
(1976) 09 KAR CK 0009
In the Karnataka High Court

K. Raghavendra Nayak and Others

APPELLANT

Vs

The Judicial Magistrate, First Class Karkala, S. Kanara and Others

RESPONDENT

Date of Decision : 02-09-1976

Acts Referred:

Madras Hindu Religious and Charitable Endowments Act, 1951 — Section 39, 40, 40 (2), 87

Citation : AIR 1977 Kar 53 : (1977) ILR (Kar) 43 : (1976) 2 KarLJ 258

Hon'ble Judges : M.K. Srinivasa Iyengar, J; D.S. Tewatia, J

Bench : Division Bench

Advocate : U.L. Narayana Rao, for the Appellant; K.S. Puttaswamy, A.G.A. and B.P. Holla, for the Respondent

Judgement

Tewatia, J.—14 Trustees, all of them hereditary, constituted the Board of Trustees of Sri Venkataramana temple,. Karkala - admittedly a denominational temple. They are all parties to the present petition. Five of them as petitioners and remaining nine as respondents being respondents 4 to 12. By some kind of convention, which the petitioner trustees claim to be the scheme, while the respondent trustees name it a mere working arrangement, all the said trustees used to elect 3 trustees from amongst themselves as managing trustees for being in-charge of the day-to-day affairs of the trust for a period of 3 years.

2. Petitioners 1 to 3 were so elected on 26-9-1969 for a period of 3 years which expired on 30th June, 1972. It appears that thereafter the trustees were deadlocked and were unable to elect a fresh set of managing trustees and the existing set tried to perpetuate its hold for another term of three years by some kind of mandate of the general body of the denomination.

3. Some of the respondents-trustees approached the Deputy Commissioner Endowments (Respondent No. 2) to intervene, who directed the Assistant Commissioner Endowments (Respondent No. 3) to convene a meeting of the Board of Trustees for the purpose of electing a Chairman, who in compliance with

the said directions, called the Board to meet on 11-11-1972. The Board met accordingly on the said date (though some of the petitioners-trustees did not participate) and duly elected respondent No. 8 as the Chairman of the Board of Trustees.

4. The present petitioners along with two other trustees challenged the election of respondent No. 8, as Chairman of the Board of Trustees through writ petition No. 2859 of 1972; the said petition was dismissed by an order dated 10th September 1973,* and the election of respondent No. 8 as Chairman was upheld. That decision acquired finality, as appeals against the same also failed.

5. Respondent No. 8 thereafter applied to the Deputy Commissioner, Endowment - respondent No. 2 for issuance of a certificate in terms of Section 87 of the Madras Hindu Religious and Charitable Endowments Act of 1951 (hereinafter referred to as the "Act"). Respondent No. 2 by his order dated 12th September, 1973, issued the requisite certificate and it is this order that has been impugned by the petitioners in this Court on writ side, primarily on two grounds, viz.:

(1) That respondent No. 2 did not have the jurisdiction to entertain the request of respondent No. 8 for the issuance of the certificate, as the provisions of Section 87 of the Act, in terms, were not directed to the affairs of denominational temples, which undoubtedly the present temple happens to be; and

(2) That respondent No. 8 had no locus standi to apply alone to respondent No. 2 for the issuance of the certificate u/s 87 of the Act.

6. Learned Counsel for the petitioners while elaborating his submission based on ground No. 1 stressed the fact that the provisions of Section 87, in terms, envisaged a person appointed as trustee under the Act and since the trustees so appointed are only those who are appointed under Sections 39 and 41, and Sections 39 and 41 having been held to be inapplicable to the affairs of the denominational temples, the granting of a certificate by the Deputy Commissioner tantamounts to an illegal interference with the affairs of the denominational temple in question.

7. For ease of reference, the relevant provisions of Section 87, as also Sections 39, 40 and 41 of the Act, at this stage, be noticed.

87, -Putting trustee or executive officer in possession.

Where a person has been appointed-

- (a) As trustee or executive officer of a religious institution,
- (b) To discharge the functions of a trustee of a religious institution in accordance with the provisions of this Act, or
- (c) As manager u/s 56 or in any scheme framed by the Board before the commencement of this Act, and such person is resisted in, or prevented from, obtaining possession of the religious institution or of the records, accounts and

properties thereof, by a trustee, officeholder or servant of the religious institution who has been dismissed or suspended from his office or is otherwise not entitled to be in possession or by any person claiming or deriving title from such trustee, office-holder or servant, not being a person claiming in good faith to be in possession on his own account or on account of some person not being such trustee, office-bolder or servant, any Magistrate of the First Class in whose jurisdiction such institution or property is, situated shall, on application by the person so appointed, and on the production of the order of appointment and where the application is for possession of property, of a certificate by the Commissioner in the prescribed form setting fourth that the property in question belongs to the religious institution, direct delivery to the person appointed as aforesaid of the possession of such religious institution, or the records accounts and properties thereof, as the case may be.

Section 39 (New):

Trustees and their number and term of office.

(1) Where a religious institution included in the list published u/s 38 or over which no Area Committee has jurisdiction, has no hereditary trustee, the Commissioner shall constitute a Board of trustee consisting of not less than three and not more than five persons appointed by him.

(2) Where any such institution has, at the commencement of this Act, both a hereditary trustee or trustees and a nonhereditary trustee or trustees, the Commissioner shall have power to appoint the non-hereditary trustee or trustees as and when vacancies arise in their number.

(3) Every trustee appointed under sub-section (1) or sub-section (2) shall hold office for a term of five years, unless in the meanwhile the trustee is removed or dismissed or his resignation is accepted by the Commissioner or he otherwise ceases to be a trustee.

40 (New): Chairman:

(1) In the case of a religious institution for which a Board of Trustees is constituted u/s 39, sub-section (1) the Board shall elect one of its number to be its Chairman.

(2) In the case of any other religious institution having more than one trustee, the trustees of such institution shall elect one of their number to be Chairman.

(3) Chairman elected under sub-section (1) or sub-section (2) shall hold office for such period as may be prescribed,

Section 41 reads:

Power of Area Committee to appoint trustees.

(1) In the case of any religious institution over which an Area Committee has jurisdiction, the Area Committee ,hall have & same power to appoint trustees as

is vested in the Commissioner in the case of a religious institution referred to in Section 39:

Provided that the Area Committee may, in the case of any institution which has no hereditary trustee, appoint a single trustee.

(2) The provisions of Section 39, subsection (3), and Section 40, shall apply to the trustee or trustees appointed, or the Board of Trustees constituted, by the Area Committee as they apply in relation to the trustee or trustees appointed or the Board of Trustees constituted, by the Commissioner.

8. We do not think there is any merit in the contention advanced on behalf of the petitioners.

9. It is not the case of the petitioners that all the provisions of the Act are inapplicable to the denominational temples. Respondent No. 8 was elected as a Chairman of the Board of Trustees of the temple in question u/s 40 (2) read with Rule 15 framed u/s 100 (1) (2) (h) (i) which provision has been expressly held to be applicable to the present denominational temple by this Court, when pronouncing upon the validity of the election of respondent No. 8 as Chairman of the Board of Trustees at the instance of the very petitioners in Writ Petition No. 2859 of 1972.*

10. For the purpose of Section 87 respondent No. 8 is the "trustee" by virtue of Rule 16 (2) (a) framed u/s 100 (2) (j), Rule 1 framed u/s 100 (2) (k) and Rule 4 framed u/s 36 and 100 (2) (1) which rules deal with the Recovery and Custody of Property of the temple. For facility of reference, the aforesaid Rules are extracted herein and they read:-

Rule 16 (2) (a) reads:-

16 (2) Where the institution has no such executive officer duly authorised, but has more than one trustee-

(a) the Chairman of the trustee shall be deemed to be the "trustee" for purposes of Rules 1 to 7;

Rules 1 to 7 above read:

(1) Every item of income of a religious institution shall be collected regularly and, as far as may be, on the date on which it falls due.

(2) The trustee of the institution shall be responsible for making all collections of income whether in cash or as kind.

(3) The trustee shall grant receipts for all items of income and for all offerings and gifts in cash and kind received by him for the institution.

(4) Where an officer of the institution is authorised to make collections, a temporary receipt may be issued by such officer. Such collections shall not be

utilised directly, by the officer for any purpose but shall be handed over to the trustee then and there and if the collection is made by an officer employed for collection in a village other than the village where the institution is situate, as expeditiously as possible, and in any case, within seven days of the date of collection. The trustee shall grant a permanent receipt as soon as he received the collections made by the officer.

(5) Temporary or permanent receipt books with receipts in counterfoil bearing printed machine numbers, shall be maintained. The signature of the person to whom the receipt is issued and in case such person cannot sign his name, his attested thumb impression shall be obtained with date-on the reverse of the duplicate of the receipt in token of having obtained the receipt.

(6) All collections shall be brought into account by, the trustee without delay.

(7) No person other than a trustee shall be competent to give a valid discharge of any claim of the institution.

Rule 1 framed u/s 100 (2) (k) reads:

(1) Subject to the provisions of any scheme settled or deemed to have been settled for a religious institution, the moneys received by a math shall be in the custody of the trustee of the math or such officer of the math as the trustee may appoint in this behalf and the moneys received by other religious institutions shall be in the custody of the trustee and if the number of trustees exceeds one in the case of the Chairman of the trustees. The custody of moneys of a religious institution notified u/s 64 shall be regulated by, the terms of the order defining the powers of the trustees and the executive officer u/s 67.

(underlining is ours)

Rule 4 framed under Sections 36 and 100 (2) (1) reads:

Custody of Jewels and other Valuables.

4. Where the institution has an executive officer appointed under a scheme, the jewels and valuables shall be in the joint custody of the executive officer and the trustee or if the number of trustees exceeds one, the Chairman of the trustees

(Underlining is ours).

11. The aforesaid rules recognised the Chairman of the Board of Trustees alone as the "trustee" entitled to the custody of the various categories of properties belonging to the temple and therefore, he is the "trustee" appointed to discharge the functions of that office under the Act. Hence, the Chairman is a person appointed as "trustee" under the Act for the purpose of Section 87 of the Act.

12. An argument was advanced on behalf of the petitioners that a person elected cannot be considered a person appointed.

13. The learned Counsel also sought to draw a distinction between the trustee

who is "appointed" and of a hereditary trustee who succeeds to that office and is not appointed as such to that office.

14. The distinction sought to be drawn on behalf of the petitioners may be pertinent to an academic discussion as to whether a hereditary trustee can be considered to be an appointed trustee, But here we are concerned with "the trustee", that is, a "trustee" who is appointed under the Act to perform the functions envisaged by the aforesaid rules regarding the custody of the property of the temple. For that purpose, every trustee (whether hereditary or elected or nominated) is not a trustee but only the one who happens to be the Chairman of the Board of Trustees when the board is comprised of more than one trustee as is the case here,

15. For the above view we receive sustenance from the following observations of Mr. Justice Jagmohan Reddy, as he then was, in *Kuntanukkala Satyanarayana v. Sri Rama Lingeswara Swamy Temple Represented by the Chairman, Board of Trustees, Venkatarathnam* 1964 2 AWR 256 at p. 259:

"The contention of the learned Advocate for the petitioner is that a person elected u/s 40 of the Act as Chairman cannot be deemed to be "a person appointed" within the meaning of Section 87 of the Act. In our view this contention also is equally without force. When Section 87 uses the word "appointed", it was not confining that word only to the appointment made by a particular person. The election of a chairman can also be deemed to be an appointment because the provisions of the Act itself have prescribed the procedure for appointment of a chairman. Where a statute lays down that a person elected as chairman shall exercise the functions under the Act he must be deemed to be a person appointed under the Act. That apart even Section 87 of the Act contemplates a person elected as Chairman u/s 40 of the Act. The relevant portion of Section 87 is as follows:-

. "Where a person has been appointed

(b) to discharge the functions of a trustee of a religious institution in accordance with the provisions of this Act. The chairman is a person appointed to discharge the functions of a trustee of a religious institution in accordance with the provisions of Section 40 of the Act. There is therefore no party

cular significance in the word "appointed" which confines it only to the appointment by an authority and not to the appointment by election."

16.As to the next contention based on ground No. 2 advanced on behalf of the petitioners, it may be observed that whether to such an application all the trustees and the temple be joined or not, would depend on the fact whether the application was one to recover the temple property and secure its custody or it was merely intended to secure the custody from some one, who does not dispute the right of the temple to the same.

17. In the present case the dispute is in regard to the fact as to whether

respondent No. 8 or petitioners 1 to 3 are entitled to the custody of the property in question, In other - words, respondent No. 8, u/s 87, had merely sought to secure the custody of the property of the temple and not the recovery thereof to the temple and therefore to such an application it was not necessary either to join the temple or the other trustees either as petitioners or as respondents.

18. The learned Counsel for the petitioners placed considerable reliance. for his submission that application u/s 87 was not maintainable at the instance of respondent No. 8 alone, on a Division Bench decision of the Madras High Court in *M. Angappan v. Deputy Commr., Hindu Religious and Charitable Endowments, Madras* (1965) 1 Mad LJ 151. In that case. 5 persons were appointed as the trustees by the area committee who, in turn, had elected one amongst themselves as the chairmen of the said Board of Trustees. The chairman then applied u/s 101 of the 1959 Act which section corresponds to S. 87 of 1951 Act. There it was contended that a chairman alone was not competent to move the application, Upholding the said contention it was observed that where a statute employed a singular expression, according to the well known rule of Interpretation of Statute, that would include the plural unless it was indicated therein otherwise.

It was further observed that it was well settled law that in case of co-trustees, the office is a joint one, all of them forming as it were one collective body. They were all expected to join in the enforcement of their statutory rights and privileges. Support for-the above view was sought from the following observations occurring in *Commr., H. R & C. E., Madras v. Sethurama Pillai* (1960) 1 Mad LJ 157.

"It is well settled that where there are more trustees than one all would be entitled to act jointly, they would be in the position of joint trustees and form a corporate body. A scheme providing for the management of a private temple by turns amongst the members of a family would be only an arrangement inter se, but outside the family, the trustees would form a corporate entity.

The representation of an institution could be valid or effective only if all the trustees jointly act; a fortiori, the institution could be bound by an order of the Board under the Act only if all the trustees are impleaded to the proceedings before the Board."

19. With great respect to the learned Judges, we are of the view that the proposition has been too widely stated. It is not in all cases that the trustees as a body must join. To an application seeking merely to secure the custody of the temple -property only those persons who are either entitled to the custody or those who are resisting the same without challenging either the identity of the property or the right of the temple to the same that are necessary party. The relevant rules already noticed recognise only the chairman of the Board of Trustees, when the Board comprises of more than one trustee, as the only person entitled to the custody of the property of the temple and therefore, he

alone had .the right to apply for the custody of the temple property. With respect, this aspect of the position of the chairman was not present to the mind of the learned Judges in M. Angappan"s case (supra) either for the reason that such a point had not been pressed before them or the provision of relevant rules framed- under 1959 Act are not in primavera with those that have been relied upon on behalf of respondent No. 8 in the present case.

20. " In conclusion, the contention that the application in question was not maintainable only at the instance of respondent No. 8 must therefore be repelled, This, then, leads to the inevitable result of the dismissal of the petition, and no other contention has been urged before us.

21. As regards costs, respondent Nos. 5 to 10 shall get costs from petitioners 1 to 5. Advocate"s fee Rs. 250/-.

22. Petition dismissed.