

SUPREME COURT OF INDIA

Subramanya Desiga Gnanasambada Pandarasannadhi

Vs.

State of Madras

C.A.No.272 of 1963

(K. Subba Rao, Raghubar Dayal, J. R. Mudholkar, R. S. Bachawat and V. Ramaswami, JJ.)

08.02.1965

JUDGEMENT

SUBBA RAO, J.:

1. Sri Vaidyanathaswami Temple at Vaitheeswarankoil, Sirkali Taluk, Thanjavur District, Madras State, is an ancient and famous Siva temple. It owns a large extent of immovable property and it is said that its annual income is more than Rs. 2 lakhs. In 1342 the British Government, which was then administering the temple handed over its management to the Pandarasannadhi of Dharmapuram Adhinam. Since then the said Pandarasannadhi has been managing the same through one of his selected disciples a Kattalai Thambiran. In the year 1919 the High Court of Madras framed a scheme for the administration of the said temple in A. S. No. 181 of 1917. The said scheme provided, among others, that the administration of the temple should be in the hands of the Kattalai Thambiran appointed by the Pandarasannadhi, and that he should be assisted by a treasurer, a shroff and an auctioneer who was to be appointed once in 3 years by the Court. The Madras Legislature passed Act II of 1927 providing for the good administration of temples and their endowments. The Religious Endowments Board functioning under the said Act, presumably because the administration of the temple in question was satisfactory, did not take any steps to have the scheme framed by the High Court in 1919 modified under the said Act. That Act was substituted by The

Madras Hindu Religious and Charitable Endowments Act, 1951 (Act No. XIX of 1951), hereinafter called the Act. On June 16, 1951, the Commissioner, Hindu Religious and Charitable Endowments, Madras, filed a petition in the Court of the Subordinate Judge, Mayuram, under S. 62 (3a) of the Act for modifying the scheme framed by the High Court. In the petition the Commissioner, after alleging various acts of commission and omission by the Trustee and his subordinates in the management of the temple, and pointing out the defects in the earlier scheme, averred that the full income of the Devasthanam had not been secured and safeguarded and that, that was attributable mainly to the defective machinery set up under the scheme for the administration of the temple. The most important of the modifications suggested to the scheme was that an Executive Officer should be appointed in the place of the Kattalai Thambiran and the Treasurer, conferring large powers on him for the day-to-day administration of the temple. The Pandarasannadhi filed a counter-affidavit denying all the allegations made against the management of the temple and asserting that he had functioned in terms of the scheme and had piloted the temple through difficult times successfully. The learned subordinate Judge, after considering the entire material placed before him, came to the conclusion that the petitioner had not substantiated any of the allegations made against the Trustee and that no case had been made out for amending the scheme and for the appointment of an Executive Officer. In the result he dismissed the petition. The State of Madras, represented by the Commissioner of Hindu Religious and Charitable Endowments, Madras, preferred an appeal against the said order to the High Court of Madras. The said appeal came up before a Division Bench of the High Court. In the High Court the learned Government pleader appearing for the State did not question the correctness of the finding given by the learned subordinate Judge that there was no proof of mismanagement of any kind by Pandarasannadhi or the Kattalai Thambiran. The learned counsel for the Pandarasannadhi had no objection for making formal amendments to the scheme, which became necessary due to lapse of time and due to the passing of the Act. After hearing the parties, the High Court modified the scheme introducing the controversial provision. viz., the appointment of an Executive Officer. In the result, the order of the Subordinate Judge was set aside and the scheme made by the High Court in 1919 was modified. This appeal has been filed, on a certificate issued by the High Court, against the said decree of the, High Court.

2. Mr. A. V. Viswanatha Sastry, learned counsel for the appellant, contends that the High Court, having agreed with the Subordinate Judge that the Commissioner had failed to establish any of the charges levelled by him against the Trustee, erred in modifying the scheme framed by the High Court in the year 1919 introducing drastic changes therein, such as putting the management of the temple under an Executive Officer who could be appointed and removed only by the Hindu Religious and Charitable Endowments Board and also making a provision for the appointment of additional Trustees in future. He has no objection to that part of the scheme introducing formal changes in the earlier scheme so as to bring it in conformity with the provisions of the Act.

3. The arguments of Mr. A. Ranganadham Chetty, learned counsel for the State, may be stated thus: Under the Act a scheme for administration of a temple may be framed or an earlier scheme may be amended not only when there is mismanagement by the Trustee but also for providing for a better administration of the temple. In the present case, though there is no mismanagement by the Trustee, the extensive immovable properties the temple owns, the existence of large arrears of rents, settlement of disputes that may arise between the tenants and the Trustee under the new tenancy laws and such others call for the appointment of a trained Executive Officer by the Commissioner in

the best interests of the Temple. That apart, as under the Act the Commissioner is empowered to frame a scheme if he has reason to believe that in the interests of the proper administration of a religious institution a scheme should be settled for the same, his opinion must be given almost a decisive weight by a Court in the matter of amending a scheme.

4. To appreciate the contentions of the parties it will be convenient at the outset to notice briefly the scheme of the Act. The Act was passed to provide for the proper administration and governance of Hindu Religious and Charitable Endowments and institutions in the State of Madras. It provides for the appointment of 4 classes of authorities, namely, Commissioner, Deputy Commissioners, Assistant Commissioners and Area Committees. The Commissioner is the highest authority in the hierarchy. Subject to the provisions of the Act, the administration of all religious endowments shall be subject to the general superintendence and control of the Commissioner and for the purpose of such control he can pass any orders which he may deem necessary to ensure that such endowments are properly administered and that their incomes are duly appropriated for the purposes for which they were founded or exist. Specific duties have been allotted to the other authorities subject to the overall control of the Commissioner. There are many effective provisions in the Act to ensure proper administration of temples. Trustees have to keep registers for all institutions for the scrutiny of the appropriate authority. They have to furnish accounts and the accounts have to be audited in the manner prescribed in the Act. The Trustees cannot alienate immovable properties or lease the same beyond 5 years without the sanction of the appropriate authority. They have to obey all lawful orders of the appropriate authorities. The service conditions of the officeholders are duly protected. The scales of expenditure have been standardized and a provision is made fixing the fees for archana and the apportionment of the same. The Trustees have to prepare budgets and get their accounts audited. There are provisions even for ordering surcharge against Trustees. All the temples, whether governed by schemes or not, are subject to the said provisions of the Act. Thus, there is a fair amount of financial and administrative control over the Trustees.

5. The general provisions of the Act may be sufficient in the case of temples which are properly administered; but there may be temple without any scheme of administration or even if it has one, it may require to be improved to achieve better results. Section 58 enables a Deputy Commissioner to settle a scheme for an institution if he has reason to believe that in the interests of better administration thereof a scheme should be settled for it. His order framing a scheme is subject to appeal to the Commissioner. Under S. 62 of the Act a party aggrieved by the order can file a suit in a Court questioning the correctness of the same and against the order of that Court an appeal lies to the High Court. Under S. 103 (d) of the Act,

"all schemes settled or modified by a Court of law under the said Act (The Madras Hindu Religious Endowments Act, 1926) or under Section 92 of the Code of Civil Procedure, 1908, shall be deemed to have been settled or modified by the Court under this Act and shall have effect accordingly."

Under S. 62 (3) of the Act, any scheme modified by a Court under S. 62 (2) of the Act or any

scheme framed or any scheme deemed under S. 103 (d) In have been settled or modified by a Court can at any time be modified or cancelled by a Court on an application made to it by the Commissioner or a Trustee or any person having interest. Any party aggrieved by any order of the Court under cl. (a) of S. 62 (3) may within 90 days of the order appeal to the High Court. The effect of these provisions is that though the Deputy Commissioner settles a scheme at the first instance, an aggrieved party can finally go to a civil Court to have the scheme modified. So too, a scheme framed by a Court under S. 92 of the Code of Civil Procedure can be modified on an application made to a Court by the Commissioner, Trustee or any person having interest. Before the Act, there was a conflict whether the scheme framed by a Court under S. 92 of the Code of Civil Procedure could be modified on an application made by an aggrieved party and that conflict is resolved under the Act by an express provision that it can be so done. Where a temple is so badly mismanaged that the administration cannot be improved by the exercise of ordinary powers under the Act or by framing a scheme, the Commissioner is given the power to notify such a temple and put it under the direct control of an Executive Officer directly responsible to him. This is in the nature of supersession of the ordinary administration of a temple. It is, therefore, clear that under the Act the administration of all temples is subject to the exercise of the powers conferred upon the authorities thereunder. The Deputy Commissioner can settle a scheme for the proper administration of a temple. If the administration of a temple is very bad, it can be superseded and the temple notified for a prescribed period. From the scheme of the said provisions we do not see any justification for the argument of the learned counsel for the State that the Court shall accept without scrutiny the view of the Deputy Commissioner that the scheme requires modification in the manner suggested by him and that the formal approval by the Court is all that is contemplated thereunder. While we appreciate the argument that a Court shall have due regard to the views of the Commissioner or the Deputy Commissioner, as the case may be, who is in close touch with the administration of temples, we cannot persuade ourselves to hold that the Court is relieved of its duty of ascertaining the necessity for framing a scheme or to find out the propriety or advisability of the various clauses of a scheme. In framing a scheme, the Deputy Commissioner and in a suit or application for amendment of a scheme, the Court will mould the relief under S. 58 (2) of the Act having regard to the circumstances of each case. Section 58 (2) of the Act reads:

"A scheme settled under sub-s. (1) for a temple or for a specific endowment other than one attached to a math may contain provision for

(a) removing any existing trustee whether hereditary or non-hereditary;

* * * *

(b) appointing a new trustee or trustees in the place of or in addition to any existing trustee or trustees:

(c) defining the powers and duties of the trustee or trustees;

(d) appointing, or directing the appointment of a paid executive officer who shall be a person professing the Hindu religion, on such salary and allowances as may as may be fixed, to be paid out of the funds of the institution; and defining the powers and duties of such officer:

* * * *"

The Deputy Commissioner, the Commissioner or the Court, as the case may be, is not bound, in framing a scheme to appoint an Executive Officer in every case; but a case will have to be made out for appointing him: that depends upon the facts established in each case.

6. with this background let us look at the scheme framed by the High Court. The scheme is made a part of the judgment of the High Court. The clauses of the scheme read thus:

1. The temple of Sri Vaithianathaswami at Vaitheeswarankoil Shiyali Taluk, and the shrines and minor temples attached thereto, and charities and endowments thereof, together comprise the "Velur Devasthanam", and it shall be governed by the provisions of Act XIX of 1951 and the rules made thereunder.

2. The properties, movables and immovables, belonging to the Devasthanam and that may hereafter be acquired by the Devasthanam shall vest in the deity of Sri Vaithiranathaswami.

3. The administration of the Devasthanam and its properties shall vest in the Pandarasannadhi at the Dharmapuram Adhinam for the time being, who shall be the "trustee" of the Devasthanam.

4. On the application of the Commissioner, the Court shall have the power to add two additional trustees if at some future time it is found that it is necessary to do so in the interest of the Devasthanam on account of the mismanagement by the Pandarannadhi, the Trustee.

5. All the affairs of the Devasthanam, such as the receipt of income, incurring of expenditure, management of the property, the performance of the worship and the festivals of the temple, bringing and defending suits on behalf of the Devasthanam, shall be conducted by the Executive

Officer under the supervision of the trustee, the mamool religious functions of the Kattalai Thambiran being reserved.

6. The Trustee shall in April every year prepare a budget of the income and expenditure and such budget will be governed by the provisions of Madras Act XIX of 1951. The Trustee shall be given a discretion to spend any amount not exceeding Rs. 2,000 (Rupees two thousand) every year in addition to the budgeted expenditure.

7. (a) The Trustee shall from out of the five names sent to him by the Commissioner choose one of them for appointment as the Executive Officer of the Devasthanam and such person shall be appointed by the Commissioner as Executive Officer and shall be in management of the Devasthanam and its properties in the day-to-day administration including the maintenance of accounts, keeping of records, making collections and disbursements, and shall have the control of the temple servants.

(b) The Executive Officer shall be a first class Executive Officer, and shall be paid such salary and employed on such terms as the Commissioner may from time to time prescribe and his power and duties shall be regulated by Madras Act XIX of 1951 and the rules framed hereunder.

8. The Pandarasannadhi shall select from among the Thambirans of the Dharnapuram Adhinam a Kattalai Thambiran competent to do the religious functions of the Trustee. The Pandarasannadhi will be responsible for all act of the Kattalai Thambiran as a master for the acts of the servant.

9. The Kattalai Thambiran shall attend to the performance in proper manner and in proper times of the daily pujas and worship and of the monthly and yearly festivals of the Devasthanam under the supervision and direction of the Executive Officer.

10. (a) The matam building belonging to the Devasthanam in Vaitheeswarankoil shall be set apart for the residence of the Kattalai Thambiran, and a sum of Rs. 50 a month shall be paid to him for his maintenance and personal expenses. He will also be entitled to the enjoyment of one veil of maniam land, as in the pre-scheme days.

(b) The present treasurer and shroff will continue in office on the present scale of pay, and they shall work under the directions of the Executive Officer and shall do such work as is assigned to them. The future treasurer and shroff will be appointed by the commissioner. The old scale of salary of the treasurer is reduced to the present scale of Rs. 100-5-125.

11. The Executive Officer shall with the permission of the Commissioner, sell in public auction the jewels and ornaments gold and silver coins not in circulation and other metallic objects in the hundials except current coins and any other offerings.

12. The Trustee shall place one or more hundials, as occasions might require, for the deposit of voluntary and compulsory offerings by the worshippers. Each hundial shall be of copper, brass or any other materials, and shall have metallic covering with an aperture. Each of such hundials shall be under double lock and sealed by the Trustee and the Executive Officer. One set of keys shall be with the Executive Officer and other set with the Trustee. The hundials shall be opened every day or at such intervals as the Trustee may direct in the presence of the Executive Officer and the Kattalai Thambiran and the worshippers of the temple and the collections shall be kept by the Executive Officer.

13. In the matter of accounts, preparing abstracts, and receipts and disbursement of the Devasthanam as also at preparation, publication and audit of accounts, the Executive Officer and the Trustee shall observe the procedure prescribed in Madras Act XIX of 1951 and the rules made thereunder.

14. The accounts of the Devasthanam shall be open to inspection by any person having interest, on his giving one day's previous notice to the Executive Officer and paying a fee of Rs. 5 for each day or part of a day in advance of such inspection. The person so inspecting may bring to the notice of the Commissioner any irregularity and the Commissioner may pass such orders as he may think necessary.

15. All the records of the Devasthanam shall be kept in proper order in the premises of the Devasthanam provided for the purpose in Vaitheeswarankoil, and an accurate list of all records should be maintained. There shall be a recordkeeper who shall be in charge of all the records and he shall not allow any record to be taken out without the written authority of the Executive Officer and without getting proper vouchers.

16. Power is reserved to the Trustee to apply to the Commissioner for permission to use the surplus funds on such religious and charitable and other purposes as may tend to promote the cause of the institution such as an Agama Patasala or Thevara Patasala or Adhyayana Patasala or such other purposes as are prescribed by the Act.

17. The Trustee shall have the discretion to make jewels vahanams, etc. or to do thiruppani work for

the Devasthanam out of the surplus income of each year after obtaining the sanction of the Commissioner and in accordance with the provisions of Act XIX of 1951, and the rules made thereunder. The Trustee shall have a discretion to spend Rs. 2,000 annually over and above the sanctioned amount if necessary and if funds are available.

18. The Trustee may with the sanction of the Commissioner invest the surplus funds of the Devasthanam in such manner as is prescribed under Madras Act XIX of 1951 and the rules made thereunder.

19. There shall be no money dealings or transactions between the Devasthanam Trustee and the Adhinam or any of the Kattalai charities or trusts managed by the Pandarasannadhi of Dharmapuram or any person under his orders.

20. Save as expressly provided herein, the administration of the temple shall be governed by the provisions of the Madras Act XIX of 1951 and the rules made thereunder.

It will be seen from the aforesaid provisions of the scheme that it introduces an Executive Officer to be appointed by the Commissioner and removable by him; his salary is fixed by the Commissioner and his powers and duties are regulated by the Act and the rules framed there- under. In substance, he is a servant of the Commissioner and is under his control. He is to be in charge of the entire administration of the temple. Nothing can be done in the temple without his permission. It is true that he functions under the supervision of the Trustee; but there is an essential distinction between supervision and management. If the Executive Officer disobeys him, the Pandarasannadhi cannot do anything, except perhaps to complain to the Commissioner. Such a drastic provision may be necessary in it case where the temple is mismanaged or if there are other circumstances which compel such an appointment. But there is concurrent finding of fact in this case that the Commissioner has failed to establish any of the charges levelled by him against the Trustee. It is not, therefore, possible to hold that any case has been made out for the appointment of an Executive Officer who practically displaces the Trustee.

7. Mr. A. Ranganadham Chetty says that the appointment of the Executive Officer is necessary in view of the great things which have to be done in the temple, like sale of 3,000 acres of land to the tenants under the new legislation at agreed prices, checking cash collections including the hundial collections, doing away with the ad hoc auctioneers appointed by the Commissioner from time to time and for auctioning leases, and all kinds of properties like jewellery, lands etc. We have no material before is to find out what is the complicated and difficult action the Trustee has to take on the matter of selling 3,000 acres of land to the tenants under the new legislation at agreed prices. If there is any such difficulty, the Commissioner ha ample powers under the Act to issue orders or at any rate advice the Trustee in the matter of disposal of such lands. Other difficulties are not such as to necessitate the appointment of an Executive Officer practically displacing the Trustee. Further it

appears from the record that the present Kattalai Thambiran is a legally qualified person and he can ordinarily be expected to look after these things with appropriate expert advice. We do not think any case has been made out for the appointment of the Executive Officer.

8. The next objection raised by Mr. Viswanatha Sastry relates to cl. (4) of the scheme which reads:

"On the application of the Commissioner the Court shall have the power to add additional trustees if at some future time it is found that is necessary to do so in the interest of the Devasthanam on account of the mismanagement by the Pandarasannadhi, the Trustee."

Clause 4 of the scheme only confers a power and it does not direct the appointment of additional trustees in presenti or even on further. Indeed, S. 39 of the Act was amended in 1934 whereunder such a power is conferred even on the Commissioner. We do not think the appellant is in any way prejudiced by the said clause. Therefore, it may stand. As we are deleting the clause appointing the Executive Officer, there will be consequential amendments in the various clauses of the scheme framed by the High Court.

9. It is brought to our notice that in 1959 the Madras Hindu Religious and Charitable Endowments Act (Act XXII of 1959) was passed by the Madras Legislature. Under S. 45 thereof, the Commissioner is given a plenary power to appoint an Executive Officer to any temple and, therefore, it is argued, this Court shall not interfere with the clause of the scheme providing for the appointment of an Executive Officer to the temple in question. The said Act was passed subsequent to the filing of the suit. We are deciding this appeal on the basis of the circumstances obtaining in the year 1951 when the suit was filed. It may be that under the new Act the Commissioner has higher powers than he had under the 1951 Act and subsequent events may call for the exercise of those powers. Our judgment will not preclude the Commissioner to take any action under the new Act as the circumstances demand. With these observations we shall proceed to modify the scheme framed by the High Court.

10. In the scheme framed by the High Court clauses 1, 2, 3, 4, 6, 10 (a), 16, 17, 18, 19 and 20 will be retained: clause 7 will be deleted: and the other clauses will be amended as under:

Clause 5. The words "the Executive Officer under supervision of" will be omitted.

Clause 8. The word "religious" will be omitted.

Clause 9. The words "under the supervision and direction of the Executive Officer" will be omitted.

Clause 10 (b) shall read:

The treasurer and shroff will continue in officer on the present scale of pay, and they shall work under the directions of the Trustees.

Clause 11. The words "Executive Officer" shall be replaced by the word "Trustee."

Clause 12 shall read:

The Trustee shall place one or more hundials, as occasions might require, for the deposit of voluntary and compulsory offerings by the worshippers. Each hundial shall be of copper brass or any other materials, and shall have metallic covering with an aperture. Each of such hundials shall be under double lock and sealed by the Trustee or his nominee and the Kattalai Thambiran. One set of keys shall be with the Kattalai Thambiran and the other set with the Trustee or his nominee. The hundials shall be opened every day or at such intervals as the Trustee may direct in the presence of the Kattalai Thambiran and the worshippers of the temple and the collections shall be kept by the Trustee

Clause 13. The words "Executive Officer." will be substituted by the words "Kattalai Thambiran".

Clause 14. The words "Executive Officer" will be substituted by the word, "Kattalai Thambiran".

Clause 15. The words "Executive Officer" will he substituted by the words "Kattalai Thambiran".

11. In the result, the decree of the High Court is modified as aforesaid. The parties will bear their respective costs throughout.

Appeal partly allowed.

