

(1966) 09 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No. 735 and 736 of 1963

R. Venkataramani

APPELLANT

Vs

The Madras Hindu Religious and Charitable Endowments
Board

RESPONDENT

Date of Decision : 07-09-1966

Acts Referred:

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

Citation : (1966) 09 MAD CK 0007

Hon'ble Judges : Venkatadri, J

Bench : Single Bench

Advocate : S. Chellaswami, M.R. Krishna Iyer and I.M. Govindan, for the Appellant;

Final Decision : Dismissed

Judgement

Venkatadri, J.—These writ petitions are filed by one Venkataramani claiming to be the hereditary trustee of three temples, namely, Sri

Krishnaswami, Kari Varadarajaswami and Prasanna Venkateswaraswami, situate in the village of West Komaralingam, Udumalpet taluk, to quash

the scheme framed in respect of the management of these temples in O. A. No. 98 of 1955 by the Hindu Religious Endowments Board and to

prohibit the Commissioner of the Board from enforcing the said scheme. Before I dispose of these writ petitions it is necessary for me to state

briefly the facts that led to the filing of these writ petitions. The petitioner is the son of one K.S. Ramaswami Aiyangar, who claimed to be the

hereditary trustee of the above said temples. He alleges that the temple was founded and established by his ancestors 155 years ago. A grant in

respect of the temple was made by the Ruler of Mysore and with regard to the

Kari Varadarajaswami temple the grant was made by the Palayakars of Madurai. The petitioner's ancestors have been in possession and enjoyment of the properties attached to the temples. A patta for the properties was issued in the name of his great grandfather, Narayana Aiyangar, after him to his son and grandson, the grandfather of the petitioner who died in 1951 and thereafter the hereditary trusteeship descended to the petitioner's father and he continued to be the trustee till he was removed by the Endowments Board for mismanagement of the temples. Owing to the mismanagement of the temples scheme proceedings were started under S. 58 of Madras Act XIX of 1961 in O. A. No. 98 of 1955 and notice was given to the petitioner's father on 26th March 1955. He filed his objections on 20th September 1955 and after an enquiry the Deputy Commissioner, Hindu Religious and Charitable Endowments Board, Coimbatore, framed a scheme by his order dated 2nd December 1955. Simultaneously charges were framed against the petitioner's father under S. 45 of the Act and after following the procedure prescribed by the Act, the Deputy Commissioner by his order dated 18th December 1955 removed him from the office of trustee of the temples.

2. Then the petitioner's father started a series of proceedings only with the intention of preventing the implementation of the scheme framed by the Board and depriving him of the possession of the properties belonging to the temple. He filed O. S. No. 6 of 1956 on the file of the Sub Court, Coimbatore, for a declaration that the properties of the temple are his absolute properties only burdened with service or in the alternative to declare that he is the hereditary archaka of the temple entitled to the management of the temples and possession of the properties. In that suit one of the important issues framed was "Whether the plaintiff is a hereditary Archaka trustee of the temple?" The learned trial Judge gave a finding to the following effect:

Plaintiff's forefathers and the plaintiff have been the hereditary Archaka trustees of the temple. It was on this ground that the temple was declared as an excepted temple in 1941.

3. Evidently, the reference is to the Board's order dated 7th November, 1941, wherein it was observed:

.....the petitioner and his ancestors had been managing the temples as trustees

and that therefore the temples are excepted temples as defined in Madras Act II of 1927.

4. Nevertheless, the suit was dismissed on the ground that the properties really belonged to the temples and therefore the plaintiff cannot claim to be in possession of the same. Against that decree he preferred A. S. No. 240 of 1958. The only question raised before Kailasam, J. was whether the properties in suit belonged to the plaintiff absolutely or only burdened with service. The learned Judge negatived this contention and came to the conclusion that the grant was not a personal Inam to the plaintiff but that the properties did really belong to the temples. Hence, he dismissed the appeal. Thereupon the plaintiff filed L. P. A. No. 110 of 1961 and the Bench consisting of Ramachandra Iyer, C. J. and Anantanarayanan, J., confirmed the finding of Kailasam, J. and dismissed the appeal on 23rd October, 1962. Soon after the dismissal of that appeal the petitioner rushed to this Court with the above two writ petitions for the reliefs mentioned above. The main ground urged by the petitioner is that his rights as a hereditary trustee is not affected and that in the scheme framed by the Endowments Board no provision has been made for the management or possession of the temple properties and that therefore the scheme is not binding upon him. But this contention is met by the learned Counsel appearing for the State that it has not been declared that the petitioner is not a hereditary trustee, that no order has been passed against him and hence he is not an aggrieved party and that the scheme will be and would be valid at the time of its framing, since the petitioner's father had been removed from the trusteeship on account of his mismanagement of the properties.

5. Therefore, the only question that has to be considered by me in this case is whether the scheme would be binding on the petitioner. It has been held in *Narayana Nambudripad v. State of Madras* I. L. R. 1955 Mad. 356 at 385 = 66 L.W. 947:

The nature and incidents of the office of hereditary trusteeship are well settled by authority. It descends like partible property on the heirs of the trustees. Even females will be entitled to the office if they happen to succeed as heirs.

6. In *Sankaran Nair v. Govindan Ntambiar* (1955) 1 M. L. J. 243 = 67 L.W. 26,

Balakrishna Aiyar, J. held that hereditary trusteeship is property within the meaning of Art. 19 (1) (f) of the Constitution and if there is an encroachment of the rights of citizens as hereditary trustees to manage a temple, they can be granted appropriate relief and that where a scheme framed by the Hindu Religious Endowments Board and modified by the District Court reduces the hereditary trustees to the position of dummies, the provisions of such a scheme are void under Art. 19 (1) (f) of the Constitution. Therefore, it is clear from the principles laid down by these decisions that if the petitioner is a hereditary trustee and if there is no provision in the scheme sought to be enforced for the management of the temples the (petitioner) has got every right to say that the scheme would not be binding on him.

7. But then the question would arise whether the petitioner has established that he is a hereditary trustee in respect of these temples. Learned

Counsel for the State contended before me that the petitioner has not established that he is a hereditary trustee and that it is for him to establish

such a right by taking appropriate proceedings. Under the Hindu Religious and Charitable Endowments Act and that as long as he did not get such

a declaration, he has no right in these writ petitions to question the propriety of the scheme framed by the Board in 1955. It is therefore necessary

for me to consider whether there is any material placed before me for holding that the petitioner has prima facie made out that he is a hereditary

trustee of these temples. As early as in the year 1941, when an application under S. 84 of Madras Act II of 1927 was filed for a declaration that

the temples are excepted temples, the Commissioner of the Endowments Board gave finding that since the petitioner therein (Sami Aiyangar) and

his ancestor had been managing the temple as trustees the temples are excepted temples as defined in Madras Act II of 1927. Similarly, when the

petitioner's father filed the suit O. S. No. 6 of 1956 and an issue was framed whether he is the hereditary Archaka trustee of the temple, the

finding was that "the plaintiff's forefathers and the plaintiff have been the hereditary Archaka trustees of the temple." But what the learned Counsel

for the State contended before me is that this finding was unnecessary for the disposal of the suit because the question that was concerned in that

suit was whether the suit temples were excepted temples or not. But the learned

Counsel for the petitioner brought to my notice the decision in

Munuswami Mudali v. Kanniah Naidu (1954) 2 M. L. J. Andh. H.C. 42 at 43 wherein Chandra Reddi, J. (as be then was) observed :

....The decision of the Beard that the temple was an "excepted" one could only be based either on the finding that the trusteeship of these

institutions was hereditary or that the rule of succession was provided for that office.

Therefore, on the materials placed before me, it looks as if the petitioner has prima facie established that he is the hereditary trustee in respect of

these temples. But the question that would still remain to be considered is whether the petitioner is entitled to ask for the quashing of the scheme

framed by the Board, when his father was removed from trusteeship on account of his mismanagement. At the time when the scheme was framed,

the Board had got jurisdiction to frame it. An executive Officer was appointed to take possession of the temples and their properties. The

petitioner cannot now in these proceedings question the validity of the said scheme. It is for him to take appropriate proceedings to protect his

rights and therefore as long as the scheme was valid at the time when it was framed by the Board, the petitioner cannot attack the same in these

proceedings. Of course, the scheme as it is may not bind him. With these observations, these writ petitions are dismissed. No order as to costs.