

(1920) 07 MAD CK 0027
In the Madras High Court

Sundaresa Gurukkal and Others

APPELLANT

Vs

Kuttiam Subramania Mudali and Others

RESPONDENT

Date of Decision : 29-07-1920

Acts Referred:

Citation : AIR 1921 Mad 511 : 61 Ind. Cas. 741 : (1921) 13 LW 212

Hon'ble Judges : Wallis, C.J;Seshagiri Aiyar, J

Bench : Division Bench

Judgement

Wallis, C.J.—This is an appeal from the judgment of the Temporary Subordinate Court of Vellore giving the plaintiffs a decree in a suit brought by them as trustees appointed by the Devasthanam Committee for a declaration that they are lawfully appointed dharmakarthaa and are entitled to be in possession of the trust properties. Defendants Nos. 9 to 11 had been removed by the Temple Committee for misconduct and in their written statements they have denied misconduct and contested validity of the plaintiff's appointment. They would be entitled to succeed if they established either of these cases. The view taken in this Court as to these trusteeships is, that they are in the nature of free-hold offering held under a Corporation, and in England, to justify the removal of a free hold officer during good behaviour, it must be shown that he has been removed and removed by competent authority and with due observance of the rules of natural justice and also for cause which is sufficient to justify his removal. On these principles, this Court, in a suit such as the present, has allowed the dismissed trustees, as defendants, to question their own dismissal both in point of procedure and in point of cause and also the regularity of the appointments of their next successors the plaintiffs. The cases are Chinna Rangaiyengar v. Sabbraya Mudali 3 M.H.C.R. 334 and Chinna Rangaiyengar v. Subbraya Mudali 3 M.H.C.R. 338 which are two stages of the same case. There this Court called for a finding as to whether the trustee had been guilty of the alleged misconduct. The law is laid down to the same effect in Pethadri Ayyangar v. Nataraja Ayyar 21 M. 179 to which Mr. Justice Shepherd was a party In these cases, the Court appears to have re-tried the question whether the removed trustees had in facts

been guilty of misconduct which justified their removal. It is unnecessary to express any final opinion the question whether the Court is at liberty to go into (be whole question or to confine itself to seeing whether the cause for which the Committee has removed the trustees was a sufficient came in law, because in the present case, for reasons which I shall state, we are of opinion that a just cause of removal had in fact been proved by the evidence in the case.

2. As I have said, defendants NOS. 9 to 11 contended that they were not properly removed on two grounds, the first being that defendants Nos. 1, 2 and 3, the members of the Committee who removed them, were not competent to do so. Following the analogy of law with respect to corporate offices in England, this Court has held that such removals and appointments must be made by a majority of the Temple Committee. With reference to the English law on the question, I may merely refer to a case which was one of the removal of the Recorder of Ipswich who held it during good behaviour. Vide *Reg. v. Ipswich Corporation* 92 E.R. 342. At the time in question there were five members of this Temple Committee and the defendants have set up that the third defendant was not a duly appointed member and that consequently his vote must be ignored, with the result that they were only removed by two out of the four members of the Committee.

3. On the other hand, Mr. Varada Chariar, who appeared for the plaintiffs, has sailed our attention to the case of *Scaddling v. Lorant* 92 B.R. 312, where the Statute required a rate to be levied by at least seven Vestrymen and it was alleged that one of these seven who imposed the rate was only de facto and not a de jure Vestryman and the House of Lords consulted the Judges as to whether the objection, if made out, would affect the validity of the rate, and the Judges unanimously answered, mainly on grounds of convenience, that it would not and that answer was accepted by the House of Lords. Mr. Varda Chariar has also sailed our attention to the fact that this principle has been accepted in America also and has asked us to hold that, in view of the fact that the third defendant had been elected more than a year before the dismissal of these trustees and had entered on and acted in his office without dispute up to that time, he was a de jure member and that whether he was de jure member or not, would not affect the validity of the act of the Temple Committee in which he joined. There is very much to be said in support of the application of this rule to a case like this, because it is very inconvenient that trustees who have been removed for misconduct should be at liberty to challenge the validity of the appointments of all the members of the Committee who removed them and thus open up enquiries into all their elections. It is not necessary to decide this point in the present case, because we have come to the conclusion that the defendants have failed to show that there was any irregularity in the election of the third defendant as member of the Committee in this case which would invalidate it. Some of the defendants alleged that all the three members of the Committee were invalidly appointed and the alleged the third defendant alone was invalidly appointed but down to the time of settlement of the issues and the disposal of

the preliminary issues, no ground of invalidity was pleaded. This was a serious error. The Judge, at any rate, ought to have insisted upon particulars being given of the grounds on which the validity of the appointments was challenged before proceeding with the trial. What was done was, to cross-examine the witnesses for the plaintiffs and to endeavour from their answers to spell out some grounds of invalidity, with the result that the evidence on this point is left, as was to be expected, in an unsatisfactory state. The only ground of invalidity which has been seriously relied on relates to the preparation of the register. The first plaintiff who was one of the trustees said that the register had been properly prepared and he was not asked anything about the qualifications of the voters whose names were inserted. The question as to this was sprung upon the second witness for the plaintiffs who was another member of the Committee. He said that the qualification for a voter is that he must pay at least Rs. 25 hertz, and that if a man does not pay Rs. 25 to Government he is not entitled to be in the voters" list. That answer is entirely inconsistent with the role. He was being asked in 1917 about a list which he prepared in October 1910. One of the members who sided with the defendant, fifth defendant, says: "In 1911 a list was prepared in which there was about 1400 voters. We gave instructions to the monigars of the Temple and to second defendant and the deceased Devarajulu Naidu to collect the names of the persons having an income of over Rs. 12 a month and above and those who pay Rs. 20 and more for assessment and who own houses worth Rs. 250 and more. These are the statutory qualifications prescribed by the rules and the presumption is that the list was properly drawn up, and this is confirmed by Exhibits AA and BB which were directions which were issued by the Committee at the time for the preparation of the list and also by the fact that the list was accepted by the Committees as properly drawn up. both the plaintiffs" and the defendants" witnesses say, that it was a list of over 1400 names. There was a certain list, Exhibit M1, put in the course of the case which contains only about 91 names; but it is not proved to our satisfaction that this was more than a portion of the list dealing, as it does, with only a very limited portion of the taluq which was the constituency. The election was uncontested and the defence has called no evidonce to show that any one"s name was improperly omitted in the list and that any one who has a right to vote was refused the opportunity of voting and they have failed to show that no sufficient notice of the election was given. Therefore, even assuming, which I am inclined to doubt, that it is open to the defendants in law in a suit like this, to question the appointment of the members, they have made out no grounds for questioning it, and the action of the three members who were the majority of the Committee both in dismissing the defendants and in appointing plaintiff their successors was within their authority.

4. It remains to deal with the contention of the defendants that their dismissal was invalid because it was made for an insufficient cause. They were dismissed, among other things, for failure to submit accounts and for failure to keep any proper accounts. These two grounds are sufficient in law, if made out, and

assuming, which also I am inclined to doubt, that we ought to go into the question, whether the fact that they failed to submit accounts and to keep accounts was rightly decided at the trial. We agree with the learned Subordinate Judge that it is proved that they have failed to render accounts and keep accounts and that, therefore, they were properly removed.

5. The result is, that the appeal fails and is dismissed with costs of respondents Nos. 1 and 2.

6. The memorandum of objections relates to the moveable properties included in B Schedule. The Subordinate Judge was under an erroneous impression that the Receiver who was appointed in this suit had taken possession of these properties from the defendants trustees Nos. 9 toll. The evidence contains a statement by these defendants that they are in possession of the B Schedule properties and, therefore, it follows that the decree must be modified by directing them to deliver up possession of these properties also.

7. The memorandum of objections must be allowed with costs of first and second plaintiffs.

Seshagiri Aiyar, J.

8. I agree with my Lord the Chief Justice. I entertain grave doubts whether in law the Courts are competent to review a finding of fact by the Committee. In cases where quas-judicial tribunals are invested with power of removal or suspension, it is necessary that their findings of fact should be respected by Courts, provided they have adhered to the principles of natural justice and provided they have given notice and afforded opportunity to the defendants who had been removed of being heard. It should ordinarily not be open to Courts before which these matters are litigated to sit in judgment upon the findings arrived at on a consideration of all the facts by these quasi-judicial bodies. Subject to these observations, I agree with the judgment of my Lord.