

(1999) 05 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 1502 of 1994

Thiruvachira Sreekrishna Kshethra Paripalana Committee	APPELLANT
Vs	
Commissioner, H.R. and C.E. and Others	RESPONDENT

Date of Decision : 28-05-1999

Acts Referred:

Citation : (1999) 05 KL CK 0003

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : K. Ramakumar and Ram Prasad Unni, T, for the Appellant; P. Gopinathan Nair, Government Pleader for Respondents Nos. 1 to 3 and P. Santhalingam, Jeena Joseph and G.D. Panicker, for the Respondent

Final Decision : Allowed

Judgement

C.S. Rajan, J.—The Thiruvachira Sreekrishna Temple once belonged to the Kozhikode Zamorin Raja, who was the Hereditary Trustee of the Temple. The Petitioner representing the Thiruvachira Sreekrishna Kshethra Paripalana Committee is in possession and management of the Temple for the last 20 years. The second Respondent issued Ext. P-1 notice to the Zamorin as well as to the President u/s 41 of the Hindu Religious and Charitable Endowments Act (Madras Act XIX), 1951 (hereinafter referred to as "the Act"). Ext. P-1 proposes to appoint new Trustees to the Temple for giving more representation to the worshipping public. The Petitioner challenged Ext. P-1 before the first Respondent. The first Respondent as per Ext. P-3 quashed Ext. P-1 notice and the second Respondent was directed to proceed afresh in accordance with law. In Ext. P-3 an Administrator was also appointed to take over the charge of the Temple. In O.P. No. 12537 of 1992 a Division Bench of this Court quashed Ext. P-3 to the extent of appointing the Executive Officer as the Administrator of the Temple. Thereafter the second Respondent passed Ext. P-4 order by which the objection against Ext. P-1 notice was rejected. The Petitioner took up the matter before the first Respondent and the first Respondent as per Ext. P-6 order

confirmed Ext. P-5 order.

2. The main ground taken by Sri Ram Prasad Unni, learned Counsel for the Petitioner is that unless this particular temple has been included in the list of religious institutions prepared and published u/s 38 of the Act, no appointment of Trustees can be made u/s 39 of the Act. According to Section 39(1) of the Act, where a religious institution included in the list published u/s 38 has no Hereditary Trustees, the Commissioner can also appoint non-Hereditary Trustees, if he is of opinion that the affairs of the institution are not likely to be properly managed by the Hereditary Trustee.

3. There is no case for the Respondents that the proposed action has been taken under any section other than Section 39 of the Act. In ground A of the Original Petition a specific ground has been taken that Section 39 has no application as the Temple has not been included in a list published u/s 38 of the Act. The above ground has been answered in the counter-affidavit filed by the first Respondent as follows: The Temple has been declared as a public temple coming under the purview of H.R. and C.E. Act by the Deputy Commissioner u/s 57(a) of the Act by order in O.A. 8/85 dated 14th February 1991. No appeal has been preferred by anybody against the above order. It is further admitted in the counter-affidavit that Ext. P-1 notice has been issued u/s 41 of the Act read with Section 39.

4. Thus, the fact that this Temple has not been included in the list of institutions u/s 38 of the Act has not been denied. Therefore, the only other contention, that because this Temple has been declared as a public temple u/s 57 of the Act, Respondents 1 and 2 get jurisdiction to appoint new Hereditary Trustees has to be considered. Section 57 of the Act gives power to the Deputy Commissioner to enquire into and decide the following disputes and matters:

- (a) whether an institution is a religious institution;
- (b) whether a trustee holds or held office as a hereditary trustee;
- (c) whether any property or money is a religious endowment; and
- (d) whether any property or money is a specific endowment.

Therefore, the Deputy Commissioner is empowered to decide whether an institution is a religious institution. There is no power for the Deputy Commissioner to declare a Temple as public temple. In fact there is no definition of the public temple in the Act. A Temple has been defined as a place of public religious worship and dedicated by the Hindu Community. Therefore, the declaration alleged to have been made by the first Respondent u/s 57 of the Act that this institution is a public temple will not enable the Respondents to invoke powers u/s 39 of the Act. The basic fact for Respondents 1 and 2 to get jurisdiction to act u/s 39 of the Act is the inclusion of a Temple in the list prepared and published u/s 38 of the Act. In the absence of such inclusion in the list of Temples, the first Respondent cannot invoke the powers u/s 38 so as to appoint either Hereditary or non-Hereditary Trustees. Since Section 57 does not

authorise the Deputy Commissioner to declare a Temple as a public temple. Such a declaration cannot enure to the benefit of the first Respondent to invoke Section 30 of the Act.

Therefore, I am of the view that Respondents 1 and 2 acted illegally and without jurisdiction in passing Exts. P-1, P-4 and P-6. Therefore, I quash Exts. P-1, P-4 and P-6.

Original Petition is allowed as indicated above.