
(1937) 02 MAD CK 0020
In the Madras High Court

S.N.T. Kumaraswami Chettiar

APPELLANT

Vs

Board of Commissioners for Hindu Religious Endowments and
Others

RESPONDENT

Date of Decision : 19-02-1937

Acts Referred:

Citation : AIR 1937 Mad 940 : (1937) 46 LW 528

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—In this petition, I am asked to revise an order of the District Judge of Trichinopoly dismissing an application u/s 84,

Clause 2, Religious Endowments Act. The dispute between the parties relates to a communal temple. The petitioners here seek to maintain that no

particular families have any hereditary right to the trusteeship in connexion with the said temple, and that it is merely subject to the general

management of the community resident in the village. The respondents have all along been maintaining that they have the hereditary right of

management. When the matter was before the Endowments Board, the respondentia proceeded further and claimed that it was a private temple.

The Endowments Board rejected that claim; but it was of opinion that the present trustees who represented three families have been managing the

temple hereditarily. The Board accordingly held that the temple was an "excepted" temple. The present petitioners filed an application u/s 84,

Clause 2 to set aside the order of the Board in so far as it held that the suit temple was an excepted temple, because that conclusion was rested on

the finding that the respondents were hereditary trustees. For instance, in para. 6 sub. para. (j) of the petition in the lower Court, the petitioners say

that the temple being public or communal, controlled by the villagers must have been treated to be a non-excepted temple, negating the exclusive

hereditary claims of management by the respondents 2 to 4. The learned District Judge has dismissed the petition more on what he thought to be

an objection to the locus standi of the petitioners than on the merits of the case, though there are some observations in his order which may be read

as expressing his views on the merits.

2. It is not clear that the learned Judge sufficiently realized the implication of the change effected by the Amending Act of 1930 in the language of

Section 84, Clause 2. Prior to the amendment, the right to apply to the Court under that section was given only to the trustee affected by the

decision and that would have implied that the rights of other people were left unaffected and could be agitated in an independent suit. But by the

amendment of 1930, the right to apply u/s 84, Clause 2 is given to any person affected by the decision under Clause (1) of that section. I do not

wish to decide whether the effect of this change is to deprive persons other than trustees of their right to resort to a regular suit to establish any

claim inconsistent with the order of the Board; but it must be said that having regard to the fact that the Legislature has deliberately widened the

class of people entitled to apply u/s 84, Clause 2, such a contention is possible. I cannot therefore agree that the petitioners have no locus standi to

apply u/s 84, Clause 2 or that their only remedy is by an independent suit.

3. The learned District Judge next says that the dispute between the parties really is as to who is entitled to be appointed trustees. Whether this is

what was in their mind or not is not a matter for the Court to consider. We can only deal with the case stated by them in the pleadings. According

to the pleadings, the petitioners have certainly been more consistent in putting forward their case than the respondents. The petitioners claim that it

is a communal temple subject to the control of the village community, and they are not asking that they should be appointed or recognized as

hereditary trustees. It would not therefore be fair to interpret their petition as merely raising a dispute as to who is to be the hereditary trustee, as

though it was common ground that one or another of the people in the village was the hereditary trustee of the temple. Nor does it seem to me right

to say that even on the allegations in the petition, the temple will anyhow be an

"excepted" temple, within the meaning of the definition in Clause 5 of Section 9. If it is subject to the control of the village community, I am unable to see how it will satisfy the definition of an "excepted temple". The fact that the villagers as a body--whoever may happen to be villagers for the time being--will have the right of management does not mean that any one of them has got hereditary right thereto. For instance, if new members of that community should come and settle in the village, they might well claim that as part of the village community they have got the right to take part in the management of the temple. Such a claim cannot certainly be based on any title by hereditary right. Whether this claim will be made out in that particular case is another matter; I give the illustration only to show that the right of management by the village community is certainly not the same as management by "hereditary right" which is required by Clause 5 as an essential requisite in the case of excepted temples. I must accordingly hold that the learned District Judge was not justified in dismissing the petition in limine in the way he has done. The civil revision petition must be allowed and the case sent back for disposal in due course of law. Costs to abide.