

(1906) 03 MAD CK 0019
In the Madras High Court

Ganapathi Ayyar and Others

APPELLANT

Vs

Sri Vedavyasa Alasinga Bhattar and Others

RESPONDENT

Date of Decision : 16-03-1906

Acts Referred:

Citation : (1906) ILR (Mad) 534

Hon'ble Judges : Subrahmania Ayyar, J;Benson, J

Bench : Division Bench

Judgement

1. The question in this case is whether the appointment by the Temple Committee of defendants Nos. 1 and 2 as temporary additional trustees of the Srirangam temple is valid?

2. The scheme of management which was in existence at the time of the appointment in question was one that had been sanctioned in 1842 by the

Board of Revenue in pursuance of the policy then adopted under the order of the Court of Directors with a view to the withdrawal of Government

interference with the executive management of temple affairs. Under the orders of the Board of Revenue, dated the 6th October 1842, the

management of the temple was entrusted to two trustees who were otherwise unconnected with the temple, and to the body of mirasi office

holders in the temple, known as stalathars. As there were four families of stalathars it was arranged that one stalathar should act with the other

trustees by yearly turns, such acting stalathar representing the whole body and conducting his duties in consultation, if necessary, with them.

3. We agree with the District Judge that the stalathar trustees were hereditary trustees. In the Proceedings of the Board of Revenue they are

referred to as ex-officio trustees, and as already stated, their right to the office

of stalathar is permanent and hereditary. The first objection taken by the vakil for the appellants is that it was not competent to the Board of Revenue to invest any body of persons with an hereditary right to the trusteeship. We are unable to accept this contention, At the time when the scheme was introduced it does not appear that any one possessed any right which would be interfered with by the scheme of the Board. The case was one in which it was competent to the Board of Revenue u/s 13 of Regulation VII of 1817 to make "such provision for the trust, management or superintendence as may to them seem right and fit, with reference to the nature and conditions of the endowment." Mr. Sivasawmy Ayyar's argument was that, u/s 2 of the Regulation, the superintendence of the temples was vested in the Board of Revenue, and that for the Board to create a body of hereditary trustees was to renounce a part of their duty under the section, and was therefore improper and illegal. But it is undoubted that the power of superintendence provided for by this section was not confined to institutions where the trustees were not hereditary and, therefore, there is no necessary inconsistency between the exercise of the superintendence contemplated by that Section and the existence of hereditary trustees, whether appointed by the Board or otherwise existing. The question really turns upon the effect of Section 13. The words of that section already quoted are wide and general, and, if in the opinion of the Board, it was desirable to introduce an hereditary element into the management of the temple, we can see no objection to their having done so.

The ritual and other details connected with the worship in the temple are matters with which the management would properly concern itself.

4. Consequently the association of important hereditary office holders of the temple with other persons as trustees was obviously for the advantage of the institution. Our opinion that the Board of Revenue did not exceed its powers in making such an arrangement is supported by the decision in *Venkatesa Nayudu v. Shrivani Shatagopa Shri Shatagopaswami* 7 M.H.C.R. 77. We are unable to agree in the doubts thrown on the decision in *Apparami v. Nagappa* ILR 7 Mad. 499. By the mere fact that one of the trustees was made hereditary, there was no relinquishment of the control vested in, the Board by the law.

5. Mr. Sivaswami Ayyar's next contention was that, even if the Board were

competent to make the scheme it did for the management of the temple, it was open to them to revoke it, and that as the powers of the Board passed to the Temple Committee under Act XX of 1868, the committee might make any changes they liked in the existing scheme, and their present action therefore cannot be questioned. We cannot agree with the suggestion that it was competent to the Board of Revenue to arbitrarily put an end to arrangements permanently made by them. Interference with a scheme so made could only be for good and sufficient reasons connected with the interests of the institution, and any interference would be unwarranted so long as the scheme permanently introduced was at work without any default on the part of the managers or so long as there was no change of circumstances rendering an alteration of the scheme necessary. The assumption that an authority empowered by law to introduce a scheme of management in respect of public institutions is necessarily at liberty at its mere will and pleasure to set aside the scheme once introduced is unfounded, - such power will exist only if specifically given. The real point for consideration is whether the committee had power to alter as they did the constitution of the temple management regularly established by the Board.

6. The case of *Sheik Davud Saiba v. Hussein Saiba* ILR 17 Mad. 212 is an authority to the contrary. The Court there laid down that a committee cannot appoint additional trustees where there is an hereditary trustee. We are unable to accept the suggestion that the Court there intended to restrict this view to cases where there is a sole hereditary trustee, or to cases where all the trustees are hereditary. On this ground alone the appointments in question should be held invalid. Even apart from this, we think that the appointments cannot be supported. We cannot accept the contention that the committee has an unqualified power of adding to the number of trustees sanctioned under an existing scheme even if the trustees be not hereditary. The case of *re Buruham National Schools* L.R. 17 Eq. 241 is no authority against this view. In that case the Charity Commissioners were by statute empowered to exercise the powers of the Court of Chancery, and there is clearly no analogy between the powers of such a body and the committee appointed under Act XX of 1863 which gives no such powers. It is scarcely necessary to say that the

appointment of additional trustees does not necessarily add to the efficiency of the body, and in many cases it might make the body unwieldy. The proper view, in our opinion, is that the committee's power in the matter can only be exercised for good and sufficient cause. The reason for this conclusion is substantially that which warranted this Court many years ago in holding that the committee is entitled to remove a trustee only for good and sufficient reasons; viz., that otherwise the rights and powers of trustees would be improperly interfered with. It is obvious that the appointment of additional trustees would have the effect; of modifying the powers and responsibilities of the existing trustees. We may add that the grounds on which the addition of trustees was resolved on do not appear to have been fully and clearly stated in the Proceedings of the Committee, as they should be in the case of a public body such as this is. So far as can be gathered from the order of appointment issued to the new trustees there was alleged to be negligence and mismanagement on the part of the old trustees. Assuming that there were grounds for this statement it seems to us, as urged on behalf of the plaintiffs that the proper remedy is not by the appointment of additional trustees, but by enquiring into the charges and by the removal, if necessary, of the defaulting trustee and the appointment of others in their places. It also appears that one inducement for the appointment of the new trustees was an offer on their part to defray the cost of some of the repairs of the temple which it is said the old trustees had failed to carry out. Though such benefactions from those interested in the temple may properly be encouraged, we do not think that such encouragement should take the form of giving the donors a place in the established scheme of management. Another and a most serious objection to the appointments is that they are altogether temporary. We are supported in this view by the opinion of Shepherd, J., in the case of *Seshadri Ayyangar v. Nataraja Ayyar* ILR 21 Mad. 179. It is manifest that to lay down that the committee has an unqualified power of making temporary appointments would give them a power liable to grave abuse. Such temporary managers would 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 Act XX of 1863, viz., that the actual administration of affairs should be in the hands of the trustees subject only to the supervision of the committee.

7. We therefore agree with the District Judge and dismiss the second appeal with costs.