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A.S.No.285 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 29.11.2022

Judgment Pronounced on : **21.12.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.285 of 2003

1. Sri Vedaranyaswamy Devasthanam
rep. by its Managing Trustee
K.Sevanthinatha Pandarasannithi

2. K.Sevanthinathh Pandarasannithi .. Appellants

Versus

The Commissioner, HR & CE Dept.,
Nungambakkam High Road,
Chennai - 34. .. Respondent

Prayer : Appeal Suit filed under Section 70(2) of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 against the judgment and decree of the learned Sub Judge, Nagapattinam, dated 07.11.2002 made in O.S.No.1 of 1983.

For Appellants : M/s.G.Sumithra

For Respondents : Mr.M.Bindran
Additional Government Pleader
(for H.R. & C.E., Department)



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JUDGMENT

A. The Appeal Suit :

This Appeal Suit is filed against the judgment and decree, dated 07.11.2002 of the learned Subordinate Judge, Nagapattinam in O.S.No.1 of 1983, in and by which, the suit filed by the plaintiffs to set aside and to cancel the order of the first defendant, dated 29.07.1982 in A.P.No.63 of 1981, thereby, confirming the order of the Deputy Commissioner, Thanjavur in O.A.No.71 of 1972, dated 22.12.1980 and for costs of the suit.

B. The Complaint :

2. The first plaintiff namely, *Sri-la-Sri S.Kadirkama Pandara Sannathi*, by virtue of his status and position as the Hereditary Managing Trustee of *Arulmighu Vedaranyeswaraswamy Thiruvkkovil* at Vedaranyam, originally, the second plaintiff, as the head of the *Varani Adheenam*, along with his eldest son, being the third plaintiff, have filed the above suit under Section 70 of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 22 of 1959) with the above prayer. The Commissioner, H.R. & C.E., is arrayed as the first defendant, while the eligible and competent male descendants of the Sage-Ancestor called *Sri-la-Sri Thillainayaga Thambiran* of Varani in Jafna district of Sri Lanka, constituting to what is



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called as *Varani Adheenam*, are arrayed as defendants 2 to 24 in the suit.

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The said *Varani Adheenam* at Varani, in the district of Jafna in Sri Lanka, is a religious order consisting of the male descendants either through sons or daughters, natural born or adopted of the Sage-Ancestor called *Thillainayaga Thambiran Swamigal* of Varani. The said *Adheenam* is a *matam* by itself and the trusteeship, the administration of the properties and the conduct of the functions and festivals in the temple namely, *Sri Vedaranyaswamy Devasthanam* at Vedaranyam (hereinafter referred to as 'the temple') are vested absolutely in the said *Varani Adheenam* from time immemorial. The said *Varani Adheenam* has a very long, ancient, and historical tradition and has a glorious past. The temple is also a very ancient, celebrated and a renowned one, sung in hymns by *Nalwars* and other Tamil Saints and Sages. The said *Thillainayaga Thambiran Swamigal*, who was the sole Hereditary Managing Trustee, purchased 300 *velis* of wet land in the village of Kunnalur in Tiruturaipundi Taluk and dedicated the same to the temple. They also acquired the Thirappu lands, which are now held by the temple. The said *Thillainayaga Thambiran Swamigal* also undertook vast and extensive Thiruppani by using rock-cut stones. The inscriptions in respect thereof are found in the temple. The



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management of the said temple and its associated temples which were vested entirely in the said *Varani Adheenam* is now governed by a Court scheme framed in O.S.No.6 of 1993, on the file of the Temporary Sub Court, Thanjavur and confirmed with some modifications by the judgment and decree of this Court in A.S.Nos.121 and 122 of 2019. While so, after The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 was enacted, a departmental scheme was introduced, in which, there was a provision to appoint non-hereditary trustees which was framed on 07.07.1957. However, the said provision remained a dead letter without being put into use. In any event, it was inoperative and void. The second departmental scheme was framed on 06.04.1963 in O.S.No.60 of 1960. The said departmental scheme had since been superseded by the third departmental scheme made in O.A.No.71 of 1972 dated 22.12.1980. The appeal filed in A.P.No.63 of 1981 was dismissed by order dated 29.07.1982. The said original order is not a speaking order and hence an appeal was preferred which was also dismissed by the first defendant.

3. It is the contention of the plaintiffs that no notice was taken out at any stage of the proceedings initiated under Section 64 of the Act and the



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interested persons were treated as third parties. Therefore, in the absence of service of proper notice to all or any member of *Varani Adheenam* or *Varani Adheenam* itself, the proceedings are null and void. The order of the Deputy Commissioner does not show any reason justifying the appointment of Executive Officer or Additional non-hereditary trustees. There was neither any complaint or mal-administration nor anything had been found wanting. There was absolute cooperation from the side of the hereditary trustee. The Deputy Commissioner was incompetent to modify or cancel the scheme framed by the High Court. Thus, the office of the hereditary trustee, its rights and powers, functions and obligations and duties *vis-à-vis* the temple had been rendered totally powerless and useless. The Board of Trustees can be constituted only from the members of the *Varani Adheenam*. The other clauses, such as requiring Rs.50,000/- as security and vesting undue powers on the Executive Officers are also illegal and hence, the suit.

C. The Written Statements :

4. The suit is resisted by the first defendant by filing a written statement. By G.O.Ms.No.859, dated 08.09.1949, the temple was notified



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under the department and an Executive Officer was appointed. In the absence of the statute, as mentioned in the plaint, the suit was originally filed by a third party, in which, the scheme was framed. The action of bringing the property under the control of the department was challenged by the erstwhile hereditary trustee in W.P.No.369 of 1955, in which, the existing notification was set aside with further directions. Accordingly, on 07.07.1957, a new scheme was framed in O.A.No.81 of 1956. Since the scheme was not properly functioning, the second scheme was framed in the year 1960. As a matter of fact, in O.A.No.71 of 1972, all the members of the *Adheenam* were sent notices and the receipt thereof is acknowledged. All of them were called absent and set *ex parte*. Only because they were set *ex parte* in the original proceedings, no fresh notices were sent to them in the appeal as the requirement of sending notices was specifically dispensed with in the appeal. Therefore, the scheme was duly framed and as per the provisions of the Act, a Deputy Commissioner has powers to modify the scheme in such a manner as such it is aligned with the interests of the temple and in the best interests of the management of the temple. Only to involve and include the devotees in management of the temple, a Trust Board was constituted so as to function with the hereditary trustees and the



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same was challenged without any prejudice to the plaintiffs. Similarly, the other conditions such as a deposit of Rs.50,000/- and appointment of Executive Officers are all as per the Statute and Rules and therefore, the suit is liable to be dismissed.

5. An additional written statement was also filed on behalf of the first defendant, containing additional facts, stating that the plaintiffs are not hereditary trustees and the fourth plaintiff, who was brought on record upon the death of the second plaintiff, was not recognized as hereditary trustee.

6. The defendant No.24 also filed a written statement contending that the suit be dismissed as the plaintiffs were not the appellants as against the original order and therefore, they have no *locus standi* to file the suit.

D. The Issues & The Trial:

7. On the strength of the said pleadings, the Trial Court framed the following issues:-

(i) Whether the order passed by the first defendant in A.P.No.63 of 1981, dated 29.07.1982 is liable to be set aside?

(ii) Whether the suit is maintainable?



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(iii) *To what reliefs, the plaintiffs are entitled?*

Additional Issues:-

(i) *Whether the plaintiff is barred from filing the present suit?*

(ii) *Whether the suit filed by the plaintiff is barred in law?*

8. On the said issues, the fourth plaintiff was examined as **P.W.1** and **Exs.A-1** to **A-4** were marked. On behalf of the defendants, one Packirisamy was examined as **D.W.1** and one *Kamala Thiyagarajan* was examined as **D.W.2** and **Exs.B-1** to **B-28** were marked.

E. The Findings of the Trial Court :

9. Thereafter, the Trial Court proceeded to consider the case of the parties. By the judgment, dated 07.11.2002, the Trial Court found that the impugned proceedings cannot be held to be a variation of the scheme framed by the High Court as prior to the present scheme, already in O.A.No.81 of 1956 and O.A.No.60 of 1960 schemes were framed and no objection whatsoever has been raised by the plaintiffs in respect thereof. In any event, by the judgment reported in **T.Lakshmikumara Thathachariar**



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Vs. Commissioner, H.R.C.E and Ors.¹, the plaintiffs' case, that the Deputy

Commissioner has no powers to modify the scheme, cannot be accepted.

The scheme has also been framed after due notice to the parties. It has been framed in the public interest and none of the members of *Varani Adheenam* had objected to the original scheme framed in ***Ex.B-2*** in O.A.No.60 of 1960. That being the same, now belatedly, for the present scheme in O.A.No.71 of 1972 alone, the plaintiffs cannot object. The conditions relating to deposit of Rs.50,000/- and the powers of Executive Officer are all in order. Once the original scheme which is framed under Section 64(5) of the Act is not objected to in the earlier O.A.Nos.81 of 1956 and 60 of 1960, the plaintiffs are barred from challenging the scheme in O.A.No.71 of 1972 alone. Even though the first defendant has prayed that the suit should be dismissed, as by an amendment to the Act, foreigners are now barred from being trustees, since it is contended that the matter is still pending before the Hon'ble Supreme Court of India, the said ground cannot be accepted. The plaintiffs, even though are Sri Lankan nationals, will be eligible to maintain the present suit. However, the Trial Court held that the plaintiffs are not entitled to merits in this case and therefore, dismissed the suit. Aggrieved by the same, the present Appeal Suit is laid before this

¹ (1998) 6 SCC 643



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Court.
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F. The Submissions :

10. Heard *Ms.G.Sumithra*, learned Counsel appearing on behalf of the appellants and *Mr.M.Bindran*, learned Additional Government Pleader appearing on behalf of the respondents.

11. *Ms.G.Sumithra*, learned Counsel appearing on behalf of the appellants, would submit that even on a perusal of the documents produced by the department, it would be clear that *Varani Adheenam* is not served with a notice in the impugned proceedings. The management of the temple being vested in *Varani Adheenam*, non-service of notice on the *Adheenam* renders the order invalid. Secondly, she would contend that when there is no complaint as to any mismanagement or mal-administration of the affairs of the temple, there was no necessity to supplant the hereditary trustee with a Trust Board with other Trustees. The other trustees of the Board will interfere with the functions of the hereditary trustee, which has been carried on religiously by them for centuries. When the plaintiffs and their family members have contributed so much for the temple, requiring them to deposit a sum of Rs.50,000/- for trusteeship adds insult to injury.



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12. The learned Counsel would submit that since the matter as to whether foreign nationals can be Trustees in temples is pending before the larger bench of the Hon'ble Supreme Court of India, the suit, as such, cannot be decided without the final decision of the Hon'ble Supreme Court of India. The learned Counsel would further submit that there was no justification whatsoever to appoint additional Trustees and to modify the scheme.

13. *Per contra*, Mr.M.Bindran, the learned Additional Government Pleader, inviting attention of this Court to the detailed counter-affidavit filed in the above Appeal Suit, would submit that the scheme was not framed for the first time, but, when the earlier Act came into force in the year 1951, under the said Act, the temple was originally taken under the department and after the present Act, i.e., Act 22 of 1959, came into force, once again the original scheme framed in O.A.No.81 of 1956 was further modified in O.A.No.60 of 1960. Even in O.A.No.60 of 1960, provisions were made to appoint non-hereditary trustees. When the third scheme in O.A.No.71 of 1972 reiterated the earlier scheme and steps were taken to appoint additional non-hereditary trustees in the best interests of the temple so that members of the public could also participate in the administration of



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the temple, the same is now found fault with. As a matter of fact, the plaintiffs also remained *ex parte* while the said scheme was framed and an appeal was also not filed by the plaintiffs. Therefore, the Trial Court has rightly decided the suit.

14. The learned Additional Government Pleader, taking this Court through Section 118 of the Act, submitted that the schemes framed before the advent of the Act, to the extent they are repugnant to the Act shall be deemed to be void. He would rely upon a judgment of the Hon'ble Supreme Court of India in *Common Hindu Religious & Charitable Endowments Admn. Department, Madras Vs. Smt.P.S.Sethurathinam*² to contend that in view of Section 64(5) of the Act, it is no longer open for the parties to challenge the power of the Deputy Commissioner to modify the scheme. Therefore, he would pray that the Appeal Suit be dismissed.

G. Points for consideration :

15. Upon considering the rival submissions made on either side and after perusing the material records of the case, the following questions arise for consideration in the instant case:-

² 1999 (1) SCR 332



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(i) Whether the plaintiffs are to be non-suited in view of the amendment to the Act vide The Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1994 (Tamil Nadu Act 30 of 1994)?

(ii) Whether the Deputy Commissioner has powers to frame the impugned scheme in O.A.No.71 of 1972?

(iii) Whether the orders impugned in the suit are liable to be set aside for non-service of notice to the necessary parties?

(iv) Whether there is justification in the claim of the plaintiffs' hereditary trustee that their office has been undermined and nullified and that the modifications, by appointing non-hereditary trustees etc., are unjustified?

(v) To what reliefs, the parties are entitled?

H. Question No.1 :

16. The contention of the department that by virtue of Act 30 of 1994, the plaintiffs should be non-suited, cannot be countenanced at this stage. This amendment Act was subject matter of a constitutional challenge before this Court in W.P.No.13122 of 1994. The said Writ Petition was allowed by a judgment, dated 12.09.2005, which struck down the amending Act. However, on appeal by the State of Tamil Nadu in W.A.No.117 of 2006, a



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Division Bench of this Court set aside the judgment in W.P.No.13122 of 1994 and upheld the constitutionality of the said Act. The matter was taken up further before the Hon'ble Supreme Court of India in Special Leave to Appeal (Civil) No(s).20276-20277 of 2009 and an interim order of status quo is directed to be maintained. Therefore, the said issue is pending before the Hon'ble Supreme Court of India and it can be seen that by an order, dated 26.09.2019, the matter was adjourned and was directed to be listed. In that view of the matter, the plaintiffs cannot be non-suited in view of the Act 30 of 1994 and I answer the question accordingly.

I. Question No.2 :

17. The question as to the powers of Deputy Commissioner is no longer *res integra*. The Hon'ble Supreme Court of India in ***T.Lakshmikumara Thathachariar Vs. Commissioner, H.R.C.E and Ors.*** (cited supra) has held that the schemes can be subjected to modification or cancellation under the provisions of Section 64(5)(a) of the Act. It is useful to extract the paragraph No.15 of the said judgment which reads as follows:-

" **15.** *Therefore, under Section 64(5)(a), all schemes in force deemed to have been settled or modified by the court under the Act of 1951 and covered by clause (a) of sub-section (2) of*



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*Section 118, are subject to modification or cancellation under the provisions of Section 64(5)(a). The decision of the Madras High Court in the case of **O. Radhakrishnan v. Manickam [(1974) 2 MLJ 179]** does not give, in this context, a correct interpretation of law. The scheme in the present case can be modified under Section 64(5)(a) of the said Act of 1959. What is more, it was expressly so held in the case of this very scheme by the Madras High Court in the case of **R. Thatha Desika Thathachariar v. Dy. Commr., H.R.E. [(1970) 2 MLJ 475]** "*

18. Similarly, in **Common Hindu Religious & Charitable Endowments Admn. Department, Madras Vs. Smt.P.S.Sethurathinam** (cited supra), the same proposition was reiterated by the Hon'ble Supreme Court of India. Therefore, I answer this question that the Deputy Commissioner has powers to modify or vary a scheme framed earlier by the Court.

J. Question No.3 :

19. The primary attack on the impugned order passed by the first respondent is that while framing the scheme, notices were not served on all the necessary parties. In this regard, by a perusal of the order, dated 22.12.1980 in O.A.No.71 of 1972, it can be seen that the preliminary order



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itself was passed after consulting the hereditary trustee and the persons having interest in the temple. All the members of the family including the hereditary trustee were arrayed as the respondents 1 to 23. When all the members have been arrayed as respondents and notices were duly served, the contention of the learned Counsel for the appellants that *Varani Adheenam* was not separately served with the notice, is untenable. Even as per the averments in the plaint, all the members of the family jointly constituted the corporate body, known as *Varani Adheenam*. As a matter of fact, the second plaintiff represents that he represented *Varani Adheenam*. However, in the cause title, his individual name is only shown and it is mentioned in the plaint that he has joined as the second plaintiff in the capacity so as to represent the *Varani Adheenam*. That being so, when notice has been served on the second plaintiff, the contention that the impugned proceedings are liable to be set aside for want of notice is totally without any merits and accordingly, I answer the question.

K. Question No.4 :

20. On a perusal of the material records of this case, it can be seen that it is not for the first time that a provision has been made to include non-hereditary trustees as the same were also made in earlier schemes framed.



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However, the said schemes framed were unchallenged. Even while framing the present scheme, a majority of the family members of the hereditary trustee belonging to the *Varani Adheenam* remained *ex parte*. For centuries, the temple has been looked after by the hereditary trustees. After the Act coming into force, the temple is brought under the department. The scheme framed in the year 1919 before the Act came into force can no longer be justified. It is true and laudable that the plaintiffs, their family members and their forefathers have contributed immensely for the maintenance, Thiruppani and also have donated huge extents of property to the temple. It is also true that even though the Deputy Commissioner and the Commissioner refers to complaints, there is no serious complaint against the hereditary trustees. But, it has to be seen that there is necessity for day to day administration of the temple. The *Vedaranyam* town as such grew in population and the number of visitors to the temple has increased and the present day upkeep and celebration of festivals has to involve the common public and therefore, there is justification to include these devotees also as non-hereditary trustees as Members of the Board so as to manage the temple. The concept of sole hereditary trustee maintaining a public temple is changing with times, with a necessity to involve devotees from all



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sections of the society in the affairs of the temple. By the impugned order, the appointment of a hereditary trustee and the right of the family members to appoint one such hereditary trustee is not being done away with as they continue to be in the management of the affairs of the temple. This being so, when there is no serious prejudice as to the rights and privileges of the plaintiffs, the challenge is made for the sake of it without any foundational facts demonstrating prejudice. Therefore, I hold that the scheme as modified by the scheme framed by the Deputy Commissioner, as upheld by the first defendant, cannot be held to be unreasonable or in any manner undermining the office of the Hereditary Trusteeship of the plaintiffs and I answer the question accordingly.

L. Question No.5 and Answers to the Issues :

21. In view of my above findings, I concur with the findings of the Trial Court in respect of issue No.1 that the order passed by the first defendant is not liable to be set aside. I concur with the Trial Court that in the absence of the challenge to the original scheme, by which, the department is enabled to nominate/appoint non-hereditary trustees, the present suit challenging the third scheme, which is only reiterating the earlier scheme, cannot succeed as such and I accordingly concur with the



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findings of the Trial Court in respect of issue No.2 and additional issue No.1. As far as the additional issue No.2 is concerned, in view of my above answer to the question No.1, the plaintiffs, as on date, cannot be non-suited for being foreign nationals. In view of the above findings, I hold that the plaintiffs are not entitled for any reliefs in the present suit and I accordingly answer the issues.

M. The Result:

22. In the result:

- (i) the Appeal Suit in A.S.No.285 of 2003 is dismissed;
- (ii) There will be no order as to costs.

21.12.2022

Index : yes
Speaking order
grs

To

1. The Sub Judge,
Nagapattinam.
2. The Section Officer,
V.R.Section,



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D.BHARATHA CHAKRAVARTHY, J.,

grs

Pre-Delivery Judgment in

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