

(1930) 11 MAD CK 0023
In the Madras High Court

T.S. Lakshmana Ayyar and Others

APPELLANT

Vs

R.S. Nayudu and Others

RESPONDENT

Date of Decision : 20-11-1930

Acts Referred:

Citation : AIR 1931 Mad 340

Judgement

1. The suit from which this appeal is presented was by representative worshippers of the Madura Devasthanam against the ten members of the

Madura, etc. Devasthanams Committee, defendants 1 to 10, and the Secretary of State, defendant 11, for a declaration that the appointment by

defendant 11 of defendants 1 to 10 as members of that committee is illegal and invalid because defendant 11 has no power to modify the scheme

for these Devasthanams framed by the District Court of Madura in O.S. 4 of 1922, and for an injunction restraining defendant a 1 to 10 from

interfering with the management of the suit devasthanams. The District Court dismissed the suit and the plaintiffs appeal.

2. In O.S. 4 of 1922, which was a suit u/s 92, Civil P.C., the District Court, in its decree dated 12th April 1924,. framed a scheme for the better

administration of the suit devasthanams, appointing a committee of five members to be known as the Madura etc. Devasthanams Committee. The

District Court decree was slightly modified by the High Court on appeal on 31st July 1925. It appears from the judgment in that suit, and is

otherwise admitted, that on the date of that scheme there was already in existence a committee of five members known as the Madura, etc.

Devasthanams Committee constituted and appointed under Act 20 of 1863. The District Court-in its scheme seems to have adopted that

committee as the committee appointed under its scheme. This explains what was at first a rather puzzling feature, namely that the District Court's

scheme provided no way of filling up vacancies in the scheme committee. We take it that that was because the committee was really one

constituted under Act 20 of 1863 and vacancies would therefore be filled up in the manner provided by that Act. Subsequent to the passing of

Madras Acts 1 of 1925 and 2 of 1927 the Local Government by several notifications purported to interfere with and vary the constitution of the

Madura, etc., Devasthanams Committee. Ex. B is a notification of 1st February 1927 u/s 16 (1) (b), Act 1 of 1925, varying the strength of the

committee and fixing it at six members. Ex. B-1 dated 21st August 1928 is a notification under Sections 20 (1) (a), 21 and 22, Madras Act 2 of

1927, which had by then superseded Act 1 of 1925, constituting a committee for the Madura Meenakshi Sundareswarar, etc. Devasthanams and

fixing its strength at ten and appointing nine out of the ten members for a period of one year. Ex. B-2 is a notification dated 23rd October 1928 u/s

22, Act 2 of 1927, whereunder the Local Government appoints the tenth member. Under B-3, a notification dated 4th February 1930 under the

proviso to Section 22, the Local Government appointed defendants 1 to 10 as members for one year.

3. Plaintiffs' general contention before us is that all variations of the original committee appointed under Act 20 of 1863 are ultra vires; that the

notifications, B to B 3, are therefore illegal; and that defendants 1 to 10 are not validly appointed. The ground on which the plaint attack was based

in the trial Court was that the Local Government's action was tantamount to a modification of the District Court's scheme, which fixed the

committee at five and provided no method of filling up vacancies, and that any such modification of the scheme framed by the District Court was

illegal, and that is the point which formed the subject of the main issues in the case. But, as the argument was developed before us, it appeared to

us that such a contention was irrelevant since, as we have pointed out, the Madura, etc. Davasthanams Committee was not the creature of the

District Court's scheme but owed its being to Act 20 of 1863. The plaintiffs have not attacked the authority of the Local Government to vary the

constitution of the committee appointed under Act 20 of 1863, but only its authority to modify a schema of the District Court. Any contention and

issue framed, for example issues 2 to 4, as to the authority of the Local Government to alter the District Court's scheme therefore became

irrelevant, and the parties and the lower Court therefore seem to have missed the real point when these issues were framed and tried.

4. The plaintiffs' attack on the committee's constitution, as set out in issues 2 to 4, therefore fails as irrelevant. The plaintiffs contend however that

the general language of their plaint and the wording of issue 1 enable them to maintain, as a purely legal point, the contention that, even taking it that

the District Court's schema had nothing to do with the real points at issue, the Government notifications were invalid on other grounds. We

allowed this matter to be argued as it seemed to us that such a contention would plausibly come within the terms of the plaint case, and it was

inadvisable to continue the uncertainty in which the constitution of the committee seemed to be involved if it could be properly resolved in this case

and save further litigation thereon. Had our considered opinion been in favour of the plaintiffs it might have been only fair to the defendants to have

raised fresh issues and to have sent the case down for further trial. But as we hold that even on the fresh contention the plaintiffs have made out no

case, we proceed to deal at once with that contention.

5. Put shortly, it is this : Act 20 of 1863 was repealed by Act 1 of 1925. To provide for the transitory period between that repeal and the

appointment of the new committee under Act 1 of 1925 to take the place of the old one, Section 79 of that Act was enacted which runs:

(1) Every committee established under the Religious Endowments Act of 1863, which is in existence at the commencement of this Act shall be

deemed to have been duly constituted under the provisions of this Act; (2) In their application to the members and Presidents of Committees in

office at the commencement of this Act and the first reconstitution of such committees in accordance with this Act, the provisions of this Act shall

be read subject to the rules contained in Schedule 3.

6. The plaintiffs contend that Section 16, Act 1 of 1925, which deals with the constitution of committees, deals only with committees appointed

under that Act since "committee" by definition, Section 5 (2), means a committee as constituted u/s 16, and Section 79 does not say that a

committee established under the Religious Endowments Act of 1863 shall be a

committee constituted u/s 16, but merely that it shall be deemed to have been constituted under Act 1 of 1925. We think however that Section 79 (1) means that any committee established under the Act of 1863, in existence at the commencement of Act 1 of 1925, is to be regarded by the law as if it were one constituted under, Act 1 of 1925, that is, as if it were a committee constituted u/s 16 of that Act, and therefore is a committee which comes within the definition of "committee" u/s 5. Section 16 then gives the Local Government power to vary or abolish such a committee. If this interpretation is not right, then all the provisions in Ch. 3 of the Act regarding the establishment of temple committee are nugatory, wherever a committee appointed under Act 20 of 1863 holds jurisdiction, since such a committee would remain unassailable and unalterable for ever, it being impossible for the Local Government to abolish it under Act 20 of 1863 because that Act itself is now repealed and Government has not reserved to itself by legislation any power to abolish or modify such a committee. The scheme of Section 79 with its specific mention in Sub-section (2) of "the first reconstitution of such committees in accordance with this Act," and the real meaning of the section obviously are that the Local Government takes power if it thinks fit to abolish the old committees under Act 20 of 1863 and put, in their place, new committees under Act 1 of 1925, and that for the transitory period Schedule 3 is to be in operation. When Act 1 of 1925 was in its turn repealed by Act 2 of 1927, Section 9 (2) then took the place of the definition in Section 5 (2) of the previous Act, and Sections 20 and 83 the place of Sections 16 and 79, the only change in language which is relevant here being that for the words "any such committee" in Section 16 (1) (b) and (c) of the former Act the words "any committee" are inserted in Section 20 (1) (b) and (c), a change which, if anything, is in favour of giving these words a wider application so as to include in them a committee deemed to have been duly constituted" under the provisions of that Act. Even if we take it that the narrower wording of Section 16 (1) (b) and (c) did not empower the Local Government to vary or abolish the committee under Act 20 of 1863, the Local Government did not purport to abolish it during the currency of Act 1 of 1925. The old committee therefore continued until it was abolished by notification, we are told, dated 28th November 1927 and ceased to

exist on 1st December 1927. Such abolition was under Act 2 of 1927 and is justified and valid u/s 20 (1) (c) of that Act, and the reconstitution of it under notification Ex. B, is also valid under Sub-section (1) (a).

7. We are bound to say that the strongest justification for the plaintiffs' suit is the extraordinary dilatoriness of the Local Government in giving effect

to its own legislation Act 1 of 1925 and the consequent repeal under it of Act 20 of 1863 came into force on 27th January 1925. The transitory

provisions of Schedule 3, Act 1 of 1925, gave to the Local Government three years within which to prepare the machinery for the electoral

method of appointment of the temple committee designed under the Act. Not until two years after that Act came into force did it occur to the

Local Government to vary the constitution of the committee of 1863 so as to increase the number to six and thus make it conform to Section 17,

Act 1 of 1925. This was the purpose of the notification, Ex. B. Now from the date of the High Court decree-in appeal from the judgment of the

District Court, Madura, in O.S. 2 of 1921, a decree which was passed on 31st July 1925, and removed three of the then members of the

committee, there had been three vacancies on the committee-No steps were taken to have these vacancies filled up until the notification Ex. B 18

months later. Presumably the committee was left to function for that period with only two members. By a notification dated 28th November 1927

the Local Government at last decided to abolish the existing committee from 1st, December 1927 and it then came to an end.

8. Beyond that nothing was done and no committee was therefore functioning until the date of Ex. B, 21st August 1928, when the new committee

of ten members was established. u/s 20, Act 2 of 1927, nothing had yet been done towards bringing the electoral machinery into play. The

transitory provision of that Act, which had to be resorted to, provided only one year from the date of the Act coming into force during which these

provisions might operate. That year expired on 7th February 1928. Section 22 had therefore to be resorted to and Ex. B-I is a notification under

that section, which allows the Local Government to make appointments for one year. That year expired on 20th August 1929. No electoral

machinery was even yet ready. So recourse was had to fresh legislation and Act 1 of 1928 enacted a proviso to Section 22,, which came into

force on 14th February 1928. The proviso allows Government to make appointments for another year. Whether that year is to date from the expiry of the one allowed u/s 22, which seems reasonable, or whether it is to date from whatever date the Local Government chooses to fix, which does not seem reasonable, does not matter in this case. One year from 20th August 1929, brings us to 19th August 1930, and the suit was filed on 17th February 1930, so that on the date of the filing of the suit defendants 1 to 10 were legally in office appointed under the proviso to Section 22 by notification Ex. B-3 dated 4th February 1930. But it will be observed that there was another interregnum between 20th August 1929 and 4th February 1930 when no committee was functioning. We are informed that during the periods of interregnum when the committee was not functioning a trustee appointed by the District Court's scheme was in actual management; but this seems doubtful as the District Court's judgment says that the trustee was removed on 16th July 1929. We have not gone further into this question. Such a record of dilatoriness appears on the face of it indefensible, and is bound to have been a source of exasperation to worshippers who were not in favour of the Local Government nominees or the Local Government methods by which these nominees attained to their office, and who are anxious to exercise the privileges which Act 2 of 1927 was designed to confer upon them. However for the reasons we have given it is clear to us that the plaintiffs' suit as framed cannot succeed even on the legal ground which we have allowed them to raise here, since defendants 1 to 10 were on the date of suit legally in office under the notification, Ex. B-3. It is unnecessary to deal with the other matters raised in the other issues and we have not had those fully argued before us. The appeal must therefore be dismissed. As the plaintiffs have failed they must pay the costs of the contesting defendants. One set to contesting defendants 1, 2, 5, 7 to 10 and one set to defendant 11. Rs. 200 each set for pleaders fee.