
(1955) 06 KL CK 0005
In the High Court Of Kerala
Case No : A.S. No. 367 of 1952

Nethran Damodaran Nambooripad

APPELLANT

Vs

The Travancore Devaswom Board

RESPONDENT

Date of Decision : 27-06-1955

Acts Referred:

Travancore Hindu Religious Endowments Act, 1079 — Section 5, 5(1), 6, 8

Citation : (1955) 06 KL CK 0005

Hon'ble Judges : Nandana Menon, J;K. Sankaran, J

Bench : Division Bench

Advocate : T.R. Achutha Warriar and T.N. Subramonia Iyer, for the Appellant; M. Madhavan Nair, for the Respondent

Judgement

Nandana Menon, J.—This is a Plaintiff's appeal. The suit was based upon the following averments. The Plaintiff's whom was the sole Ooralor of Puthiathrikkovil Devaswom alias Manikantapuram in Thirunakkara. It was being managed by a Samudayam nominated by the Plaintiff and later on a Srcekariakkar was being" appointed by the Government to help in the management of the Devaswom. The Plaintiff's predecessor filed a petition before die Travancore Government pointing out the difficulties in the management of the Devaswom affairs.

In pursuance of that the Government took proceedings u/s 5 of the Travancore Hindu Religious Endowments Act, III of 1079, and passed an order of assumption of the Devaswom and its properties on 17-11-1942 (Vrischigom 1118). After that the management was being carried on by die Government Devaswom Department. When the management was entrusted to the Governrment a statement was submitted on behalf of the Plaintiff's illom noting the amounts due to the illom from the Devaswom being expenditure incurred by the whom for the purpose of the Devaswom and due from the Devaswom to the whom.

Contending that the State which assumed the management of the Devaswom did not pay the amount so due the suit was brought. During the pendency of the suit

the rights to the management of the Devaswom passed to the Devaswom Board of Travancore. Hence the Board was impleaded as an additional Defendant. The claim is for the amounts shown in the statement referred to above and subsequent yearly dues which the illom claims by way of marayapanam at the rate of 17 paras of paddy per annum.

The contentions of the State now adopted by the Devaswom Board are to the effect that the management had to be assumed by the Government on account of mismanagement, that the debts mentioned in the plaint are fictitious ones, that the alleged discharge is not true, and that even if there was any payment as alleged there was no liability on the Defendant Devaswom to pay the same. Limitation also was pleaded. On facts as well as on points of law the lower Court found against the Plaintiff and dismissed the suit.

2. What we have first of all to consider is whether the Plaintiff's illom had any right to discharge any debt due from the Devaswom after its assumption by the State and whether the Devaswom is now liable for any such amounts. On behalf of the illom it was argued that the assumption by the Government did not affect the proprietary rights of the illom in the Devaswom and as the Government or the Devaswom Board had only the status of a manager the claim preferred by the illom cannot be questioned by them. So we have to see what exactly is the position of the illom with regard to this Devaswom.

Exhibit I is the copy of the judgment in O.S. 79 of 1083 of the District Munsiff's Court, Kotta-yam, in a suit filed by the Sreekariam of this Devaswom. The nature of the management of the Devaswom is referred to there in para. 6. There it is stated as follows:

From a judgment of 1035 we get a glimpse into the history and constitution of the Devaswom. It appears that one Thekkumkoor Raja founded it and endowed it with sufficient properties and entrusted its business and management to a body consisting of a Sreekariam, a Samudayam and a Karaima. The Sreekariam was appointed by the Sirkar and the Ka-ruimasthanom appears to have been given to certain Warrior houses. These officers were to nominate a person for Samudayasthanom and it was the duty of the Kuttanalloor Nambudripad to sanction the nomination. It is also said that in case the Samudayam misbehaved it was open to the Sreekariam to dismiss the Samudayam and submit to the Nambudripad a nomination for the appointment of another.

Thus it is evident that Kuttanalloor Nambudripad is a controlling authority in the matter of the appointment or dismissal of the Samudayam and unless he expressed his assent to the appointment or dismissal it cannot take effect. Whether the Nambudripad has any Ooraima in the plaint temple it is unnecessary to enquire for the purpose of this case. There is also no necessity for going into the question whether the Plaintiff is the absolute owner of the plaint Devaswom and its properties.

Exhibit U is the copy of the proceedings dated 17th November 1942 with regard

to the assumption of management served on the Plaintiff's illom. The nature of the Devaswom management is referred to there being to the following effect:

The Kuttamasseri Illom in Alwaye Pakuthy has oraima right in the Devaswom and Government have the right to take part in the management. The management of the Devaswom was carried on by a Samudayam appointed by the Kuttamasseri Nambudripad and a Sreekariam appointed by the Government.

Exhibit W is the notice issued directing the Plaintiff's illom to show cause why the Devaswom should not be assumed under the provisions of the Travancore Hindu Religious Endowments Act, III of 1079, "There the management of the illom is referred to as Ooraima of the Puthiyathrikkovil Devaswom. From the above it is clear that there was no endowment by the illom regarding the Devaswom, that the illom always shared the right of management with the Government and the Ooraima right of the illom was of such a restricted kind.

So the illom cannot put forward any right based upon an alleged proprietary interest in the Devaswom. The argument that when a Devaswom is assumed under true provisions of Act III of 1079 the Board which now manages stood only in the capacity of a manager has no force. The Endowments Act only embodies the principles which were recognised and accepted by Courts even before that. As early as in 1064 Courts have dealt with the question of the right of the State to assume Devaswoms; *Sirkar v. Subba Iyer Sessa Iyer*, 8 Ker LR 1 (A), is one such decision of the Royal Court of Final Appeal, Travancore. The following observations there at p. 4 may be referred to:

Any member of a community to which a religious institution belongs, has the power to remove; even an independent hereditary trustee with the aid of the Civil Courts. Reason points to the conclusion that the Government, which is *parens patriae*, must possess higher powers than those of its subjects. We think that the executive, on being satisfied of the existence of strong grounds for its interference, may assume the management of the public trusts, without prejudice to the rights of aggrieved parties to obtain redress for wrongs committed upon them, by an appeal to the judicial tribunals in due course of law. The best interests of public trusts require that the Government should possess this summary power.

If it is obliged to remove by suit every defaulting trustee, the consequence would be very serious to the interests of religious institutions. For instance, if divine service is discontinued in a Hindu shrine held in great veneration, the serious consequence which results there from, cannot from a religious point of view, be removed by any relief granted by Courts; and prompt action would be necessary to secure the continuous performance of service. Who should take such action? None but the Government can be safely entrusted with the power of interference on emergent occasions. The position of the Government demands that every presumption should be made in favour of the fairness of its proceedings. The parties aggrieved by any unwarranted or unjust action of the executive can

obtain redress by civil action.

This decision is referred to in the report regarding objects and reasons of Hindu Religious Endowments Regulation, III of 1079.

3. Now we may go into the relevant provisions Travancore Act, III of 1070. In the concluding paragraph Ext. U, proceedings, regarding assumption, it is stated that action was taken u/s 5 (1) (c) of the Hindu Religious Endowments Act of 1079.. The said provision is as follows:

5 (1). The Sirkar may assume the management of Hindu religious endowments in the cases following:

(c). In cases where die Sirkar has the right to feke part in the management by appointment of certain officers or servants according to existing usages, if the trustees have failed to carry on their duties properly and in the best interests of the institution.

The Act contemplates two modes of interference the State in the management of Devaswoms. is assumption of management as per the provisions of Section 5 (1) and the other is die exercise of supeffi tendency in the management as per Section 5, sub-slay. Then in Section 6 which deals with the preliminary enquiry and report prior to action u/s 5 it is started as follows:

Before assuming or exercising superintendence in the management of any Hindu Religious Endowment under the provisions of this Regulation,, Qur Dewan may require any officer not inferior in rank to that of a Dewan Peishkar to enquire into the fairs of such endowment and submit a full reptile If, on such report and after hearing the parties interested or affected, Our Dewan be satisfied for a condition precedent as set forth in Section 5 exists, he may pass such order for assumption or superintendent enabled by that section.

Here Ext. U shows that die order was one of assumption. When it is a case-of assumption it is that the Ooralan or trustee who was taking pa the management of the Devaswom prior to the of assumption loses all his right in that Dcva from that day. His duties also end. This is plain by Section 8 of the Act which is as follows:

In cases where the Sirkar assumes the management, the institution shall be managed in the "win" manner as Sirkar institutions of the same class, subject to the provisions of any scheme, canons or usages, if any, established by die founder or founders.

So, after the removal of a trustee under the carpools stances pointed out in Section 5 and assumption by the State certainly the said trustee cannot claim diafb State is only a manager who is to account for the collections and hand over the same as directed by him. Dewan of Travancore v. Krishnan Eswaran, 22 Ker LR 54 (B), was cited on behalf of" the Appellant to support his position that die assumption of the Devaswom did not take away the Plaintiff"s illom to put

forward any claim with regard to the collections out of the Devaswom Vpr pertics. The observations relied upon are those para. 8 being as follows:

That the effect of an assumption by Governor of the management of a religious endowment of the provisions of Regulation III of 1079 is not to convert the property of such endowment into Government property, or rents of such endowment of the revenue of the State is clear from the preaml to the Regulation which recites that it is expedient to provide for the better administration of certain Hindu Religious Endowments.

Then reference is made to Section 8 of the Act. Certain these observations do not go to show that the Pip managers of the Devaswom had any right to the Devaswom after assumption. This decision is only to the effect that assumption of a Devasw by the State does not convert the Devaswom into State assets and that they still continue to be trust properties to be managed as such; it is made clear by the observations towards the para, 7 of the same judgment after referring Trav LR 1 (A), being as follows:

This ruling is an authority for the position when the Sirkar assumes the management of the temple properties do not become Government property and that the assumption is an administrative act founded on the position of the Government as *parens patriae*. It so follows that the character of the trust and the endowment attached to it cannot be held to undergo any change from the circumstance of the management being undertaken by the Sirkar in suppression of the hereditary managers or such trust.

4. In the present case, as pointed out in para 9 of the plaint, the order of assumption was on 17th November 1942 corresponding to 2-4-1118 and the control was taken over in Makaram 1118. In the same paragraph it is stated that amounts were paid by the illom in Karikitakam 1119, i.e., long after the assumption order and of handing over of the management to the State.

Money items claimed in the plaint account detailed, as A items 1 to 6 and paddy items as 1 to 4 are on the basis of alleged discharge of the same by the illorn in Karikitakam 1119 to the various employees of the Devaswom and towards advocate's fee for conducting Devaswom cases. The Plaintiff examined as P.W. 1 deposes to this and evidence is adduced on the Plaintiff's side to prove this. Exhibit M is stated to be the copy of a statement regarding these debts of the Devaswom handed over to the State at the time of assumption.

Thus even according to the Plaintiff he paid the amounts long after the assumption by the State. In view of what is pointed out above regarding the position of an erstwhile Ooralan after assumption it is clear that on the date of the alleged payment the Plaintiff's illom had no right to pay these amounts on behalf of the Devaswom then represented by the State. So if any payment was made it was an uncalled for one. No claim can be preferred on the basis of such payment.

There is absolutely no evidence to show that the State had authorised the Plaintiff to discharge any debt of the Devaswom. So the Plaintiff has no cause of action against the Devaswom or the body representing it on the basis of these alleged payments. On that ground itself the claims regarding these items are to be rejected. In view of the above finding though there is no need of going into the authenticity of these claims it may be stated that with regards to their genuineness also there is no ground to think that the lower Court's conclusions are in any way erroneous.

All these items are alleged to have been paid as arrears of wages due to the employees of the Devaswom or repayment of amounts- borrowed from them. The Plaintiff's evidence regarding this cannot be accepted. It is not easy to believe that employees would have advanced amounts as alleged by the Plaintiff.

The receipts produced such as Exs. H to L and I the Plaintiff's illom accounts have been rightly rejected as unreliable by the lower Court. After the Government assumed management it is improbable that the Plaintiff's illom would have paid all these amounts when the parties had a remedy against the Devaswom itself. So the findings of the lower Court on facts as well as on law regarding these claims Cannot be challenged.

5. Then there is the claim for Maragapanam at the rate of 17 paras of paddy per year from the date of assumption, being item 8 in the plaint account. When the Plaintiff was examined he was questioned as to how this right accrued, Ilo says he does not know and then adds that his impression was that it was a prerequisite for signing documents. The Plaintiff's kariattha examined as iJ.W. 5 deposes to this claim but) admits that when the collections of the Devaswom diminished the illom was not getting, it.

He also says in his cross-examination that he does not know what is the basis of this claim and then adds that he had heard that this was the interest on amounts advanced by the illom, to the Devaswom in ancient days. The Plaintiff himself has no such claim. There is no record to prove any such loan to the Devaswom. In the Plaintiff's accounts in certain entries the word used is not Marayam but Narayam, the instrument with which Cadman records are written. When the evidence is like this the lower Court was right in rejecting this claim also. Hence it follows that the Plaintiff has not made out his right to any portion of the claim.

6. In the result, there, is no merit in this appeal and the same is dismissed with costs.