
(1957) 04 MAD CK 0025
In the Madras High Court

The State of Madras, presented by the Commissioner, Hindu Religious and Charitable Endowments APPELLANT

Vs

M. Ramakrishna Naidu (died) and Others RESPONDENT

Date of Decision : 12-04-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1957) 2 MLJ 252

Hon'ble Judges : P.V. Rajamannar, C.J

Bench : Division Bench

Judgement

P.V. Rajamannar, C.J.—This is an appeal against the Judgment of Subba Rao, J. in W.P. No. 840 of 1951 which was filed under Article 226 of the Constitution for the issue of a writ of certiorari or other appropriate order to quash the order of the Commissioner, Madras Hindu Religious and Charitable Endowments, dated 19th October, 1951, appointing one C. Subramaniam Chetty as a Trustee of Sri Parthasarathi Swami Devasthanam, Triplicane, in the vacancy caused by the expiry of the term of the trustee, Sri V. Ranganadham Chetty. The petitioners are two Thengalai worshippers interested in the said temple.

2. Sri Parthasarathi Swami Temple is a famous and ancient Vaishnavite temple in Triplicane in Madras City. The administration of the temple has been in accordance with a scheme framed by this Court in CS. No. 527 of 1924. The scheme inter alia provides that the management and affairs of the temple shall be carried on by a body of dharmakarthas under the supervision and control of a Board of Supervision. The dharmakarthas shall be three in number, of whom one shall be a Brahmin, one an Arya Vysia (Komatti) and one a Non-brahmin not Arya Vysia. The dharmakartha shall hold office for a period of five years from the date of his appointment. The retiring dharmakartha is however re-eligible for office provided he is at the time of his re-appointment eligible for such office under the other provisions of the scheme. The dharmakarthas shall be elected by persons whose names are included on the date of the election in the list of voters

maintained at the temple. The qualifications necessary for a person to be registered in the list of voters are that he should be (a) a Vaishnavite of the Thengalai sect; (b) of the male sex; (c) of the age of 21 years or upwards; (d) resident of Triplicane within specified boundaries for at least six months immediately preceding the publication of the year's preliminary electoral roll and (e) able to sign his name. The qualifications for being appointed as dharmakarthas are also mentioned in the scheme as well as the disqualifications. Elaborate rules for the conduct of the elections are laid down in the scheme.

3. The Madras Hindu Religious and Charitable Endowments Act (XIX of 1951) came into force on 1st October, 1951. The period of office of one of the dharmakarthas, namely, Rao Bahadur V. Ranganadham Chetty, expired by efflux of time on 12th October, 1951. Under the scheme the vacancy had to be filled up by election. But the Commissioner of the Hindu Religious and Charitable Endowments passed on 19th October, 1951, the following order:

In exercise of powers vested in him under Sections 39(1) and 42 of the Madras Hindu Religious and Charitable Endowments Act, 1951, the Commissioner is pleased to appoint Sri C. Subramaniam Chetty as a Trustee of the above Devasthanam in the vacancy caused by the expiry of the term of Trustee of Sri V. Ranganadham Chetty.

It is this order that the petitioners sought to set aside on several grounds of which the following were pressed before Subba Rao, J., who heard the petition, namely,

(1) The Commissioner has no power to appoint a trustee u/s 42 in a case where the appointment of a member is regulated under a scheme by way of election.

(2) Section 42 has no application as the trustees of the temple are hereditary trustees.

(3) The order appointing the second respondent as trustee affected the petitioners' fundamental right to vote, which is property within the meaning of Article 19(1)(f) of the Constitution of India.

4. The learned Judge rejected grounds 1 and 3 but upheld the second objection and held that Sections 39 and 42 had no application as the trustees of the temple were hereditary trustees. He quashed the order of the Commissioner and directed him to hold an election to fill up the vacancy in accordance with the provisions of the scheme. The appeal against that order is by the Commissioner of Hindu Religious and Charitable Endowments, Madras.

5. The learned Advocate-General, who appeared for the appellant contended that Sections 39 and 42 were applicable. Section 39(1) of the Act runs thus:

Where a religious institution included in the list published u/s 38 or over which no Area Committee has jurisdiction, has no hereditary trustee, the Commissioner shall constitute a Board of Trustees consisting of not less than three and not

more than five persons appointed by him

6. Section 42 declares that the power to appoint trustees u/s 39 shall be exercisable notwithstanding that the scheme if any, settled, or deemed under the Act to have been settled for the institution contains provision to the contrary. It was not disputed that the scheme settled for this institution must be deemed to be a scheme settled under the Act, for u/s 103(d) of the Act all schemes settled or modified by a Court of Law u/s 92 of the CPC shall be deemed to have been settled by the Court under the Act and shall have effect accordingly. The scheme settled by this Court in C.S. No. 527 of 1924 was a scheme settled u/s 92 of the Code of Civil Procedure. That scheme, as mentioned above, provides for the filling up of vacancies in the office of the trustee of the temple by election. Nevertheless the Commissioner will have the power to appoint trustees if the temple falls within the class of religious institutions mentioned in Section 39(1) of the Act. It is common ground that the temple is included in the list published u/s 38. The only question therefore is whether it is an institution which has no hereditary Trustee. "Hereditary Trustee" is defined in Section 6, Clause (9) thus:

Hereditary trustee " means the Trustee of a religious institution succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the foundere so long as such scheme of succession is in force.

7. It is not the case of the contesting respondents, the petitioners before Mr. Subba Rao, J., that the trustees of the temple in question are hereditary trustees because their office devolves by hereditary right or because the succession to their office is specifically provided for by the founder. The contention on their behalf was, and is, that the succession is "regulated by usage" and it is this contention that found favour with Mr. Subba Rao, J. The learned Advocate-General, on the other hand, contended that so far as this temple is concerned, there is no succession to the office of trustee. His argument was that the phrase "regulated by usage" must be read with the expression " succession to whose office" and when so read that part of the definition would only apply where the ordinary rules of succession under the Hindu Law are modified by usage and succession has to be determined in accordance with the modified rules. Mr. Champakesa Ayyangar for the respondents contended that "succession" should be construed widely so as to include any method of appointment or selection of the trustee to fill up a vacancy caused by the previous trustee ceasing to hold office. He relied upon the fact that from time immemorial there was an usage relating to this institution, of a nomination of the dharmakarthas by the members of the Thengalai sect.

8. There is one formidable obstacle in the way of accepting the contention of Mr. Champakesa Ayyangar that the Trustees of Sri Parthasarathi Swami Temple fall within the category of hereditary trustees as defined in the Act. Whatever may be the position before any scheme was framed by this Court, once a scheme has been framed u/s 92 of the Code, and that scheme provides a particular method

of filling up vacancies in the office of the trustee, it cannot be said that the succession to the office of the trustee, even construing it in the widest sense, is regulated by usage. All that Mr. Champakesa Ayyangar can say is that it was regulated by usage. It may be that the several schemes framed took notice of the usage and embodied it with such modifications as the Court deemed fit; but it cannot be said that the succession continued to be governed by usage when the fact is that it was governed by the provisions of the scheme. This position is conclusively established by the provisions in the schemes framed in the suits of 1918 and 1924. According to Mr. Champakesa Ayyangar, the usage was that a trustee, once elected, held office for life; but in the scheme framed by Courts Trotter, J., as he then was, in C.S. No. 111 of 1918 the period of the trustee's office was limited to five years at a time. But the retiring trustee was eligible for re-election. Likewise, in the scheme which till today is in force, namely, the scheme settled in C.S. No. 527 of 1924, the period is five years with a like provision that the retiring trustee is eligible for re-election. That provision is certainly not a part of usage. It is a provision in the scheme. It is impossible indeed to contend that on the date of coming into force of Madras Act (XIX of 1951), the succession to the office of the trustee of Sri Parthasarathi. Swami Temple was regulated by usage. The language "is regulated by usage" will not be applicable to a temple, succession to the trusteeship of which was regulated by usage but is no longer regulated by usage. The temple, therefore, certainly falls within Section 39(1) of the Act.

9. This is sufficient to dispose of the appeal. But as learned Counsel on both sides addressed arguments on the construction of the definition of "hereditary trustee" we shall briefly express our opinion on this point.

10. Succession in relation to property and rights and interests in property generally implies "passing of an interest from one person to another" Vide *In re The Hindu Women's Rights to Property Act* (1941) 2 M.L.J. 12 : (1941) F.L.J. 1 : 1941 F.C.R. 12 . Inheritance and succession are often used in juxta-position justifying the inference that succession is either another category from or a wider category than inheritance. It is now well-established that the office of hereditary trustee is in the nature of property. This is so whether the trustee has a beneficial interest of some sort or not *Narayanan Nambudripad v. State of Madras* (1953) 2 M.L.J. 699 and 713 and *Sri Shirur Mutt v. Commissioner, Hindu Religious Endowments Board* (1952) 1 M.L.J. 557 . Ordinarily a shebaitship or the office of dharmakatha is vested in the heirs of the founder unless the founder has laid down a special scheme of succession or except when usage or custom to the contrary is proved to exist. *Mukerjee, J., in Angurbala Mullick Vs. Debabrata Mullick*, delivering the judgment of the Supreme Court observed:

Unless, therefore, the founder had disposed of the shebaitship in any particular manner--and this right of disposition is inherent in the founder--or except when usage or custom of a different nature is proved to exist, shebaitship like any other species of heritable property follows the line of inheritance from the

founder.

11. In the case of mutts whose heads are often celebrities and sometimes sanyasins, special rules of succession obtain by custom and usage. In *Sital Das Vs. Sant Ram and Others*, the law is taken as well-settled that succession to mahantship of a mutt or religious institution is regulated by custom or usage of the particular institution except where the rule of succession is laid down by the founder himself who created the endowment. In that case the custom in matters of succession to mahantship was that the assembly of bairagis and worshippers of the temple appointed the successor; but the appointment had to be made from the disciples of the deceased mahant if he left any, and failing disciples, any one of his spiritual kindred. Such a succession was described as not hereditary in the sense that on the death of an existing mahant, his cehla succeeds to the office as a matter of course, because the successor acquires a right only by appointment and the authority to appoint is vested in the assembly of the bairagis and the worshippers. In *Sri Mahant Paramananda Das Goswami Vs. Radhakrishna Das and Others*, a Division Bench took the view that where succession to the mahantship is by nomination by the holder in office, it is not a hereditary succession. Venkatasubba Rao, J., said:

If the successor owes his title to nomination or appointment, that is, his succession depends on the volition of the last incumbent and does not rest upon independent title, I am inclined to the view that the office cannot be said to be hereditary.

Krishnan, J., the other learned Judge, came to the same conclusion on the following reasoning:

Where succession is by nomination by the holder in office of his successor it seems to me impossible to contend that it is a hereditary succession. Hereditary succession is succession by the heir to the deceased under the law, the office must be transmitted to the successor according to some definite rules of descent which by their own force designate the person to succeed. There need be no blood relationship between the deceased and his successor but the right of the latter should not depend upon the choice of any individual

The present definition in Section 6, Clause (9), would, however, comprise even such cases.

12. It appears to us to be singularly inappropriate to say that there is a succession of A's office to another when on the efflux of the period for which A was appointed there is a vacancy and B is elected to that vacancy. It is quite possible that for that vacancy A himself might be re-elected because a retiring trustee is eligible for re-election. The possibility of A being the successor of A himself is not merely an anomaly, it is an impossible legal position. No man can succeed to his own office. Mr. Champakesa Ayyangar recognised this but contended that the word " succession " in the definition of hereditary trustee is used in a wide sense and in one sense A may be said to be the successor of

himself in respect of a subsequent period. We are unable to accept any construction which will lead to such, anomalies and impossibilities. We are, therefore, of opinion that the trustees of the Sri Parthasarathi Swami Temple cannot fall within the category of hereditary trustees as defined in Section 6(9) of Madras Act (XIX of 1951).

13. The appeal is allowed and Writ Petition No. 840 of 1951 is dismissed. But in the circumstances there will be no order as to costs.