

**(1959) 01 MAD CK 0011**  
**In the Madras High Court**

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| M.R.N. Mahalinga Nadar and Another         | APPELLANT  |
| Vs                                         |            |
| The Commissioner, H.R. and C.E. and Others | RESPONDENT |

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**Date of Decision :** 06-01-1959

**Acts Referred:**

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 — Section 39

**Citation :** (1959) 72 LW 497 : (1959) 2 MLJ 236

**Hon'ble Judges :** Subrahmanyam, J

**Bench :** Single Bench

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**Judgement**

Subrahmanyam, J.—This civil revision petition is preferred against the order passed by the learned Additional Judge of the City Civil Court,

on 24th April, 1958, in O.P. No. 423 of 1957 on his file.

2. In Old Washermanpet there is a temple known as Sri Siva Sundara Vinayagar temple. The Area Committee having jurisdiction under Madras

Act XIX of 1951 (The Madras Hindu Religious and Charitable Endowments Act), passed an order on 27th September, 1955, appointing five non-

hereditary trustees for the temple. At that time, the Area Committee treated the second petitioner as the person in management of the affairs of the

temple, and sent him a copy of the order appointing non-hereditary trustees and asked him to hand over charge of the temple and its affairs to

those non-hereditary trustees. The trustees so appointed are respondents 2 to 6. The Commissioner, Hindu Religious and Charitable Endowments,

is the first respondent. The petitioners are brothers, the second petitioner being the younger brother of the first.

3. The order passed by the Area Committee appointing respondents 2 to 6 as non-hereditary trustees of the temple was made in purported

exercise of the Committee's powers u/s 41 read with Section 39(1) of the Act. Against that order, the petitioners preferred an application to the

City Civil Court, praying that the order be set aside. That application was made u/s 39(4) of the Act. Section 39(4) of the Act is in these terms:

Where the Commissioner, by order, appoints a non-hereditary trustee or trustees, the hereditary trustee or trustees may, within thirty days of the receipt of the order, file an application to the Court to set aside or modify such order.

4. The petitioners claimed that the temple was a private temple, that is to say not "a religious institution" as the term is defined in the Act. They

claimed further that they were the hereditary trustees of the temple. No notice had been given to them to show cause why non-hereditary trustees

should not be appointed. They contended that the order appointing non-hereditary trustees was invalid firstly because the Area Committee had no

jurisdiction over the temple, which was not a religious institution, and secondly because no order appointing non-hereditary trustees could be made

without giving the petitioners an opportunity to show cause why such an order should not be made.

5. The learned Additional City Civil Judge did not consider or decide the question whether the temple was a public temple, that is to say, whether

it was a "religious institution" as the term is defined in the Act. He proceeded on the basis that the temple was a religious institution. He held that

the first petitioner was the hereditary trustee of the temple. No notice had been given to him by the Area Committee to show cause why non-

hereditary trustees should not be appointed. The learned Judge held that the order appointing non-hereditary trustees should be held invalid. On

the question whether the application before him was in time the learned Judge held that it was not. On that finding he dismissed the petition.

6. Section 39(4) of the Act states that an application to set aside an order appointing non-hereditary trustees should be made within 30 days of the

receipt of the order. In this case, a copy of the order had been sent to the second petitioner and he had been asked to hand over charge of the

affairs of the temple to the non-hereditary trustees who had been appointed by the Area Committee. But no copy of the order was sent to the first

petitioner at all who, according to the learned Judge, was the hereditary trustee of the temple. In regard to the first petitioner the learned Judge

held, however, that the expression " receipt of the order " should be construed as " knowledge of the order" and since the learned Judge found

that the first petitioner had had knowledge of the order more than thirty days before he filed the application the Judge held that the, application was

barred as regards the first petitioner as well.

7. In the view that I take of the purpose and scope of Section 39(4), it is unnecessary to consider whether the learned Judge was correct in his

interpretation of the expression " receipt of the order " occurring in Section 39(4). I am of the opinion that the application u/s 39(4) was

misconceived and that. section. 39(4) could not apply at all to the order that was. passed by the Area Committee appointing non-hereditary

trustees.

8. Section 4.1. of the Act read, with Section 39(1) empowers, the Committee to appoint non-hereditary trustees for a religious institution, which

has no hereditary trustees. Section 41 read, will Section 39(2) provides for the appointment of non-hereditary trustees for an institution which has a

hereditary trustee or trustees. In relation to such an institution non-hereditary trustees could be appointed in the event only of the Committee being

satisfied, after giving an opportunity to the hereditary trustee or trustees to show cause, that, in the interests of the efficient administration of the

affairs, of the institution. non-hereditary trustees should be appointed in addition to the hereditary trustees. The-number of non-hereditary trustees

to be appointed should be such that the total number of trustees inclusive of the hereditary trustees does not exceed five. In this case the number of

non-hereditary trustees appointed was five. That was because the Area Committee proceeded on the basis that there was no hereditary trustee. In

my opinion Section 39(4) applies only to the case of appointment of non-hereditary: trustees avowedly made u/s 39(2). Section 39(4) can have no

application to a case of appointment of non-hereditary trustees made in purported exercise of the Committee's power u/s 41(1) read with Section

39(1) or of the Commissioner's power u/s 39(1).

9. Section 39(4) refers, it will be seen, to the hereditary trustee or trustees applying to the Court within 30 days of the receipt of the order. That

obviously shows that the Legislature contemplated the hereditary trustee or trustees receiving the order appointing non-hereditary trustees so as to

enable them to file an application u/s 39(4). No question of any hereditary trustee or trustees receiving notice of the order could arise when an

order is made in purported exercise of the power u/s 39(1) because, in such case, the Committee or the Commissioner does not recognise the

existence of the hereditary trustees at all and proceeds to act on the basis that there is no hereditary trustees in office or entitled to hold office.

10. Even apart from the language in Section 39(4) which shows that Section 39(4) could not apply to a case of the exercise of powers u/s 39(1) it

will be inconsistent with the scheme of the Act to hold that the Court could entertain an application u/s 39(4) to set aside an order passed u/s

39(1). Where a person claims that the temple of whose affairs he is in management is a private temple, or that the temple which he admits to be

public is in his management as hereditary trustee, and where in such a case the appointment of non-hereditary trustees is made by the Area

Committee or by the Commissioner in purported exercise of powers u/s 39(1) such a person would have to seek relief to have the temple declared

to be a private temple or to have it declared that he is the hereditary trustee of that temple which he admits to be a religious institution. If it be held

that in such case he could file an application u/s Section 39(4) to set aside the order appointing non-hereditary trustees, the Court having

jurisdiction u/s 39(4) would have to decide the question relating to the character of the institution or the claim of the party to be hereditary trustee.

But the scheme of the Act indicates plainly that these questions should be determined by different Tribunals and under a different procedure.

11. Section 57 enacts that a Deputy Commissioner shall have power to enquire into and decide whether an institution is a religious institution or not

and whether a trustee holds or has held office as a hereditary trustee. Therefore, when a person claims (as in this case the petitioners claim) that the

temple is a private temple and is therefore not a religious institution as the term is defined in the Act, jurisdiction to decide that question is vested in

the Deputy Commissioner under ½ Section 57(a). Similarly, assuming that the temple is a religious institution, the claim of the petitioners that they

are hereditary trustees is, again, committed to the jurisdiction of the Deputy Commissioner for decision u/s 57(b) of the Act. Against an order

passed by the Deputy Commissioner u/s 57(a) or Section 57(b) an appeal to the Commissioner is provided by Section 61 of the Act. If the

Commissioner so decides against the claim of the petitioners, they are allowed a right to file a suit u/s 62 of the Act. Against an order passed by the

Court of the first instance u/s 62 of the Act an appeal is provided to the High Court. Surely, it would be unreasonable to hold that questions which

the legislature considered of such importance as to be decided after such elaborate enquiry and by such a hierarchy of Tribunals were at the same

time committed by the Legislature to a decision in a summary proceedings on an application filed u/s 39(4) of the Act.

12. Because the legislature considered that the succession of Tribunals provided by Sections 57, 61 and 62 of the Act for the determination of

these questions was competent and adequate, the legislature expressly barred the jurisdiction of civil Courts to take cognisance of these disputes

otherwise than in accordance with those sections. Section 93 of the Act enacts:

No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for

determining or deciding which provision is made in this Act shall be instituted in any Court of law, except, under, and in conformity with, the

provision of this Act.

13 I hold that an application which can be made u/s 39(4) of the Act is only an application in respect of an order made in purported exercise of the

Area Committee's and the Commissioner's powers u/s 39(2) of the Act, and that since the order now in question was made in purported exercise

of the Area Committee's powers u/s 41 read with Section 39(1) of the Act, the application was incompetent. The dismissal of the petition has,

therefore, to be sustained not on the ground mentioned by the learned Judge but on a ground more basic to a consideration of the rights of the

petitioner and the powers of the Area Committee.

14. The petitioners felt aggrieved by the order of the Area Committee appointing non-hereditary trustees. The law should undoubtedly give them a

right to relief. The learned Counsel for the respondent states that the right to relief is provided by Section 57 of the Act. The second petitioner had

applied in 1954 to the Deputy Commissioner for a declaration that he held office as hereditary trustee. The Deputy Commissioner had said that, on

the documents produced by him, his elder brother (the first petitioner), was hereditary trustee and that therefore the second petitioner's claim could

not be recognised. That order could not be read as an order declaring the first petitioner to be a hereditary trustee. All that was said was that the case urged by the second petitioner when scrutinised, led to the conclusion that not he but his elder brother was the hereditary trustee. If the elder brother claimed to be hereditary trustee, that claim would have to be heard and decided on its own merits. The first petitioner is free--that is conceded by the respondent's learned Counsel<sup>12</sup> to file an application u/s 57(a) and 57(b) to the Deputy Commissioner. The first petitioner may file an application praying for a declaration that the temple is a private temple and that it is not a religious institution as the term is defined in the Act, and, in the alternative if the Deputy Commissioner holds that the temple is religious institution for a declaration that he (the first petitioner) holds office or is entitled to hold office as hereditary trustee. If in such an application the decision is given against him, he may proceed further under Sections 61 and 62 of the Act, as has been stated above.

15. The petitioners' learned Counsel says that, if in a case where a hereditary trustee is aggrieved by an order passed in purported exercise of powers u/s 39(1), such person is held not entitled to apply for relief u/s 39(4), such hereditary trustee would have to suffer the hardships consequent on having to hand over the management of the institution to the non-hereditary trustees appointed in purported exercise of powers u/s 39(1) and to suffer them to continue in management until the hereditary trustee gets his rights established by the machinery provided by Sections 57, 61 and 62 of the Act. But, if a person is in management as hereditary trustee, he is bound to have knowledge of the proceedings which are being taken by the Area Committee, or by the Commissioner as the proceedings are in progress. Applications would have to be made for appointment as non-hereditary trustee and if the hereditary trustee is in effective management he could not be kept in the dark as to the steps that are being taken to have non-hereditary trustees appointed. He could intervene at that stage by an application to the Deputy Commissioner u/s 57 of the Act and, if necessary, move the Commissioner to exercise his powers of general control and superintendence u/s 20 of the Act to stay proceedings of the Area Committee until the applicant's application u/s 57- is heard and decided. In this particular case, the petitioners say that

they were in management. If they were in management and yet did not know that proceedings were being taken to appoint non-hereditary trustees

such ignorance should be attributed to their own default. I do not think that the view that Section 39(4) does not apply to an order passed in

purported exercise of powers u/s 39(1) can cause any real hardship to a person who is in effective management of the affairs of a religious

institution as its hereditary trustee.

16. The petition is dismissed. No costs.