

**(1960) 06 KL CK 0047**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 297 of 1959**

Seetharama Iyer and Others

APPELLANT

Vs

Dy. Commr. for Hindu Religious and Charitable Endowments

RESPONDENT

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**Date of Decision :** 14-06-1960

**Acts Referred:**

**Citation :** (1960) KLJ 983

**Hon'ble Judges :** S. Velu Pillai, J

**Bench :** Single Bench

**Advocate :** T.S. Venkiteswara Iyer and R.C. Plappilly, for the Appellant;

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## Judgement

Velu Pillai, J.—This petition is by the Kavussery Grama Samootham, composed of the Brahmin residents of six villages, to quash a notice, Ext. P. 8, issued by the respondent, who is the Deputy Commissioner for the Hindu Religious and Charitable Endowments (Administration) Department, Kozhikode, u/s 58(1) of the Madras Hindu Religious and Charitable Endowments Act, 1951, which may be referred to hereafter as the "Act." The notice is in respect of a Shiva temple, to be referred to simply, as the temple, situated in one of the six villages, and purports, to state, that "the Deputy Commissioner has reason to believe, that the endowments of the above-said temple are not properly managed and he is of opinion that a scheme of administration should be settled for the better management of the said temple," to appoint a "fit person" to take charge of all properties of the temple and documents and records relating to it from the trustees, and to fix a date for enquiry. The petitioner's case is, that with the aid of contributions which were being made to the petitioner by the residents of the villages, immovable properties were acquired in the name of and for the petitioner, that its funds, including the income of the properties so acquired, are being applied for various purposes, religious as well as secular, and in particular, for meeting the expenses for managing the temple, and that apart from such properties and funds, the temple itself has no assets of its own. Though Ext. P. 8 does not specify what the properties of the temple are, to which it is intended to

apply, the counter-affidavit of the respondent has made it clear, that "Ext. P. 8 was issued on the basis, that the Samooham Shiva Temple is a public religious institution, and the properties of the Samooham are endowments of the said temple." According to the petitioner, the respondent's jurisdiction u/s 58(1) of the Act can extend only to properties which belong to the temple and not to those of the petitioner. This position was not and could not be challenged; the question between the parties in the last analysis is, therefore, one of title to the properties. On behalf of the petitioner it was contended, that Section 58(1) can come into play only after a precedent determination of the above question u/s 57(c) and (f) of the Act, while the learned Government Pleader has contended, that such determination can and ought to be made only u/s 58(4) of the Act, as ancillary to, or as part of the framing of a scheme. Section 57(c) and the material part of section 57(f) are as follows:--

Section 57, "Subject to the rights of suit or appeal hereinafter provided, the Deputy Commissioner shall have power to inquire into and decide the following disputes and matters:--"

(c) "whether any property or money is a religious endowment".

(f) "whether.....any property or money has been given wholly or partly for religious or secular uses

and Section 58(4) provides:--

The Deputy Commissioner may determine what the properties of the religious institution are and append to the scheme a schedule containing a list of such properties:

Provided that such determination shall not affect the rights of persons who are in hostile possession of any of the said properties

It seems to me, that there is an essential distinction between the enquiry contemplated by Section 57(c) and (f) and that contemplated by Section 58(4).

As contended, the latter can be only as ancillary to the framing of a scheme, while the former can be independent of it. The issue u/s 57(c) is, whether any property or money is a "religious endowment" and u/s 57(f) is, whether any property or money has been given for religious or secular uses, while the issue u/s 58(1) is, whether a scheme is necessary to be framed for the proper administration of a particular "religious institution" and u/s 58(4) is, what its properties are. A "religious endowment" and an "endowment" both mean the same thing under the Act, for they are defined in Section 6(14) of the Act as follows:--

religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity, and includes the institution concerned and also the

premises thereof, but does not include gifts of property made as personal gifts to the archaka, service-holder or other employee of a religious institution.

while "a religious institution" is defined by Section 6(15) of the Act, as meaning "a math, temple.". The initiation of a proceeding for the purpose of framing a scheme for the temple, can only be u/s 58(1), which applies in terms to a "religious institution". But Ext. P. 8 and the averment in the counter-affidavit extracted above, have made use of the term "endowment" and relying upon this, it was urged for the petitioner, that the enquiry can be held only u/s 57(c), and as a preliminary to the action, if any, to be taken u/s 58(1) for the framing of a scheme. The term "endowment", as defined, has also reference to property belonging to, or given or endowed for the support of a temple, but I am of the view, that the mere use of the term as stated, cannot oust the operation of Section 58(4). The question in the present case is not so much, whether any property or money is a religious endowment within the meaning of Section 57(c), as whether a scheme for the better management of the temple must be framed and if so, what are the properties to be brought within the operation of the scheme. I consider, that an enquiry of the latter kind falls squarely within the scope of section 58(4) rather than of Section 57(c) or 57(f) of the Act. I hold, that Section 58(4) is a special provision applicable to an enquiry as to what are the properties of a temple, in respect of which a scheme is considered necessary to be framed.

2. The learned counsel for the petitioner referred to decided cases on the subject of what constitutes an "endowment"; they are irrelevant for the disposal of this petition. The learned counsel also relied on other cases which have held, that jurisdictional facts must first be determined, before assuming jurisdiction; these again have no bearing, as in my opinion, the question here has to be investigated and decided as part of the proceeding u/s 58 of the Act. *Ram Saroop Dasji Vs. S.P. Sahi*, Special Officer-in-charge of The Hindu Religious Trusts and Others, also relied on, was decided on the provisions of the Bihar Hindu Religious Trusts Act, 1950 (Act I of 1951), in which, there is no provision corresponding to Sections 58(1) and 58(4) of the Act, but only a provision which is perhaps analogous to Section 57 of the Act, and has no application.

3. I therefore come to the conclusion, that it is not only open to the petitioner, but that the petitioner is bound to raise the question of title to the properties, in answer to the notice issued to it u/s 58(1); the notice Ext. P. 8 is valid u/s 58(1), and to the extent it permits an enquiry u/s 58(4). It is certainly not competent to the Deputy Commissioner to authorise the "fit person" to take charge of the properties which are in dispute. Accordingly, Ext. P. 8 is quashed to the extent it authorises the "fit person" appointed under it, to take possession of the properties, movable or immovable, the ownership of which is claimed by the petitioner, but in other respects, Ext. P. 8 will stand. The petition is decided as above, No costs.