
(1924) 01 MAD CK 0066
In the Madras High Court

Setu Iyer

APPELLANT

Vs

Sundaram Pillai and Another

RESPONDENT

Date of Decision : 31-01-1924

Acts Referred:

Citation : AIR 1925 Mad 175

Judgement

1. In this case a vacancy occurred in the trusteeship of the Perur temple on the 29th of August, 1921 and a petition was filed on the 7th of April 1922, alleging that the Devasthanam Committee had not filled up the vacancy in accordance with the schema framed for the temple and asking the Court to fill up that vacancy.

2. There are two questions that arise here; firstly, was the vacancy filled up by the Devasthanam Committee and secondly, is the order of the Court calling for nominations to the vacancy a legal order in view of the allegation that the notice sent to the Committee under Clause 4(b) of the scheme was not proper?

3. On the first question we have the various resolutions of the Committee. On the 19th of September, 1921 the Committee were of opinion that one Subbaraya Goundan should be appointed trustee and it was resolved that he be requested to report his willingness to the Committee. Subbaraya Goundan replied to that resolution on the 4th of October, 1921 stating:

I learn that the members of the committee are unanimously of opinion that I should be appointed dharmakarta of the Perur Devasthanam if all the members resolve unanimously like that, I consent to accept the office and do the work.

4. It is clear that this is not a complete acceptance, but one conditional on all the members being unanimously in favour of his appointment. At the meeting at which he was nominated there were only five members of the Committee present. After he received this letter, it appears that the Committee held meetings in March, April, May and July 1922, and at all these meetings one of the subjects for discussion was the appointment of a permanent trustee for the Perur Devasthanam. In view of this prolonged consideration of the matter and the

failure to send a reply to Mr. Subbaraya Goundan stating that the members were unanimous, it cannot be held that he was definitely appointed. His acceptance was subject to a condition which apparently was not fulfilled. He was finally given another notice of appointment on the 18th of September, 1922, which he accepted on the 19th of September, 1922, but by this time more than two months had elapsed since the date of the vacancy and the present petition for the appointment of trustee by Court was pending. It is quite clear that at the time the petition was filed the vacancy had not been filled up.

The further question arises as to whether inadequate notice was sent to the Devasthanam Committee under Clause 4(b) of the scheme. It is not disputed that notices of the petition were served on the members of the Committee and one notice was affixed to the temple itself; but it is argued that under Clause 4(b) the notice should have specifically stated that, unless the Committee made the appointment within one month from the date of service the Court would proceed to fill up the vacancy. The important portion of the clause reads as follows:

If the vacancy is not filled up as aforesaid within two months after it has occurred, the Court may, at the instance of two or more worshippers, appoint a trustee and fill up the vacancy, if after notice to the Committee, the vacancy is not filled up within one month from the date of service of notice.

The language is somewhat ambiguous, for it does not specifically state who is to serve the notice, or at what precise time Court is to take action. It would, however, appear from the very general terms used that a notice might be given by the Court or by two or more worshippers for the condition is merely that notice shall go to the Committee, the notice bringing to their knowledge that the Court was asked to perform its functions under the provisions of Clause 4(6) of scheme, one of these provisions being that the Committee is given a locus penitentiae, i.e., to appoint a trustee, within one month of the receipt of notice. Two notices, as a matter of fact, were sent, the more definite one being that in I.A. No. 284 of 1922 which, runs as follows:

Whereas the petitioners above named have made application to this Court that a trustee should be appointed in accordance with the scheme decree therein, you are warned to appear.

5. The only clause in the scheme which relates to the appointment of a trustee by the Court is 4(b), and a reference to the petition itself of which this was a notice-shows that the petitioners prayed

to issue notice to respondents Nos. 1 and 2 that an application has been made to this Court to fill up the vacancy of the Perur trustee office under the terms of the scheme in O.S. No. 1 of 1916.

6. This clearly puts the Committee members upon notice that they had committed default and that the Court would, in accordance with Clause 4(b) proceed to take action. The suggestion that the notice must be more specific is

rebutted by the very general language of the clause, the words being merely "after notice to the Committee." We think that all that is, meant is that the Committee must have substantial notice that the provisions of Clause 4(b) were sought to be enforced in consequence of their default, and we think: that the notices issued in this case do give such substantial notice.

7. This suffices to dispose of this appeal and we are of opinion that the Subordinate Judge's order is right and dismiss this appeal with costs.

8. A preliminary objection was taken that no appeal lies in this case and there is direct authority for that proposition in *Ranqanatha Thathachariar v. Krishnaswami Thathachariar* AIR 1924 Mad. 369. While we are inclined to agree with that decision, we think it is unnecessary to express an opinion as the appeal has been argued and decided on its merits. A revision petition has also been filed as a precautionary measure. The revision petition also is dismissed but without costs.