

(1957) 09 KL CK 0043
In the High Court Of Kerala
Case No : A.S. No. 73 of 1954 (M)

Kunhambu Moolacheri Nair	Vs	APPELLANT
The Commissioner, Hindu Religious Charitable Endowments Board, Madras and Another		RESPONDENT

Date of Decision : 04-09-1957

Acts Referred:

Constitution of India, 1950 — Article 19(1)(f)

Citation : (1957) KLJ 1056

Hon'ble Judges : K.T. Koshi, C.J;N. Varadaraja Iyengar, J

Bench : Division Bench

Advocate : V.P. Gopalan Nambiar and K. Raghavan Nambiar, for the Appellant; K.N. Narayanan Nair, Government Pleader for 1st Respondent and K.N. Karunakaran for 2nd Respondent, for the Respondent

Judgement

N.V. Iyengar, J.—This appeal is against the judgment and decree in O. S. 3 of 1950 on the file of the District Court of South Canara whereby a scheme of administration framed by the Hindu Religious Endowment Board in respect of the Ajanur Madiyan Koolam Kshetrapala Devaswom has been found to be unquestionable at the instance of the plaintiffs, hereditary oorallars of the Devaswom. The plaintiffs relied mainly on two grounds for opposing the scheme firstly, that the management of the affairs of the temple was not inefficient and unsatisfactory as alleged and the framing of the scheme was therefore totally uncalled for, and secondly, that the scheme as framed had too drastically cut down their powers as the hereditary trustees so as to reduce them to mere non-entities and the scheme stood in need of rectification accordingly. Both these grounds were repelled by the court below in the judgment under appeal and have been reiterated before us. We may say at once that there is no substance in the first while the second requires further and better consideration.

2. The Devaswom herein is a fairly important institution in the locality and is possessed of considerable endowments. It had three hereditary trustees viz., the

karnavars for the time being of three Nair torwads. So long ago as 16-10-1939 the Hindu Religious Endowment Board found mismanagement and decided to notify the institution. On representations made however, opportunity was given to the trustees to improve the management. But not much progress was shown with the result that the scheme proceedings were started ending ultimately in Ext. A2 order of the Board dated 16-3-1950 framing the scheme in question and containing an annexure setting forth the grounds in support thereof. It is unnecessary to detail these various grounds. It is enough to say they comprised gross mismanagement and much more serious, the attempt on the part of the trustees and the members of their families to aggrandize at the expense of the Devaswom and claim some of its properties as their own. The learned District Judge has gone into the various grounds and found them to be sufficiently made out and we are satisfied that he has come to the correct conclusion. If so there can be no doubt that for the proper and better administration of the Devaswom and its affairs, the framing of the scheme was absolutely called for. On this question learned counsel for the appellants had only this much to say that a subsequent suit O.S. 154 of 1951 filed by the Executive Officer appointed under the scheme against the members of the 1st defendant's tar wad for vindication of the title of the Devaswom to certain properties in their control, did not meet with any success, vide Exts. A, B, C, judgment, decree and plaint in that case and produced before us. We do not think that these proceedings by themselves could form any basis for differing from the conclusions reached by the Board after searching enquiry and which were not also dislodged by the plaintiffs during the trial in the court below. We therefore affirm the finding of the court that a scheme is necessary to be framed for the purpose of the proper and better management of the Devaswom's affairs and also for safeguarding its interests. The next question is whether the scheme as framed by the Board and approved by the court below stands in need of any modification. It cannot be denied that on the whole the scheme provisions err on the extreme as against the trustees. It is not as if the court below was unaware of this severity but it thought that anything less drastic would not have sufficed. To the argument that the scheme was violative of the fundamental rights of the hereditary trustees and was accordingly void under Art. 19 (1) (f) of the Constitution, the court below was of the view that, not having been put forward in the pleadings, the question could not be allowed to be raised. Even otherwise the learned Judge was willing to say that the restrictions placed by the scheme on the powers of the hereditary trustees, assuming they had a right of property therein, within the meaning of the Article, were only reasonable from the point of view of the general public. We are clear however of the undoubted existence of a fundamental right of property in the hereditary trustees, by way of their right to administer and manage their institution and due regard must be paid thereto in framing a scheme of management for such institution. So it has been held by Rajamannar, C.J., and Venkatarama Aiyar, J. that a scheme framed in disregard of such right so as to reduce the hereditary trustee to the position of a figurehead, with nothing left of their office except a nominal acknowledgment of their rights was calculated to

encroach on their rights under Art. 19(1) (f) of the Constitution and was to that extent void. See *Kidangazhi Manakkal Narayanan Nambudiripad and Others Vs. State of Madras and Another*, . And similarly *Balakrishna Aiyar, J.*, quashed an entire scheme framed by the Board because the hereditary trustees of the temple were shorn of all their right and powers and dignities and were reduced to the position of dummies left only with the doubtful honor of describing themselves as trustees of the temple. See *Sankaran Nair v Govindan Nambiar*, A. I. R. 1955 Mad. 120. Learned counsel has also brought to our notice a recent judgment of the Madras High Court in A.S. Nos. 458 and 914 of 1950, where *Rajamannar, C. J.* and *Rajagopala Iyengar J.*, withdrew a scheme framed by the Board because it gave too large powers to the Executive Officer so as to encroach upon the powers and functions of the hereditary trustees. In our judgment the provisions in the scheme herein stand in need of better balancing from the view points of the fundamental right of property inhering in the trustees on the one side and their own cupidity and inefficiency as already evinced on the other. We therefore set aside the judgment and decree herein and remand the suit to the court below for fresh disposal in the light of the above observations and according to law. In the circumstances of the case we make no order for the costs of this appeal.