

(1957) 02 MAD CK 0047

In the Madras High Court

Case No : Civil Revision Petition No. 1162 of 1953

Commissioner for Hindu Religious and Charitable
Endowments, Madras

APPELLANT

Vs

S.S. Janakirama Ayyar and others

RESPONDENT

Date of Decision : 04-02-1957

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 103(e)(ii)

Citation : AIR 1958 Mad 79 : (1957) ILR (Mad) 756

Hon'ble Judges : Rajamannar, C.J;Panchapakesa Ayyar, J

Bench : Division Bench

Advocate : R. Gopalaswami Iyengar, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—This is a petition filed by the Commissioner for Hindu Religious and Charitable Endowments, Madras, for a revision of the order of the learned Subordinate Judge, Tanjore, dated 10-10-1952 in the following circumstances. A scheme was framed for Sri Kamakshi Amman temple at Tanjore by the Additional Subordinate Judge of Tanjore in O.S. No. 1 of 1919.

Clause (2) of that Scheme provided that the management and control of the affairs of the temple and its properties shall vest in five trustees of whom two were to be elected by ballot and the three others to be appointed by the Court once in five years from among the Brahmin residents within the municipal limits of Tanjore who by their character, position, education and ability command the confidence of the community.

It appears that of the three resident trustees who had been appointed by the Court two resigned in September 1952 and the third ceased to be a trustee by efflux of time sometime in October 1952. Thereupon, applications were called for to fill up the vacancies and fifteen applications were received and from them the learned Subordinate Judge selected three. The managing trustee of the temple

brought to the notice of the learned Subordinate Judge a communication from the Commissioner for Hindu Religious and Charitable Endowments, Madras, which drew the attention of the Court to S. 103(e)(ii) of the Madras Hindu Religious and Charitable Endowments Act, 1951, and it was submitted that the Commissioner was the competent authority to make the appointment of the three resident trustees.

The learned Judge held that it was the Subordinate Judge, Tanjore, who was the proper authority to appoint the trustees and not the Commissioner. He came to this conclusion because in his opinion the two decisions of this Court in *Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt and Another Vs. The Commissioner, Hindu Religious Endowments, Madras and Others*, and *Devaraja Shenoy and Others Vs. State of Madras and Another*, must be deemed to have held S. 20 of the Madras Hindu Religious and Charitable Endowments Act, 1951, to be invalid, and, therefore, the Commissioner could have no power of management of religious institutions like the temple in question.

The Commissioner for Hindu Religious and Charitable Endowments, Madras, has filed this revision petition challenging the correctness of the view taken by the learned Subordinate Judge. The learned Advocate-General, who appeared for him, intimated to us that the Commissioner was more interested in the general principle than in upsetting the particular appointments made by the learned Subordinate Judge.

2. In our opinion, the learned Judge was entirely wrong in holding that the Sub-Court Tanjore, continued to be the proper authority to appoint the three resident trustees under Cl. (2) of the scheme. His reference to S. 20 of the Madras Hindu Religious and Charitable Endowments Act, 1951, was inappropriate, as it is not the case of the Commissioner that his power to appoint the trustees in question is derived from the provisions of S. 20 of the Act. The relevant and material provision is, as already mentioned, S. 103(e)(ii) of the Act.

That clearly provides that all powers conferred and all duties imposed on a Court by a scheme settled by a Court shall be deemed to have been conferred or imposed on the Area Committee if the institution is subject to the jurisdiction of such a committee and on the Commissioner, in other cases, and the Area Committee or the Commissioner, as the case may be, shall exercise such powers and discharge such duties in accordance with the provisions of the scheme subject to such restrictions and conditions, if any, specified in the scheme.

Undoubtedly the power and duty of filling up vacancies among the resident trustees is power and duty imposed by the scheme. Therefore such power after the passing of the Act of 1951, should be deemed to have been conferred or imposed on the Area Committee or the Commissioner, the Commissioner in this case. The learned Judge was therefore wrong in holding that the Sub-Court is the only proper authority to appoint the resident trustees under Cl. (2) of the scheme.

3. As already mentioned, it is not necessary to interfere with the order of the learned Subordinate Judge as such appointing three persons as resident-trustees. With the above expression of opinion, the civil revision; petition is dismissed. But there will be no order as to costs.