power of delegation is therefore, available to the Commissioner in respect of the other powers entrusted to him by or under the Act. It is true that Section 58(8) specifically refers to the power of the Commissioner to delegate in respect of powers within the ambit of Section 58. But Sub-section (8) of that section itself makes it explicit that the power of delegation is that contained in Section 10(2) and the delegation is not made by virtue of anything contained in the sub-section, even without that sub-section, the power of the Commissioner to delegate would have been there. Apparently Sub-section (8) was put in by way of abundant caution. Another reason may be that the rest of the sub-sections of Section 58 deal with the powers of the Deputy Commissioner in respect of any religious institution which would take both temples and maths. In the circumstances, therefore, the principle of *expressio unius est exclusio alterius* has no application to this case. Section 10 here expressly provides for a power to the Commissioner to delegate his powers except in respect of the sections mentioned therein and I can find no justifiable ground to limit its scope and hold that the Commissioner is not competent to delegate his powers u/s 45 of Madras Act XIX of 1951. But Reference was made to Section 53 of Madras Act XXII of 1959 which starts with a definition of appropriate authority"" and an argument was addressed that having regard to this provision it should be held that the power u/s 45 is not one of those powers which the Commissioner is contemplated by the Act to have competence to delegate. I am unable to appreciate this argument. It seems to me that even u/s 53, the position is not different and the powers of the Commissioner under that section are within the scope of the power of delegation u/s 13(2) of Madras Act XXII of 1959. The first point is, therefore, rejected.

7. It is next contended that even on the assumption that there was a proper delegation by the Commissioner of his power to the Deputy

Commissioner, inasmuch as the Deputy Commissioner failed to comply with the proviso to Sub-section (2) of Section 45 his order should be held

to have been vitiated. I do not think that this argument requires serious consideration. It is obvious from the provisions of Section 45 that the

proviso will apply only to a case which is within the jurisdiction of the Area Committee.

8. There is still less substance in the third point urged for the petitioner. It may be, as has been now well recognised, that a right to hold hereditary office or trusteeship is property within the meaning of Article 19 of the Constitution. But I am unable to appreciate the argument in the direction of the Deputy commissioner with reference to Rule 9(1) already referred to, to the petitioner to lease out the lands by public auction amounts to an interference with the right to hold the property, namely, the hereditary trusteeship. The rule is eminently a reasonable restriction in public interest, for, it is conceived in the interests of the religious institutions. The direction does not in any way interfere with the management by the petitioner of the lands. All that it required was that the lands should be leased out by public auction, so that they might get the highest possible rent for the benefit of the institution. In matters like this, in my opinion, one should look at the question not merely from the stand-point of the hereditary trustee, but also from the stand-point of the trust itself. There is no point in the contention that the direction of the Deputy Commissioner amounted to an infraction of the petitioner's fundamental right to hold property and, therefore, the direction was not a lawful one.

9. This Court, in a petition for certiorari, does not exercise an appellate jurisdiction and it cannot, therefore, interfere with the quantum of punishment decided by a competent authority. The question of punishment is not, therefore, for this Court to consider.

10. The result is the petition fails and is dismissed with costs. Counsel's fee Rs. 100.