

(1938) 07 MAD CK 0001
In the Madras High Court

Dharmakartha Garudachar

APPELLANT

Vs

The Madras Hindu Religious Endowment Board

RESPONDENT

Date of Decision : 25-07-1938

Acts Referred:

Citation : AIR 1939 Mad 208 : (1938) 48 LW 793 : (1938) 2 MLJ 987

Hon'ble Judges : Madhavan Nair, O.C.J.

Bench : Division Bench

Judgement

Madhavan Nair, Officiating C.J.

1. One Garudachar who claims to be the hereditary trustee of the temple of Nettikanti Anjaneyaswami in Kasapuram, Gooty taluk, Anantapur

District, is the appellant before us. Proceedings under Sections 18 and 57 of the Madras Hindu Religious Endowments Act were taken by this

Endowments Board for his removal from trusteeship and for the settlement of a scheme for the administration of the temple. The appellant claimed

that the temple was an excepted temple and that he was the hereditary trustee. The Commissioners held that there was no proof that the temple is

an excepted one and they came to the conclusion that in the interests of the temple it was necessary that a scheme should be framed. They

accordingly framed a scheme and appointed three other persons for the management of the temple. There was no place in the Board of

management? for the present appellant. He then filed a suit as contemplated by Section 57 for setting aside the scheme and also a petition u/s

84(2) before the District Judge. He contended that the temple was an excepted temple, that he was the hereditary trustee thereof, that no case was

made out for the settlement of a scheme, and that if a scheme was necessary a

place must be given to him on the board of management. The learned Subordinate Judge who tried the suit agreed with the appellant's contention that the temple is an excepted one and that the appellant is the hereditary trustee, but he decided that no case was made out for disturbing the scheme framed by the Hindu Religious Endowments Board. He also came to the conclusion that it was left to the discretion of the Board to appoint the appellant as a trustee or not though his hereditary title to the trusteeship was established. The present appeal is against this decision of the Subordinate Judge.

2. The substantial contention urged before us by the appellant is that the order of the lower Court is vitiated by the fact that proceedings were taken by the Religious Endowments Board u/s 57 which lays down the procedure for settling schemes for non-excepted temples, whereas the temple in question being an excepted temple the procedure that should have been followed is the one prescribed in Sections 62 and 63 of the Act.

We may mention here that it is not contended by the respondent that the finding of the learned Judge that the appellant is the hereditary trustee and that the temple is an excepted one is wrong. We would therefore proceed upon that assumption to consider this case.

3. There is a marked line of distinction adopted in the Madras Hindu Religious Endowments Act with reference to the framing of schemes for excepted temples and for non-excepted temples. Chapter V deals with the procedure to be followed with reference to non-excepted temples and Chapter VI deals with excepted temples. It was pointed out in *Zamorin of Calicut v. Krishnan Nambudripad* I.L.R.(1930) Mad. 532 that "the policy of the Madras Hindu Religious Endowments Act, as seen from a comparison of Chapters IV, V and VI thereof, is to place maths and excepted temples, in normal conditions, under much less direct and detailed interference from the Religious Endowments Board in matters of internal management than ordinary temples." In *Naranna Naidu v. Venkalaramayya* (1934) 68 M.L.J. 722 : ILR 1934 Mad. 862 it was observed by the learned Judges that the powers of the Board in respect of an "excepted temple" are clearly differentiated throughout the Act. This appears to be very clear when we peruse the provisions contained in Chapter V and those contained in Chapter VI. u/s 57 of the Act, before framing a

scheme for a non-excepted temple the Board has to be satisfied that in the interests of the proper administration of the endowments of the temple a scheme of administration should be settled, and when it is so satisfied, it may after consulting in the prescribed manner the trustee, the committee, if any, and the persons having interest, by order settle a scheme of administration for the endowments of such temple. u/s 62 which relates to excepted temples, the Board when it is satisfied for reasons mentioned therein that in the interests of the proper administration of the endowments a scheme of administration should be settled ""may hold an inquiry which shall be conducted in such manner as may be prescribed."" Then in Section 63 it is stated that after the conclusion of the inquiry if the Board thinks that a scheme should be settled it may after consulting in the prescribed manner the trustee and the persons having interest, by order settle a scheme of administration for the endowments connected with such math or temple. It is obvious that a comparative study of these provisions which are important, relating to the settlement of schemes for these two different kinds of temples reveals the fact that a more detailed inquiry is contemplated in the case of excepted temples than in the case of non-excepted temples. Our attention has been drawn to the rules framed under these two sections and they also indicate that the inquiry u/s 62 should be more detailed and thorough than what is required u/s 57. As a matter of fact no inquiry is contemplated in Section 57. What is required is that when the Board is satisfied that a scheme of administration should be settled, the Board may consult the trustee, the committee, if any, and the persons having interest, and proceed to settle a scheme. This point is emphasised by Mr. Rajamannar who appears for the respondent. He points out that no inquiry is contemplated by Section 57, but he says that an inquiry was held in the present case and therefore that inquiry should be treated as the inquiry u/s 62 and that unless the appellant is in a position to satisfy the Court that he has been prejudiced, we should not interfere with the order of the lower Court. This argument means that what has been considered to be an important procedure laid down by the statute, may well be ignored, because the commissioners happened to examine a few witnesses tendered by the appellant. As to what actually took place there can be no dispute at all. The commissioners purported to proceed u/s 57 and did proceed under that section. Their order is, headed ""under Sections 18

and 57." They say that certain reports submitted by their officers were perused. Then reference is made to the fact that witnesses produced by the appellant were examined. This was what actually took place. What the case of the Hindu Religious Endowments Board was against the appellant was not made clear, It was simply upon what was disclosed in the evidence that the order was based. This is not what is contemplated in Section 62. Opportunity should be given to the trustee to hear what the case against him is and then the Board may proceed to consider whether a case for the settlement of a scheme has been made out. It appears to us that since the procedure laid down in the statute has not been followed the appellant must necessarily be considered to have been prejudiced. Further, the Board proceeded on the assumption that the appellant was not the hereditary trustee, and the whole treatment accorded to the question was influenced by that consideration. If, on the other hand, the Board had realised that it was dealing with a party who had hereditary rights in the temple, then we think they would have certainly followed the procedure laid down in Chapter VI. That has not been done in this case. In such circumstances the argument that some inquiry has been made and that the appellant has not been able to conclusively show that he has been prejudiced thereby is beside the point. The appellant's hereditary trusteeship has been accepted as a fact and has not been challenged before us. In the circumstances, we think that he being the hereditary trustee of an excepted temple the case against him should have been properly dealt with in the manner prescribed in the Act, and since it has not been done so, we consider that the order of the Board has not been properly passed.

4. The appeal is allowed and the respondent will pay the costs of the appellant throughout.