

(1994) 08 MAD CK 0088

In the Madras High Court

Case No : Writ Petition No. 4254 of 1985

N.S. Raja Bather Mudaliar

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 11-08-1994

Acts Referred:

Citation : (1994) 08 MAD CK 0088

Hon'ble Judges : Mishra, J

Bench : Single Bench

Advocate : C. Chinnasamy, for Mr. P.M. Baskaran, for the Petitioner, for the Appellant; Veerapathiran, Government Advocate, on behalf of the Respondents, for the Respondent

Judgement

Mishra, J.—The 2nd respondent herein had removed the petitioner from the office of the hereditary Trustee of a Hindu Temple and its

properties vide order dt.10.5.1953. The petitioner's challenge to the said removal had failed to bring in any favourable result. After removing the

petitioner, the 2nd, respondent had appointed the petitioner's wife as hereditary trustee. Later on, however, the petitioner's wife found it difficult to

manage the affairs of the Trust and the petitioner started assisting her. As advised, to avoid any misunderstanding, the petitioner had applied for

being appointed once again as hereditary Trustee, He was supported in this behalf by his wife, who for all purposes had left the affairs of the

temple for being managed by the petitioner. The same, however, has been declined by the impugned order in G.O.Ms. No. 1348 dt. 5.12.1984 of

the Commercial Taxes and Hindu Religious Endowment Department. The petitioner's revision before the Government has been dismissed. In the

counter filed on behalf of the respondents it is stated that the petitioner was the

hereditary Trustee, certain charges were framed against him under S.45(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951 by the then Deputy Commissioner of the Department and when the charges were found proved, removed from the office. He appealed against the said order and his appeal failed. He preferred a writ petition before this Court (WP.803 of 1954) and that also failed. His wife, however, has been accepted as a hereditary trustee pursuant to a direction by this Court in a petition filed by her in WP. No. 855 of 1958. There was some attempt and it seems another proceeding came by way of a suit when there was a proceeding to remove the petitioner's wife from the office of the hereditary Trustee, but she was ever since continued as a hereditary Trustee. Petitioner has been making attempts to get himself reappointed as the hereditary Trustee and for the said purpose, he made an application before the 2nd respondent. The 2nd respondent has declined, however, to appoint him again as hereditary Trustee, for, a person who has once been removed cannot be reappointed as hereditary Trustee. It however, transpires from the record that petitioner's appointment as hereditary Trustee came under a scheme which has been settled by this Court in CS. No. 656 of 1948 as modified by an order dt. 8.1.1952. His removal, however, was caused on account of his showing in the account books of the temple, expenditure amounting to Rs. 1,706/- on litigation in CS. No. 656 of 1948. His removal for the said act, however, has become final. It is not possible on the facts aforementioned to find fault with the order of the 2nd respondent and that of the Government that he who has once been removed should not be appointed again as the hereditary Trustee.

2. Facts of this case, however, have one peculiar feature. When the petitioner was removed from the office of the hereditary Trustee, his wife succeeded him and she has been appointed as the hereditary Trustee. It can be presumed and it is conceded at the Bar that the right as to the hereditary Trustee for the family of the petitioner has not been denied and that is shown by the appointment of his wife in his place, and in case, any other appointment is required, it shall go to the family, viz. to any son or daughter of the petitioner. While any independent right for the petitioner's wife to act on her own and hold any office including the one, of the hereditary

Trustee of the temple is not disputed and cannot be disputed. It has always been recognised as a practice prevailing in this country that ordinarily womenfolk transact all their business through the male folk and in all affairs concerning them as a member of a family, whether a Hindu family or a Muslim family, they are represented by a male member of the family. It is more true for a wife that she acts as the consort of her husband and does nothing which goes against the interest of her husband. They do or not (sic) husbands are recognised in the society as representing the interests of their wives. Spouses thus compliment each other. The above practice has given to the courts the concept of pardanashin as well as that since womenfolk remain ignorant how the male folk have conducted themselves as respects their interests, they are protected by the rule of non est factum.

3. As regards Idols in temples and their properties, it is the universally recognised rule that an Idol is required to be represented by a guardian and that its position in law is that of a minor. A de jure trustee, who is almost like a guardian of a minor and holds in custody minor's properties, that a trustee holds the managerial position and is made answerable for the belongings of the deity. In the absence of a de jure trustee, even though not recognised in law, de facto in charge of the deity and the properties of the deity is given the status of a trustee called de facto trustee.

4. In Tholappa Jyengar alias Alagar Iyen-gar v. The Executive Officer Sri Kallagar Devasthanam, Alagarkoil, Madurai and others (1993-2-LW 537), speaking for the Bench, on the facts of the said case, I have taken notice of the position in law of a de facto trustee and said as follows :-

We have, however, seen in course of the examination of the materials on the record that the appellants herein have been in possession of the temples evidently not in the capacity of the owners thereof but in some capacity either as a priest (poojari), Shebait (a sort of a trustee) or in some capacity (manager) and maintaining the temples for which purpose, when occasions arose they acted as the custodians and guardians of the deities.

In such cases, in particular, where the origin of a temple is lost in antiquity and it is not possible to ascertain how as certain person came to occupy the position of the manager or a trustee of a religious institution/endowment, the Courts in India have extended a de facto recognition to such

persons" capacity as a sort of a trustee. They (the Courts in India) have taken the view that the right of a Shebait or Poojari is also a right textually

recognized by the Courts and they too, to the extent of the limitations of their trust as a Shebait or Poojari can have, in given circumstances, a right

of inheritance or a hereditary right as it is usually called. A de facto shebait has been called many a time as one who is in possession of the

endowed property and exercises all the functions of a shebait though the legal title is lacking. (See Panchkari Roy Vs. Amode Lal Burman and

Others . A decision of this Court in Subramania Gurukul v. Abhinav Poornapriya A. Srinivasan Rao Sahib (AIR 1940 Mad.617), has recognized

the presence of a de facto trustee in possession and management of a temple to bring a suit for the recovery of the temple lands, A de facto trustee

may not seek a declaration of his right to manage indefinitely the properties but can always seek recognition for the exclusive possession of the

office of the manager of the temple in the sense, that he is not a fugitive who has just hijacked the property of the temple but as manager he has

maintained it.

In the said judgment, the Bench has also expressed that the three external enemies as sastras declare, lust, anger, and greed, make people forget

that all that belonging to God and charities should not be claimed as absolute right. Servient right, that is to say, service to God has, however, been

recognized by Sastras and when not satisfied with such servient rights these appellants, out of greed, claimed absolute ownership. Referring to the

Textual Hindu Law and commenting upon the conduct of the appellants in the said case, the Court has observed:

They committed, no doubt, a sin not only in the eyes of God but also in the eyes of law. Textual Hindu Law has on many occasions commented

"prayaschith" and if the appellants are found to have realized that they as servants of God and trustees of the properties belonging to God served

as trustees only, there will be no serious wrong if such right in them is recognized, particularly, in view of the authority as aforequoted.

5. I have adverted to the position of women, who hitherto were not recognised in many sects of Hindu as persons entitled to offer poojas as

Poojari, Shebait (a sort of trustee) or in some capacity (manager). Discovery of the fact that under the Hindu Texts women enjoy such privileges

by the Courts in India is only of recent vintage. It is difficult to imagine that in discharging her duties as the hereditary trustee, petitioner's wife will not take the help of the petitioner, i.e. her husband. Although the petitioner's removal is final and it is difficult to accord de jure recognition to him as the hereditary trustee, it is a case in which the misconduct that the petitioner had allegedly committed was not one of a misappropriation of the property of the temple. The petitioner had, in fact, kept the 2nd respondent informed about the expenditure on litigation and debited the same in the accounts that he had submitted to the 2nd respondent. He has been assisting his wife in her discharging of the functions of the hereditary trustee. All these together when summed up clearly show that the wife has lent her name as the hereditary trustee, The petitioner has been discharging all functions of the hereditary trustee, but in the name of his wife. De jure status of the wife has provided to the petitioner a de facto status to function as the hereditary trustee. All conflicts in this behalf thus can be resolved by accepting the position that the de jure wife has conferred upon her husband the de facto status and thus performance of any act as the official trustee by the petitioner is an act on behalf of his wife. In other words, respondents, cannot find anything wrong in the conduct of the wife of the petitioner as the hereditary trustee if all functions of the hereditary trustee are discharged regularly and in accordance with law by the petitioner on her behalf. Learned counsel for the respondents have not been able to show any irregularity or illegality in the functioning of the petitioner de facto when his wife is the de jure hereditary trustee. Respondents are obliged to take notice of this and accordingly permit the de jure hereditary trustee to function through the petitioner. With the observations as above, the petition is dismissed. No costs.