

(1976) 02 MAD CK 0051
In the Madras High Court
Case No : W.A. No. 162 of 1973

S. Chockalingam Poosari and Others	Vs	APPELLANT
S.V. Ramswami Poosari and Others		RESPONDENT

Date of Decision : 05-02-1976

Acts Referred:

Citation : (1976) 02 MAD CK 0051

Hon'ble Judges : Veeraswami, C.J.;Suryamurthy, J

Bench : Division Bench

Advocate : R. Krishnamurthy, D. Raju and A.R. Lakshmanan, for the Appellant;
N. Sivamani and T.P. Radhakrishnan, for the Respondent

Judgement

Veeraswami, C.J.—The appeal is from an order of Ramaprasada Rao, J. in Ramasami Poosari v. H.R. and C.E. Madurai 1973-I M.L.J. 320=86 L.W. 271. The Mariamman Temple, Irukkangudi, Sattur taluk, is governed by a scheme of management settled by the Hindu Religious and Charitable Endowments Board under Madras Act II of 1927. That was done in O.A. No. 160 of 1934 on its file. Under the scheme, the temple and its properties should be administered and managed by the hereditary trustees as had been done till then. They may nominate any one of them to be the managing trustee for each fasli year. If there was failure to nominate, the vacancy should be filled up by nomination by the Hindu Religious and Charitable Endowments Board. A Manager also is required to be appointed on a salary basis and his duties have been prescribed in the scheme. The duties of the trustees and also of the Managing Trustee have been specified therein. The Board reserved to itself the power to issue directions regarding the internal management of the temple and its endowments. The petitioners before the learned Judge, two of the hereditary trustees, addressed a letter to the Commissioner, Hindu Religious and Charitable Endowments Board, stating that the first appellant Chockalinga Poosari and six others who are also appellants in this court were disqualified to be trustees since they did not attend three consecutive meetings of the Trust Board and requesting that the meeting

of the Trust Board for the election of the Chairman should be confined to only three trustees, namely, Muthurama, Subbiah and Seenisami. The Commissioner by a communication dated 19th October 1972 informed the respondent, that, in his opinion, the disqualification mentioned in S.26(6) of Madras Act 22 of 1959 had no application to hereditary trustees and therefore, there was no case for interference. Ramaprasada Rao, J. quashed that order as he considered that there was nothing in S.26(6) to suggest that it did not include also a Board of Trustees consisting of hereditary trustees. The learned Judge referred to Ss.47 and 53(2)(k), but still found that S.26(6) should not be read to restrict it to a Board of Trustees other than hereditary trustees. On that view, he stated that the provisions did not apply to hereditary trustees as well in the Board of Trustees.

2. With due respect, we are unable to agree with the view. The scheme of the Act does make a distinction between a trustee and a hereditary trustee. The Act defines both the expressions. A "trustee", says S.6(22) means any person or body by whatever designation known in whom or in which the administration of a religious institution is vested, and includes any person or body who or which is liable as if such person or body were a trustee. It can, therefore, be taken that under the scheme settled by the Hindu Religious and Charitable Endowments Board, the hereditary trustees, in whom the management vested are trustees "A hereditary trustee" is defined by S.6(11) to mean the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force. Unlike a non-hereditary trustee, a hereditary trustees owes his position not through any appointment by any authority. He owes his office by virtue of his succession which devolves on him by hereditary right. The succession may also be regulated by usage or may have been provided for by the founder, If this is borne in mind, it will be at once clear that a hereditary trustee in a Board of Trustees will not cease to hold office merely because he absents himself from three consecutive meetings of such Board of Trustees within a period of two months. To hold that he so ceased would amount to extinguishing his right of succession and to continue his office by reason of his hereditary right. S.26 itself draws a distinction between a hereditary trustee and a non-hereditary trustee and this distinction also is to be found in other sections which we will presently refer to.

3. S.26(1)(b) enables a hereditary trustee who is below 25 years of age to hold office, while normally a trustee should be 25 or more years of age. Sub-S.(4) of that section makes a difference in the case of hereditary trustee, who, if he becomes subject to any of the disqualifications mentioned in Sub-S.(1), the Deputy Commissioner may supersede the trustee. This is a specific power given to the Deputy Commissioner. S.47 relates to appointment of a Board of Trustees. As amended by Madras Act 50 of 1974, the Section provides--

...Where a religious institution which included in the list published under S.46 or

in respect of which the Assistant Commissioner has no power to appoint trustees has no hereditary trustee, the Commissioner shall constitute a Board of Trustees consisting of not less than three and not more than five persons appointed by him, of whom one shall be a member of the scheduled Castes or Scheduled tribes....

The section as it stood before the amendment, by sub-sec.(1) stated--

Where a religious institution included in the list published under S.46 or in respect of which the Assistant Commissioner has no power to appoint trustees has no hereditary trustee, the Commissioner shall constitute a Board of Trustees consisting of not less than three and not more than five persons appointed by him....

Where an institution has hereditary trustee or trustees, the Commissioner's appointment of other trustees is circumscribed namely, that he can appoint other trustees only after notice to the hereditary trustees and after holding such enquiry as he deems adequate and after such enquiry he considers for reasons to be recorded that the affairs of the institution were not likely to be managed by the hereditary trustee or trustees, it is only then the Commissioner may appoint non-hereditary trustees. S.53(2) deals with the power of the appropriate authority to suspend, remove or dismiss any trustee of a religious institution. Various grounds are enumerated to that Section. Clause (k) of S.53(2) contains the ground "absents himself from three consecutive meetings of the trustees". Even here, to our minds, it is doubtful whether even the appropriate authority in exercise of his power under S.53(2)(k) can suspend, remove or dismiss a hereditary trustee on the ground that he had absented himself from three consecutive meetings of the trustees. But we are not deciding this question.

4. The provisions that we have just now referred to point to the fact that the Act while defining a "trustee" as one in whom the administration of a religious institution is vested, a "hereditary trustee" is differentiated from him with reference to the origin of his right to hold the office, which is not by appointment but by succession by hereditary right or by usage or founder's provision. Having regard to this speciality with reference to hereditary trustee, a Board of trustees can be constituted by the Commissioner for a non-listed temple, which is to say a temple, which does not have any hereditary trustee without any distinction, but for a temple having a hereditary trustee, he can exercise power of appointment of other trustees only after following the procedure laid down there. That shows the policy of the law as found in the Act to respect the right of a hereditary trustee to manage the institution itself. The same thing appears also from Ss.26(1)(b) and 26(4). So, while the expression "Board of Trustees" in S.26(6) may apply to a Board of Trustees constituted under S.47(1) and (2) or in exercise of the power by the Hindu Religious and Charitable Endowments Board or the Commissioner as the case may be, to settle a scheme of management, when the Board consists of hereditary trustees, we are of the opinion that Sub-sec.(6) of S.26 will have no application to such hereditary trustees. That was the

view rightly taken by the commissioner himself. Accordingly, we allow the appeal.
No costs.