

(1967) 08 MAD CK 0063
In the Madras High Court
Case No : Writ Petition 568 of 1967

Rm. Arunachalam Chettiar

APPELLANT

Vs

The Area Committee, H.R. and C.E., Madurai

RESPONDENT

Date of Decision : 17-08-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (1967) 08 MAD CK 0063

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Advocate : K. Parasaran, for the Appellant; T.R. Srinivasan and S.T. Ramalingam for the Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Kailasam, J.—The petition is filed by the hereditary trustee of Sri Swayamprakasa Iswarar, alias Thanthoneeswarar and Soundaranayaki

Amman Temple at Illuppakudi, Tirupattur Taluk, Ramanathapuram District, for the issue of a writ of certiorari calling for the records of the Area

Committee communicated in the proceedings of the Assistant Commissioner dated 6th February 1967 appointing non-hereditary trustees to the

temple and to quash the said order. For a proper administration of the Devasthanam, a Scheme was framed by this Court in A.S. Nos. 300, 491,

492 and 743 of 1951. The scheme provided that all the endowments and properties and its affairs shall vest in a Board of three trustees consisting

of one hereditary trustee representing AR.L. family of Devakottai, and two non-hereditary trustees to be appointed by the Area Committee,

Ramanathapuram District, from among the non AR.L. Illupakudi Nagarathars of the thirty-three villages owing allegiance to the temple. After the

coming into force of Act 22 of 1959, the petitioner raised an objection to the appointment of non-hereditary trustees by the Area Committee. But

the objection was rejected on the ground that his plea was time-barred and that the two non-hereditary trustees had already been appointed and

taken charge. The posts of the two non-hereditary trustees fell vacant recently and the petitioner represented to the Area Committee that it had no

power to appoint non-hereditary trustees after the coming into force of Act 22 of 1959. On 6th February 1967, the Area Committee passed

orders rejecting the contention of the petitioner and deciding to appoint non-hereditary trustees for the temple. A meeting was fixed for

appointment of non-hereditary trustees on 21st March 1967 and hence this writ petition.

2. The power of the Area Committee to appoint trustees is conferred under S. 49 (1) of the Act which provides that:

in the case of any religious institution which is not included in the list published under S. 46 and is not a religious institution notified or deemed to

have been notified under Chapter VI of this Act, the Area Committee shall have the same power to appoint trustees as is vested in the

Commissioner in the case of a religious institution referred to in sub-S. (1) of S. 47.

3. It is not disputed that the religious institution is one which falls within the jurisdiction of the Area Committee. Now the contention is that the Area

Committee can exercise only the powers conferred on the Commissioner under S. 47 (1), which is the appointment of a Board of Trustees for

religious institutions which have no hereditary trustees. As S. 47 (1) is confined in its operation to institutions not having a hereditary trustee, it is

submitted that the Area Committee has no power to appoint non-hereditary trustees in the case of institutions having hereditary trustees. The

provisions of the scheme which provide for the appointment of two non-hereditary trustees is challenged as being contrary to the provisions of S.

118 (2) (b) and as such invalid. S. 118 (2) (a) provides that notwithstanding the repeal of the Madras Hindu Religious and Charitable Endowments

Act, 1951, by sub-S. (1), all schemes settled or deemed to have been settled, in so far as they are not inconsistent with the Act, be deemed to

have been settled or done by the appropriate authority under the corresponding provisions of the Act and shall have effect accordingly. Under this

sub-clause the scheme framed under the 1951 Act is preserved and is deemed to have been framed under the corresponding provision of the new

Act. But Sub-Clause (b) to S. 118 (2) provides that:½

If any provision contained in any scheme settled or deemed to have been settled under the Madras Hindu Religious Endowments Act, 1926

Madras Act II of 1927, including a scheme settled under S. 92 of the Code of Civil Procedure, 1908 (Central Act V of 1908, and in force

immediately before the 30th September 1951 is repugnant to any provision contained in this Act or the rules made thereunder, the latter provision

shall prevail, and the former provision shall, to the extent of the repugnancy, be void.

4. The argument in short is that under the new Act, Act 22 of 1959, the Area Committee has no power to appoint non-hereditary trustees and the

provision in the scheme which provides for the appointment of non-hereditary trustees in the case of temples having hereditary trustees will be

repugnant to the provisions of the new Act.

5. The provisions of S. 49 of Act 22 of 1959 were considered by this court in Valliammal v. Area Committee for Madras City 75 L.W. 36. The

court on an interpretation of S. 47 (1) and S. 49 of Act 22 of 1959 came to the conclusion that the Area Committee is not vested with the power

of appointing non-hereditary trustees to a non-listed temple. Construing the proviso to S. 49, the Court held that the proviso enabled the Area

Committee to appoint a single trustee, as but for the proviso, the appointment will have to be of not less than three and not more than five persons.

As S. 49 expressly states that the Area Committee would have the same power as the Commissioner under S. 47 (1), and as the power of the

Commissioner under S. 47 (2) is not included, it was held that the Area Committee is not vested with the power of appointing non-hereditary

trustees in cases of temple having hereditary trustees. Mr. T.R. Srinivasan, learned counsel for the respondent, submitted that though the wording

of S. 49 (1) confers on the Area Committee only the power of the Commissioner under S. 47 (1), a reading of Ss. 47, 48 and 49 would make it

clear that the intention of the legislature was that the Area Committee should also exercise the power of appointing non-hereditary trustees to

temples where there are hereditary trustees. The learned counsel pointed out the

proviso to S. 49 which is as follows:

Provided that the Area Committee may, in the case of any institution which has no hereditary trustee, appoint a single trustee.

6. He submitted that the proviso implies that the Area Committee would also have the power to appoint trustees in cases where there are no

hereditary trustees. He further referred to S. 49 (2) and submitted that the reference to the provisions of Sub-S. (3) to S. 47 and S. 48 as

applicable to trustees appointed by the Area Committee would imply that the intention of the legislature was that the Area Committee should be

empowered to appoint non-hereditary Trustees in the case of temples having hereditary trustees. S. 47 (3) is in two parts. The first part relates to a

trustee appointed under Sub-S. (1) and the second part to every non-hereditary trustee appointed under Sub-S. (2). On a strict construction, S.

47 (3) may not be applicable to S. 49 (2) at all because S. 47 (3) is not made applicable to orders of the Area Committee under S. 49 (1) and the

second part will not be applicable as the Area Committee has no power under S. 47 (2) to appoint a non-hereditary trustee. So also in S. 48,

while Sub-S. (1) relates to orders passed under S. 47 (1), Sub-S. (2) relates to cases of religious institutions not covered under S. 47 (1). The

proviso to S. 48 (2) refers to a religious institution having one hereditary trustee and having more than one hereditary trustee. The submission of the

learned counsel is that if the intention of the legislature was that the Area Committee had no power to appoint non-hereditary trustees to institutions

with hereditary trustees, the proviso to S. 49 (1) Sub-S. (2) of S. 49, S. 47 (3) and S. 48 (2) would not have been drafted in the manner in which

they have been done. There is considerable force in the contention of the learned counsel for the petitioner. Even if the contention is accepted the

Sections as drafted have failed to give effect to such an intention. On a strict construction of S. 49 (1) which confers only the power under S. 47

(1) and excludes the power under S. 47 (2), the conclusion arrived at by this court in the decision referred to cannot be questioned. But I am

unable to resist a feeling that there had been an omission in the drafting by exclusion of Sub-S. (2) of S. 47 from S. 49 (1) of the Act.

7. If it is held that the Area Committee has no power to appoint non-hereditary trustees in the case of institutions with hereditary trustees, then the

effect of S. 118 (2) (b) of the Act will have to be considered. The sub-section provides that if any provision contained in a scheme settled under

the earlier Act is repugnant to any provision contained in the new Act, the provision under the new Act shall prevail and the former provision to the

extent of repugnancy shall be void. If the appointment of non-hereditary trustees was beyond the powers of the Area Committee, the provision in

the scheme empowering the Area Committee to appoint non-hereditary trustees in pursuance of the scheme would not be consistent. In Valliamma

v. Area Committee for Madras City 75 L.W. 36, this court held that the Area Committee would certainly have the power to appoint non-

hereditary trustees under the clause in the scheme which was under consideration in that case. This Court was of the view that S. 118 is of no

assistance. It is submitted by the learned counsel for the petitioner that the said decision had not considered the effect of the provisions of S. 118

and therefore needed reconsideration. This contention cannot be rejected as baseless, as already pointed out, if it is accepted that the scheme of

the Act is that the Area Committee is not empowered to appoint non-hereditary trustees in religious institutions having hereditary trustees, any

provision in the scheme enabling such appointment by the Area Committee would not be consistent whether it can be said to be repugnant or not.

If this contention is accepted, that the schemes passed under the earlier Act providing for appointment of non-hereditary trustees will not be valid

this view will also be not in accordance with the decision in Valliamma v. Area Committee for Madras. City 75 L.W. 36. In the circumstances I am

of the view that it is desirable that the petition is disposed of by a Bench of this Court.

8. The matter will be referred to a Division Bench.

[.....16-6-1971 : Per Hon. Chief Justice, sitting with Hon. Mr. Justice Raghavan.) In pursuance of the aforesaid reference, this writ petition

coming on for hearing on this day in the presence of Mr. S. Rajaram, Advocate for the petitioner and of Mr. T.R. Srinivasan and Advocate for the

first respondent and of the Government Pleader on behalf of the first respondent and the said advocate for the petitioner representing to the court

that the matter in dispute has been settled out of Court and requesting the leave of the Court to withdraw this petition, it is ordered that this petition

be and hereby is dismissed and it is further ordered that there be no costs in this writ petition.