

(1915) 11 MAD CK 0035
In the Madras High Court

T. Sitharama Chetty

APPELLANT

Vs

Sir S. Subramania Iyer, K.C.I.E. and Others

RESPONDENT

Date of Decision : 19-11-1915

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (1916) ILR (Mad) 700 : (1916) 3 LW 43 : (1916) 30 MLJ 29

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

Bench : Full Bench

Judgement

John Wallis, C.J.—These are appeals from a decree of the Subordinate Judge of Trichinopoly framing a scheme for the management of the

temples at Srirangam. The case is one of great importance because this is admittedly the first time a scheme has been framed under what is now

Section 92 of the CPC for a temple subject to a Temple Committee under Act XX of 1863, In the Lower Court all parties appear to have been

willing that a scheme should be framed, but on appeal objection has been taken on behalf of the Committee to the scheme approved by the Court

on the ground that it is not open to the Court to frame a scheme of this sort interfering with the statutory management of the Temple Committee. It

will be convenient in the first place to consider the position of the Temple Committee under the Statute more especially as the Subordinate Judge

in approving of the introduction of a new governing body known as the Board of Control has been influenced by the fact that in his view the

powers of the Temple Committee are of a very restricted character. Prior to Regulation VII of 1817 the British Government and the Hindu Rulers

before, them had exercised powers of a visitatorial character over such foundations. See *Rajah Muttu Ramalinga Setupati v. Periyannayagam Pillai*

ILR (1874) IndAp 209. Under that Regulation which was framed for the due appropriation of the rents and produce of lands granted for the support of Hindu Temples, etc., certain statutory powers and duties were conferred upon the Board of Revenue. u/s 2 they were charged with a general superintendence of all endowments in land or money granted for the support of Hindu Temples Under Sections 3 and 5 a duty was imposed on them of seeing that the endowments are appropriated to the purposes for which they were granted and to the repairs of the buildings, and u/s 4 they were empowered to dispose of buildings which could not be repaired. Sections 7 to 11 provide for enquiries and reports to the Board by its local agents. Sections 11 to 14 are important. u/s 11 the local agents are to report to the Board all vacancies in the office of trustees, managers or superintendents, whether these "officers are hereditary or have been in the nomination of Government, and in the latter case to recommend fit and proper persons for the approval and confirmation of the Board. On the receipt of the report u/s 12, Section 13 requires the Board either to appoint the persons so nominated or ""to make such other provision for the trust, management or superintendence as may seem to them right and fit with reference to the nature and conditions of the endowment"" after obtaining any further information they may require. The Board actively exercised all these powers until the year 1841 or 1842 when, in deference to strong objections which were taken to this course by certain persons in England, the Board were ordered to withdraw as far as possible from the active management of Hindu Temples. No alteration however was made at the time in their statutory powers and duties under the Regulation and it was not until the passing of Act XX of 1863 that the situation was regularised and the powers exercised by the Board under the Regulation were transferred to Temple Committees constituted under that Act in the case of temples in which the nomination of the trustee, manager or superintendent thereof at the time of the passing of this Act (1863) was vested in or subject to the confirmation of Government. This is the effect of Section 3 and Sections 7 to 12 of the Act, Sections 4 to 6 dealing with cases in which the right of appointment was not vested in Government. Section 13 imposes upon all trustees, managers and superintendents the duty of keeping accounts and empowers and requires the Temple Committees to require the production of such accounts at

least once a year. Lastly Sections 14 and 18 provide for the institution with the preliminary leave of the Court of suits by persons interested against

trustees, managers or superintendents or members of the Temple Committees for any misfeasance, breach of trust or neglect of duty, and

empower the Courts to direct specific performance of any act and to award damages, and to remove the trustee, manager or superintendent.

These sections do not empower the Court to frame a scheme for the management of the temple affairs, Karedla Vijayaraghava Perumalayya Naidu

v. Vemavarapu Sitaramayya ILR (1902) M. 361.

2. It was in my opinion clearly the intention of the legislature that the extensive powers conferred on the Board of Revenue should be exercised

thereafter by the Temple Committees and I think the Court should be very slow to construe the Act in such a manner as to impede the due

exercise of these powers. I am therefore with great respect unable to agree with the decision in Santhalva v. Manjanna Shetty ILR (1910) M. 1.,

which was cited as showing the necessity for a scheme and which decides, if I rightly understand it, that the powers of the Committee are

suspended by the occurrence of a vacancy among its members. No authority is cited in judgments in support of this view and the decision has been

dissented from in Raghunandan Ramanuja Das v. Bibhuti Bhushan Mukerjee ILR (1911) C. 304, on the authority of an English case Doe v.

Godwin (1822) 1 Dowl. and Ry. 259, which is directly in point. This also appears to me not to be in accordance with the principles laid down in

Anantanarayana Ayyar v. Kuttalam Pillai ILR (1899) M. 481, as to the Committee being governed by the rules applicable to corporations. The

term "Committee," said Pollock, C.B. in Reynell v. Lewis (1846) 15 M.& W. 526, means "an individual or body to which others have delegated a

particular duty," and I can see no reason why the remaining members constituting a majority should not be able to act during a vacancy. In the

absence of any decisive authority the other way the argument ab inconvenienti is in my opinion sufficient to show that such must have been the

intention of the legislature.

3. Further with reference to the numerous decisions of this Court relating to the powers of the Committee to which Mr. Gangapathy Iyer has called

our attention in the course of his exhaustive argument as showing the necessity

for a scheme, I cannot help saying with great respect that some of these decisions appear to me to fetter the Committee unduly, and I think that the able judgment of Davies, J. in *Seshadri Ayyangar v. Nataraja Ayyar* ILR (1898) M. 179, with which Collins, C.J. agreed in the main and the recent decisions in *Venkatachala Pillai v. The Taluq Board, Saidapet* ILR (1910) 34 M. 375, and *A. Thiruvengadatha Aiyangar and Another Vs. R. Ponnappa Aiyangar and Others*, , are more in conformity with the terms of the Act and the intention of the legislature.

4. It is necessary to consider One of these decisions more particularly, as the contention has been raised for the 1st plaintiff that the Temple

Committee has no power over the Srirangam Devasthanam, because at the coming into force of the Act of 1863 one of the trustees under an

arrangement made by the Board of Revenue had become hereditary as held in *Ganapathi Ayyar v. Sri Vedavyasa Alasinga Bhattar* ILR (1906)

M. 534. That one trusteeship is hereditary is no doubt *res judicata* as between the Committee and the hereditary trustee by reason of that decision.

Mr. T.V. Venkatrama Aiyar who appeared for the Committee stated that there is evidence to show that the Board never appointed any hereditary

trustee, and alleged that they had no power to do so in the exercise of the statutory authority u/s 13 of the Regulation. This was apparently the

opinion of Sir Charles Turner in *Appasami v. Nagappa* ILR (1884) M. 499, though the opposite view was taken in *L. Venkatesa Nayudu v. Shri*

Shadagopa Swami (1872) 7 M.H.C.R. 77, and followed in *Ganapathi Ayyar v. Sri Vedavyasa Alasinga Bhattar* ILR (1906) M. 534. . As to this I

will merely observe that *Sheik Davud Saiba v. Hussein Saiba* ILR (1893) M. 212, is no authority for the proposition for which it is cited in

Ganapathi Ayyar v. Sri Vedavyasa Alasinga Bhattar ILR (1906) M. 534, and *Santhalva v. Manjanna Shetty* ILR (1910) M. 1 that where the

Board made one of the trusteeships hereditary, it deprived itself of authority to appoint additional trustees. The immediate question here is whether

this Devasthanam is subject to the Temple Committee. It was not questioned in *Seshadri Ayyangar v. Nataraja Aiyar* ILR (1898) M. 179 and

Ganapathi Ayyar v. Sri Vedavyasa Alasinga Bhattar ILR (1906) M. 534 that it is so subject, and it is admitted by the 1st plaintiff in his plaint in the

present case. Further, it is I think clear that Sections 3 and 4 of the Act of 1863

were introduced to cover all classes of cases, and even assuming that in 1863 one of the trustees was hereditary and the other two were nominated by the Temple Committee, I think the case comes under Clause 3 rather than under Clause 4. In any other view I should feel bound to consider whether the decision in *Ganapathi Ayyar v. Sri. Vedavyasa Alasinga Bhattar* ILR (1906) M. 534 can be supported.

5. This objection being overruled, we have next to consider whether it is competent and desirable that the scheme framed by the Subordinate Judge should be approved with or without modifications. Now as to this I take it the Court cannot interfere with the statutory powers conferred upon the members of the Committee so as to deprive them of their statutory functions. See *Attorney-General v. Governors of the Foundling Hospital* 2 Ves. Jun 41, although following the practice of the Court of Chancery it might frame a scheme conditional on legislative sanction being obtained for it; as to which see *In re Shrewsbury Grammar School* 1 Mac.&G. 324. The decision in *Attorney-General v. Wyggeston's Hospital* 12 Beav. 113, which appeared to go further was disapproved in *Attorney-General v. Payne* 27 Beav. 168. In my opinion the most helpful authority cited before us was the Judgment of Chitty, J. in *Attorney-General v. Governors of Christ's Hospital* (1896) 1 Ch. 879. The learned Judge observed "I prefer to state my own opinion broadly. I hold that it is beyond the jurisdiction of the Court to sanction the Attorney-General's scheme in the face of the opposition of the existing governing body. Their title is founded on Royal Charter, and is established by, Act of Parliament. To whatever lengths the Court may have gone, it has never assumed legislative authority; it has never by a stroke of the pen at one and the same time revoked a Royal Charter and repealed an Act of Parliament. It has never ousted from its, rights of administering the charitable trusts such a body as the present governors against their will, and that, too, in a case where no breach of trust is charged. There is no, authority in the books for any such proposition. Yet such is the proposition which underlies the Attorney-General's scheme. I consider that I am not at liberty to deprive the existing governing body of their right of control over the income of the funds vested in them, either permanently, as proposed by the scheme, or temporarily, as suggested by the Attorney-General in his reply. In a

word, I cannot, under guise of executing the trusts cypres, upset the constitution of the present governing body, or, by transferring the ir powers and duties of administering the trusts to another body, reduce them to the position of being bare trustees of the funds vested in them. To establish such a scheme as that submitted by the Attorney-General, nothing less than Act of Parliament will suffice.

6. That case however does not go so far as to decide that the Court cannot frame any scheme at all for a charity under statutory management. On the contrary, although as observed in the judgment no case of breach of trust or maladministration of any bind was suggested by the Attorney-General against the governing body, and there was no case of failure of the trusts or of the charitable objects of the endowment, the learned Judge, whilst rejecting the Attorney-General's scheme, still held himself at liberty to sanction the scheme submitted by the Governors themselves proposing certain alteration to meet the altered circumstances of the time. Following that decision, I think we are entitled in the present case to come to the assistance of the Committee and to introduce certain changes which under the decisions it is no now open to the Committee to introduce, or which are admitted by them to be desirable. Further than this I do not feel justified in going.

7. The result is that the management will remain in the trustees subject to the statutory superintendence of the Temple Committee; and the proposed Board of Control must go. As regards the number of the trustees we think we may enable the Committee to do that which under the decision in *Ganapathi Aiyar v. Sri Vedavyasa Alasinga Bhattar* ILR (1906) M. 534 they can no longer do of themselves, viz., to appoint two additional trustees, but the nomination must be in the Committee pursuant to the statute. We may also provide that in future, trustees shall hold office for only 5 years. This, it is admitted, is one of the most urgent reforms, and the competency of the Committee to introduce it of them selves has been questioned. The proposed treasurer must also be disallowed as an independent officer, but we think it desirable that a paid officer of the trustees should be appointed to perform duties similar to those assigned to the treasurer but under the trustees. As regards finance we think it should, be the duty of the trustees to prepare a budget annually and submit it to

the Committee under whose superintendence they are. We also think an audit should be insisted on. It has been arranged that the 1st plaintiff should submit a revised scheme or schemes on these lines in one month. There will be no order as to costs in this Court.

Seshagiri Aiyar, J.

8. I agree with my Lord. If I travel over the same ground in my judgment, it is because the points raised in appeal are of far reaching consequences.

9. Two questions have been raised affecting, to a great extent, the jurisdiction of the Civil Courts. Mr. Venkatrama Aiyar on behalf of the

Committee broadly contended at the outset that the scheme sanctioned by the Subordinate Judge was within the powers of the Trichinopoly

Temple Committee and that consequently it is ultra vires of the Civil Courts to frame a scheme. A somewhat modified contention was advanced at

a later stage that all the provisions in the scheme which interfered with the statutory powers of the Committee should be deleted. Mr. Rangachariar

was prepared to support the Committee's contentions only to this extent. On the other hand, Mr. Ganapathi Aiyar on behalf of the Dharma

Rakshana Sabha argued that the Trichinopoly Temple Committee had no jurisdiction over the Srirangam Temple, as at the time of the passing of

Act XX of 1863, there was a hereditary trustee. This contention, if accepted, would leave the Courts unfettered regarding the settlement of a

scheme. It is necessary to give a ruling on these preliminary points before considering the merits of the case.

10. I shall first deal with Mr. Ganapathi Aiyar's contention. I agree with him that the expression ""the nomination of the trustee, manager or

superintendent thereof"" in Section 3 includes the entire body of trustees, managers or superintendents See *Perry v. Jackson* (1792) 4 TR 516 : 100

E R 1150. But it is doubtful whether it was competent to the Board of Revenue under Regulation VII of 1817 to divest themselves of all

responsibility for management by handing over the affairs of a Devasthanam to hereditary trustees. The language of Section 13 of the Regulation

which confers general powers to adopt measures for carrying out the objects of the trust must be restricted, to the cases for which a report is to be

called for under the preceding sections. However that may be, I feel no doubt

that the Committee has jurisdiction over this temple. There have been numerous suits to which the Committee and the trustees were parties in which it was held that the temple was under the jurisdiction of the Temple Committee, e.g. Seshadri Ayyangar v. Nataraja Ayyar ILR (1898) M. 179 Ganapathi Ayyar v. Sri Vedavyasa Alasing Bhattar ILR (1906) M. 534, etc. These decisions are binding on the Committee and the trustees. The plaintiffs in the present case admit that the temple falls u/s 3 of Act XX of 1883. They are not entitled to recede from that position. Moreover the documents to which our attention was drawn show that only the right to select a trustee was given to the family of the Sthalathars, and that the selection was subject to the approval of the Board of Revenue. It cannot, therefore, be contended that the Board of Revenue created a hereditary trustee over whose appointment they had no control. If this question had been raised in proper time, evidence might have been forthcoming to show that the term hereditary has been loosely applied in this case. I agree with the learned Chief Justice that this temple comes u/s 3 of Act XX of 1863 and that the Committee has jurisdiction over it.

11. The question whether the aid of the Civil Courts can be invoked to frame a scheme when a statutory body like the Temple Committee has the right of superintendence is a far more difficult one.

12. There are no reliable data regarding the exercise of supervision by the ancient kings of the land over temples. The text of Narada which says ^ ^ j k K , o f g n k l % L ; k r ~ i z o z T ; k o f l r k s u j % * * that a king can reduce to slavery a sanyasin who is guilty of incontinence,"" seems to suggest that over religious bodies and institutions, the king had a general power of supervision. Beyond this cryptical saying, there seems to be no authority regarding the jurisdiction of the ancient sovereigns over Hindu temples. When and at what stage the ancient sovereigns exercised superintendence over religious institutions, it is not necessary to consider. In Rajah Muttu Ramalinga Setupati v. Perianayagam Pillai (1874) 1 I.A. 209, the Judicial Committee say that such jurisdiction existed in ancient times. Consequently they very early came to the conclusion that the king as parent, patria should protect the religious institutions from malversation in the same way that he looked after the rights of his lay subjects. Lord Brougham in Mayor of Lyons v. East India Company (1836) 1 M.I.A. 175, says : ""The

jurisdiction of the Court, moreover, extends over all British subjects residing within the limits of the Charter, whether in the British or native dominions, and this affords facilities for the execution of the charity under the Court's superintendence, which could not exist in any of the cases cited." In *Attorney-General v. Brodie* (1846) 4 M.I.A. 190, Lord Langdale pointed out that the Supreme Court had an equitable jurisdiction similar to and corresponding with the equitable jurisdiction exercised by the Court of Chancery in England over charities. There is no doubt that the mofussil Courts had similar powers. In *Maharanee Shibessouree Debia v. Mothooranath Acharjo* (1869) 13 M.I.A. 270, which was an appeal from a mofussil Court, their Lordships of the Judicial Committee proceeded on the footing that Civil Courts had jurisdiction to see that temple funds were properly applied. It is clear from the Charter granted to the East India Company that they were authorised "to judge all persons belonging to the said Governor and Company or that should live under them in all causes, whether civil or criminal according to the laws of the kingdom and to execute justice accordingly" (Charter of Charles II in 1661). This authority was confirmed by "the subsequent Charters. Their history is fully set out in Cowell's *Courts and Legislative authorities in India* and in Ilbert's *Government of India*. I do not propose to attempt a summary of the various regulations here. Their purport is best expressed in Section 13(c) of the Madras Civil Courts Act. "In cases where no specific rule exists the Courts shall act according to justice, equity and good conscience." This clause only embodies the principle has been recognised by the British Government from the beginning of its administration of civil and criminal justice in India. It is not necessary to cite authorities for the position that the rule of equity and justice had to be found in the decisions of the English Courts. My conclusion is that the mofussil Courts in India were Courts of both law and equity and that they exercised jurisdiction over religious and charitable institutions in the same way as Courts of Chancery did in England.

13. I shall next consider whether the Court of Chancery in England would have had jurisdiction to frame a scheme like the one we are now considering, with special reference to the fact that the Temple Committees as statutory bodies had certain powers delegated to them. It was pointed out in 1 I.A. 209 that the powers delegated to the Board were analogous

to the powers conferred on visitors in England. The nature of the powers possessed by visitors is not easily ascertainable. In *Phillips v. Bury* (1788) 2 T.R. 346, Holt, C.J., thus describes the functions of a visitor :
an authority to inspect the actions and regulate the behaviour of the members that partake of the charity,...to prevent all perverting of the charity, or to compose differences." In *Tudor on Charities*, the visitatorial tribunal is described as "a domestic forum, the court of the founder." It was pointed out in *Green v. Rutherford* (1750) 1 Ves. Sen. 462 Eng. Rep. 1144 that the visitor's powers are circumscribed by those given him by the statute. He should not exceed or depart from them.

14. Having ascertained to some extent the nature of the duties cast on the visitor, I shall now consider whether the contention that the Courts are

powerless when a statutory body is created whose powers are analogous to those of the visitor in England is well founded, The decision in

Attorney-General v. Governors of Christ's Hospital (1896) 1 Ch. 879, was strongly relied on by the appellant. The observations of Chitty, J. do

not deny jurisdiction to Civil Courts although they fetter its exercise a great deal. The language of the Charter and of the Act of Parliament

commented on in that case are not before us. Moreover certain facts are mentioned in the judgment which rendered it inequitable for the Court to

interfere. His Lordship says "To whatever lengths the Court may have gone, it has never assumed legislative authority." From the subsequent

reference to the provision of the Attorney-General's scheme, it is apparent that the learned Judge held on the merits that that scheme should not be

accepted. I do not think this case is authority for denying jurisdiction to the Courts altogether. In *re Endowed Schools. Act 1869*, In *re Christ's*

Hospital (1890) 15 A.C. 172, does not carry the matter any further. *Clephane v. The Lord Provost, &c, of Edinburgh* (1869) L.R. 1 Sc. A. 417,

only lays down that the purposes of the trust cannot be altered by the Courts. In *Attorney-General v. The Dedham School* (1857) 23 Beaven 350

: 53 Eng. Rep. 138, the Master of the Bolls ruled that where the founder had conferred specific powers on a visitor regarding internal management,

the Court should not interfere with such powers. In *Attorney-General v. Dixie* (1805) 13 Ves. J. 519 : 33 E.R. 388, the Lord Chancellor says "I

have long been perfectly satisfied that this Court has jurisdiction." The above

cases do not sustain the proposition contended for by the appellant

that the Court is deprived of jurisdiction by reason of the existence of a visitor or of a statutory body to control the affairs of a trust.

15. On the other hand it seems well established that the power is in the Court to administer a charitable or religious trust provided it does not

unduly interfere with the visitor or the statutory body. In *Stevens v. Chown*, *Stevens v. Clark* (1901) 1 Ch. 894, Farwell, J. quotes with approval

Willes, J's classification of liabilities relating to trust : ""There is that class where there is a liability existing at common law, and which is only re-

enacted by the statute with a special form of remedy; there, unless the statute contains words necessarily excluding the common law remedy, the

plaintiff has his election of proceeding either under the statute or at common law. Then there is a second class, which consists of those cases in

which a statute has created a liability, but has given no special remedy for it; there the party may adopt an action of debt or other remedy at

common law to enforce it. The third class is where the statute creates a liability not existing at common law, and gives also a particular remedy for

enforcing it."" In my opinion, the Temple Committees come under the first of these classes. I have already referred to the right possessed by the

Crown over all religious institutions. The general right possessed by the subject to ask the Courts" assistance to set right abuses and to have a

scheme framed independent of the statute has been recognised in numerous decisions. See *Karuppa v. Arumuga* ILR (1882) M. 383. *Giyana*

Sambandha Pandara Sannadhi v. Kandasami Tambiran ILR (1887) M 375, *Subbayya v. Krishna* ILR (1890) M. 186, *Rangasami Naickan v.*

Varadappa Naickan ILR (1893) M. 426, *Srinivasa Chariar v. Raghava Chariar* ILR (1897) M. 28, *Radhabai v. Chimnaji Bin Ramji Sali* ILR

(1878) B. 27. Therefore the powers of the Committee are not exclusive. The observations of Farwell, J. are very opposite to this class of cases.

Now, if I find that the statute enacts, either by way of new creation or by way of re-statement of an ancient right, a right of property, that at once

gives rise to the jurisdiction of the Court to protect that right. If the Act goes on to provide a particular remedy for the infringement of that right of

property so created, that does not exclude the jurisdiction of this Court to protect the right of property, unless the Act in terms says so."" In

Attorney-General v. Wyggeston's Hospital (1849) 12 Beaven 113, 50 Eng. Rep. 1003, Lord Langdale, the Master of the Bolls had to consider

the rights of a Governor of a hospital. His Lordship held that greater powers were given to him than was warranted by the original charter. Then he

proceeds : ""even if it should appear to be otherwise, and that this was within the power, nevertheless, if in the course of the 200 or 300 years, by

acting upon the power, it has turned out, and is shown by experience, to be prejudicial to the objects of the charity, to the extent of giving an equal

benefit to persons who are not objects of the charity - namely, to the lessees, for it comes to that - then I think that this Court could not avoid

saying, that the circumstances were so changed, that the interests of the charity and of the hospital required a new mode of conducting the business

and affairs of the charity."" These observations apply mutatis mutandis to the present case. If after 50 years of administration by the Committee, the

Court finds that circumstances have taken place which demand a remodelling of the machinery originally employed, I do not think we are

powerless simply because a statutory body had certain powers conferred on it suited to the exigencies of the situation as it then existed.

16. In The Attorney-General v. St. Cross Hospital (1853) 17 Beaven 435: 51 Eng. Rep. 1103 Sir John Romilly says : ""The only remaining point,

then, on this part of the case, is, whether the jurisdiction of this Court is taken away by reason of the visitorship of the Bishop of Winchester. If this

were the law, it would be very unfortunate, for it does not require the history of this case to teach us that the visitorship, vested in any one, whether

a corporation sole or aggregate, or the heir of the founder, is a mere nominal office, the duties and functions of which are rarely, if ever,

spontaneously performed. But the law is not so. Where there is a clear and distinct trust, this Court administers and enforces it as much where

there is a visitor as where there is none. This is clear, both on principle and authority. The visitor has a common law office and common law duties

to perform, and does not superintend the performance of the trust which belong to the1 various officers, which he may take care to see are

properly kept up and appointed. Green v. Rutherford (1750) 1 Ves. Sen. 462 : 27 Eng. Rep. 1144, Ex-parte Berkhamstead Free School

(1913) 2 V & B134 and several other cases, expressly establish the authority of this Court in cases of trusts, and the duty of this Court to see that

they are properly performed, notwithstanding that there may be a special or a general visitor." I have made this lengthy extract because it seems to

me that in India under the superintendence of Temple Committees we have, reached a position where "the duties and functions are rarely if ever

spontaneously performed," The written statement of the Committee in this case shows how powerless the Committee were in carrying out their

duties, and how little they did or endeavoured to do. It would be disastrous in this country if Courts were to refuse to intervene on the ground that

a statutory body has been created to exercise supervision over the trusts.

17. At the same time, I concede that in formulating a scheme, the courts should not unduly interfere with the powers entrusted to Committees. The

cases quoted by the learned Yakil for the Committee establish that position. In *re Sherewsbury Grammar School* (1849) 1 Mac. & Gor. 324, *The*

Attorney-General v. Aspinall (1837) 2 Myl. & Cr. 613, *Attorney-General v. The Mayor, &c, of Dublin* (1827) 1 Bli. (N.S.) 312, and *Attorney-*

General v. Governors of the Foundling Hospital (1793) Ves. Jun. 42. The learned Vakil for the Sabha did not seriously contest this position. His

argument was directed to showing that the Board of Revenue and their successor, the Committee had only certain limited powers, and that neither

the Regulation nor the Act took away the plenary jurisdiction possessed by the Courts. I shall now very briefly examine the provisions of these two

statutes mainly with a view to see how much of the scheme of the Subordinate Judge should be accepted.

18. The preamble to the Regulation refers to the ground for believing that the produce of the endowments "is ill many instances appropriated

contrary to the intentions of the donors," and speaks of the duty of the Government to see to its proper application. The duty, I take it, is that of the

parens patriae. In *Duke of Beaufort v. Berty* (1721) 1 P.W. 702, Lord Macclesfield, Lord Chancellor, says that the protection of children was

assumed by the Court of Chancery in analogy of its powers over trusts. Consequently, the care of trusts seems to have been regarded as the first

duty of the King. It was, therefore, very early held in Madras that the remedies under the regulation were not exhaustive but only supplementary of

the ordinary remedies. *Ponnambala Mudaliar v. Varaguna Rama Pandia Chinnatambiar* (1872) 7 M.H.C.R. 117. See also *Kassiyassy Kristna*

Putter v. Vangala Shangaranat Josser (1858) S.D.A. p. 39. I do not think that the view to the contrary held in Bhima Rout v. Dasarathi Dans ILR

(1912) C. 323, is consistent with the history of the temple legislation in this country. I shall now deal with the other Sections of the Regulation.

Section 2 is the most important of them. The right of general superintendence is wide enough to include the power to appoint additional trustees. I

am in agreement with the decision in Thiruvengadatha Aiyangar v. Ponnappa Aiyangar (1914) 28 M.L.J. 209. Even in Ganapathi Aiyar v. Sri

Vedavyasa Alasinga Bhattar ILR (1906) M. 534 : 16 M.L.J. 435,. Sir S. Subramania Aiyar, J. says that such appointments can be made for good

and sufficient cause. I infer the power to appoint additional trustees from Sections 12 and 13 read with. Section 2. It is not necessary in this case to

consider the exact nature of the rights conferred on the Committees by Section 2 : whatever may be involved in the term superintendence, I am of

opinion that some of the decisions of this Court to which I shall refer later on have not been shown to be wrong in placing a limit on its import.

Further the right of superintendence must be limited to the exercise of the powers conferred on the Board or on the Committee whose jurisdiction

is analogous to that of the visitor, in England. Sections 3 to 10 do not call for special notice. Sections 11 to 13 are important, Section 11 requires

local agents to report to the Board vacancies and casualties, the names of the persons claiming to be trustees and the mode in which previous

appointments were made. Section 12 deals with cases in which the Government had the exclusive power of appointment and requires the local

agent to suggest names. The 13th Section deals with the duties of the Board on the receipt of such reports. It seems to me that the clause ""or make

such other provision for the trust, etc.,"" should be confined to the appointment contemplated in Sections 11 and 12. As I said before, they do not

seem to warrant the construction that the Board can appoint hereditary trustees by virtue of this clause so as to deprive themselves of all control

over them. Section 14 gives a right of suit to persons aggrieved by the exercise of the powers vested in the Board.

19. Coming to the Act, it must be premised that it was not the intention of the legislature to give larger powers to the Committee than was

possessed by the Board. Sections 3 and 7 entrust to the care of the Committees all the institutions which were under the control of the Board of

Revenue. A feeble attempt was made to show that the Committee could hold possession of the trust property. Section 12 which refers to the

transfer of the possession of properties does not provide for the vesting of the properties in the Committee. On the other hand Sections 11 and 13

which speak of the duties of the trustees to keep accounts make it clear that the Committee was not to hold properties.

20. The course of decisions on this subject, is well established in this Presidency. Speaking for myself, I feel no hesitation in saying respectfully that

they are perfectly sound. See *L. Venkatesa Nayudu v. Shri Shadagopa Swami* (1872) 7 M.H.C.R. 77, *Ponduranga v. Nagappa* ILR (1889) M.

366, *Sankara Murti Mudaliar v. Chidambara Nadan* ILR (1893) M. 143. *Seshadri Ayyangar v. Nataraja Ayyar* ILR (1898) M. 179, *Pattikadan*

Umbaru v. Emperor ILR (1902) M. 213. *The Chairman, Municipal Council of Rajahmundry v. Susarla Venkateswarlu* ILR (1898) M. 111, and

A. Ramanathan Chettiar Vs. Swaminatha Aiyar and Others, . It has also been held that the Committee should not concern itself with the internal.

management of the institution. *Mayandi Chetti v. Oliver* ILR (1898) M. 261 8 M.L.J. 196, and *Subba Naidu Vs. Gopalaswamy Naidu*, . It stands

to reason that when there is a trustee who is responsible for the management of the properties and for their application, his control over the

servants of the establishment should not be interfered with by the Committee. The very limited power as to accounts given by the second clause of

Section 13 to the Committee bears out; this position. It is doubtful whether the decisions which lay down that no accounts should be called for

from hereditary trustees are right. See *K. Venkatabalakrishna Chettiar v. Kaliyanaramaiyangar* (1868) 5 M.H.C.R. 18, and *Fakurudin Sahib v.*

Acken Sahib ILR (1880) M. 197. Section 13 Clause 2 refers to all trustees whether hereditary or otherwise. Section 14 has been much debated

during the argument. It is a limited remedy that is given by this section to the public, it only empowers the Court to direct the specific performance

of duties which have been neglected. Such duties have also been specified. To my mind, the right of suit under the Act has been purposely

restricted because the general right of the subject under the CPC was not intended to be interfered with. The remedies are cumulative and not

exhaustive. See *Venkata Ranga Charlu v. Krishnama Charlu* ILR (1913) 181 : 21 M.L.J. 597. The above examination of the sections of the

Regulation and of the Act shows that the power of settling a scheme is not within the competence of the Committee. It is only by virtue of Section

92 of the Code that this remedy can be invoked. In considering the details of the scheme Mr. Ganapathi Aiyar contended that as the body of

trustees will be *functus officio*, if one member of it dies, there should be a Board of Control to avoid an interregnum. *Santhalva v. Manjanna Shetty*

ILR (1910) M. 1, no doubt lays down that the death or removal of one of the members incapacitates the others from carrying on the duties of the

Committee. With the greatest deference, I am unable to accept this conclusion. The decision in *Doe v. Godwin* 1 Dow and R. 259, quoted in

Raghunandan Ramanuja Das v. Bibhuti Bhushan Mukeree ILR (1911) C. 304, was apparently not brought to the notice of the learned judges who

decided *Shanthalva v. Manjanna Shetty* ILR 1910) M. 1. In my opinion the statutory body does not become extinct by reason of changes in its

constitution.

21. As in my opinion, the Civil Court alone has power to frame a scheme, and its jurisdiction is not taken away by the creation of the Temple

Committee, I shall now proceed to examine the details of the scheme.

22. The first question for consideration is whether there should be a Board of Control. In my view the powers intended to be conferred on the

Board of Control would unduly interfere with the rights of the Temple Committee. In the *Conjeevaram* scheme the Board of Control was held

necessary because the institution was not subject to the control of the Temple Committee. I am clearly of opinion that, all provisions in the scheme

relating to the Board of Control should be omitted. For the same reason I am of opinion that no right of management should vest in the treasurer.

This would be virtually adding to the number of trustees. I would therefore recast Clause 3 thus : ""that the administration of the *Devasthanam* shall

vest in a Board of Trustees subject to the control of the Committee."" Clauses 4 to 7 should be omitted in this view. A great deal of discussion

centred on the question whether there should be a *Vadagalai* trustee for this temple. It is true as pointed out by Mr. Rangachariar that the

Vadagalai trustee whenever he had an opportunity endeavoured to subvert the uses of the institution by showing his partiality towards the usages of

his own sect. But ever since 1893 when the present *Vadagalai* trustee was

appointed, no serious complaints of such a nature have been made against him. Moreover although the temple is mainly Theugalai, the archakar, and pariaharakas are Vadagalais and there are a large number of Vadagalai mirasi offices in this Temple. In order that their interests might be safeguarded there should be a Vadagalai trustee. We see no reason for disagreeing with the Subordinate Judge in regard to this matter.

23. As a counterblast to the argument of Mr. Rangachariar Mr. Narasimha Aiyangar contended that as there is a hereditary Thengalai trustee there was no necessity for the appointment of another Thengalai trustee. The history of this institution shows that the hereditary Thengalai trustee is not a person on whom the Thengalais can rely to protect their interests. Undoubtedly the Thengalai rights are predominant in this temple; the Subordinate Judge was therefore right in providing for the appointment of an additional Theugalai trustee. No serious objection was taken by any of the contending parties for the inclusion in the Board of Trustees of a Smartha and Madhwa. It is to be hoped that their presence would tend to compose the differences between the two rival sects of Vaishnavas. We do not think that the provision for the appointment of the Saivite and Madhwa trustees by the Court is necessary. The Committee should have the same power with regard to them as they have with reference to the other three trustees. As regards Clause 12, in the view that we have taken about the office of the treasurer and having regard to the representations that have been made regarding the funds of the Devasthanam we are of opinion that instead of a treasurer, the trustees should be directed to appoint a cashier on a salary of Rs. 75-0-0 per mensem. Clause 1 which confers certain powers of supervision, and control on the treasurer should be modified by investing the Board of Trustees with those powers. Clause 16 should be modified in a similar manner. In addition to the provisions contained in the scheme we think it necessary that the board of trustees should once a year prepare a balance sheet of the accounts of the Devasthanam and publish it for the information of the public in the local Gazette. The scheme should be modified as above indicated. As was done with reference to the Conjeevaram scheme we think liberty should be given to any of the trustees or any member of the Committee or to the 1st plaintiff in this case to move the Court for such alterations in the scheme as

seem desirable in the light of the experience that may have been gained of its working.

24. These appeals and the Memoranda of Objections by the 4th and 7th respondents in Appeal No. 328 of 1913 and by the 1st respondent in Appeal No. 355 of 1913 came on for final hearing after the submission of the revised scheme by the 1st plaintiff, and the Court delivered, the following.

JUDGMENTS

1. The scheme brought in by the 1st plaintiff is accepted by us subject to certain modifications. The scheme as finally approved.-

General.

1. The Temple of Sri Ranganadhaswami at Srirangam and the minor temples and shrines attached thereto (inclusive of the temple of Sri Pundarikaksha Perumal at Tiruvallarai) and constituting with the said temple the Srirangam Devasthanam and all the properties, movable and immovable which have been or may hereafter be dedicated to the said deity are and shall be vested in the Sri Ranganadhaswami deity.

2 (a). The word "Court" in this scheme and in the rules that may be framed under this scheme shall mean the Subordinate Judge's Court at Trichmopoly or such other Court of Original Civil Jurisdiction of the lowest grade as may have jurisdiction u/s 92 of Act V. of 1908.

2 (b). The word "Committee" shall mean Trichinopoly Taluq Devasthanam Committee formed under Act XX of 1863.

2 (c). The expression "Sri Ranganadhaswami Devasthanam" hereinafter referred as "the Devasthanam" shall mean and include the shrine of Sri Ranganadhaswami at Srirangam and all the Subordinate shrines attached thereto both in Srirangam and outside (inclusive of Sri Pundarikaksha Perumal Temple at Tiruvallai).

3. The administration of the Devasthanam shall vest in a Board of Trustees subject to the "control and superintendence of the Committee.

Board of Trustees.

4. The Board of Trustees shall consist of five members, viz.,

1. A hereditary Stalathar Trustee by rotation as at present,

2. A Thengalai Trustee.

3. A Vadagalai Trustee.
4. A Sivite (including a Smartha),
5. A Madhva.

Trustees Nos. 2 to 5 shall be appointed by the Committee.

5. (a) The term of the office of the Trustees appointed by the Temple Committee shall be 5 years but the said trustees shall be eligible "for re-appointment.

5. (b) Stalathar Trustees shall hold office by rotation each for one year commencing with the 1st Chitrai.

6. No office holder of the temple or a member of the Temple Committee shall be appointed by the Committee as a member of the Board of Trustees.

7. (a) No one shall be eligible to be appointed by the Committee as a Trustee of the Devasthanam:

1. Who is under 25 years of age,
2. Who is an uncertificated bankrupt or an undischarged insolvent.
3. Who is suffering from unsoundness of mind, total blindness, total deafness, total dumbness, leprosy, or paralysis of such a nature which unfits him for work.
4. Who is a member of a joint family of which some other member is at the, time a member of either the Committee or of the Board of Trustees and
5. Who has been convicted of any offence involving moral turpitude, or against whom orders under Sections 109, 110, Criminal Procedure Code have been passed.

7. (b) In the case of a rotation trustee who is a minor or who is subject to any of the disqualifications stated in 2, 3, and 5, the Committee may appoint from among the Sthalathars a competent person in his place.

Cashier.

8. A. Cashier shall be appointed by the Board of Trustees on a salary of Rs. 75 per mensem and shall furnish such security as may be determined by the rules framed hereunder.

9. The Board of Trustees shall have powers of supervision and control over the

Cashier, but shall not suspend or dismiss him unless 4 out of the 5

Trustees are in favour of such a course. An appeal shall lie to the Committee from an order of dismissal, whose decision shall be final.

Budget.

10. (a) The Board of Trustees shall three months prior to the commencement of the Fasli, prepare and submit to the Committee a budget of the estimated receipts and expenditure for the ensuing year.

(b) The Committee shall, with such modification as it may deem necessary, pass the Budget and send it back to the Board of Trustees at least a month before the beginning of the Fasli.

(c) If the Budget be not sent by the Board of Trustees as aforesaid, the Committee may, after giving 14 days notice to the Board of Trustees, themselves frame and prepare the Budget and send it to the Board of Trustees.

(d) If the Committee fail to send the Budget within the time fixed above, it shall be competent to the Board of Trustees to act upon the Budget sent by them until the Committee send the same approved.

(e) The Board of Trustees shall have a permanent advance for urgent expenses of such amount as may be fixed in the rules to be framed in this scheme. But the expenditure which may be incurred by them shall not exceed the provision of the Budget nor shall any extraordinary expenditure be incurred without the special sanction of the Committee.

Account and Audits.

11 (a) The accounts shall be audited by an auditor appointed by the Committee upon such remuneration as may be fixed by the Committee, to be paid from the Devasthanani funds. An abstract of the said accounts prepared and certified together with his report shall be sent to the Board of Trustees, who shall submit the same to the Committee with their remarks if any.

(b) It shall be the duty of the Board of Trustees to give the auditor all facilities for carrying on the audit and to produce all accounts, vouchers and other papers required by him.

(c) It shall also be the duty of the Board of Trustees to carry out the suggestions made by the auditor in his report and approved by the Committee,

(d) The Board of Trustees shall prepare every year a balance sheet of the assets and liabilities of the Devasthanam and publish it after verification

by the auditor in the local Gazette and in such other papers as they shall think fit.

(e) The accounts of each fasli, together with the report of the auditor and the abstract of the accounts and the balance sheet, shall be exhibited at

the Devasthanam office from the 15th October to 15th January following and also at the time of the Mukkoti festival at the temple premises and all

worshippers of the temple shall be entitled to inspect the same at all reasonable times.

12. All surplus income shall be invested for the benefit of the temple by the Board of Trustees in accordance with the rules to be framed for the purpose.

13. (a) No immovable property of the temple shall be leased for more than three years without the sanction of the Committee.

(b) All leases and sales shall be by public auction or in such other manner as may be provided for in the rules.

14. No jewels or other movable property shall be sold or otherwise alienated without the sanction of the Committee.

15. An inventory of the jewels and other properties shall be maintained by the Board of Trustees and shall be verified by the auditor every year.

16. Rules consistent with this scheme shall be framed by the District Court of Trichinopoly after notice to the Committee and the Board of Trustees

subject to the control of the High Court

1. for ensuring the proper receipts and custody of all offerings, income and funds,

2. for preventing misappropriation or ensuring the proper management of the temple funds and properties,

3. for the conduct of the business of the Trustees,

4. for the framing of the budget,

5. for the duties of the Cashier and the amount and form of security to be given by him and by the other servants of the temple and the duties of the auditor,

6. for the investment of any surplus, and

7. for all such other matters as may be necessary for the proper management of the secular affairs of the temple,

The Rules so framed shall be liable to alteration in like manner.

17. Any of the plaintiffs or the Dbarma Rakshana Sabha or any member of the

Temple Committee or of the Board of Trustees may, be petition, apply to the High Court for such further or other directions in the matter as may be necessary or for modification of this scheme or any of the provisions thereof.

18. The scheme shall come into operation at once.

19. Messrs. K. Seshadri Aiyangar and K. Singam Aiyangar who were appointed by the Committee shall hold office for 5 years from this date.

Those that were appointed by the Sub-Court shall cease to hold office from to-day.