**Devaraja Shenoy and ors. Vs. State of Madras, by Secretary, Legal Department and anr.**

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**Court** : Chennai

**Decided On :** Dec-13-1951

**Reported in** : AIR1953Mad149; (1952)2MLJ418

**Judge** : Satyanarayana Rao and ;Rajagopalan, JJ.

**Acts** : Constitution of India - Article 26; Madras Hindu Religious and Charitable Endowments Act, 1951 - Sections 38

**Appeal No.** : Writ Petn. No. 668 of 1951

**Appellant** : Devaraja Shenoy and ors.

**Respondent** : State of Madras, by Secretary, Legal Department and anr.

**Advocate for Def.** : Adv. General for ;Govt. Pleader

**Advocate for Pet/Ap.** : M.K. Nambiar and ;M.L. Nayak, Advs.

**Judgement** :

ORDER

1. This application relates to Sri Venkataramana Temple, Mulki, South Kanara district and was filed by five of the trustees for the issue of a writ of mandamus or any other appropriate writ or order directing the first respondent, the State of Madras, to forbear from enforcing any of the provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951, against the petitioners, the Shri Venkataramana Temple and its endowments. The application was filed after the new Act came into force. The administration of this temple is governed by a scheme framed by the Sub-Court, South Kanara, in O. S. No. 26 of 1915 known as the Moolki Temple Scheme. There are certain peculiar features regarding this temple which can be gathered from the scheme framed in that suit which for convenient reference is added as an appendix to this judgment as the contentions raised turned mostly upon a correct appreciation of the principles underlying the scheme.

Under the scheme the general control and the management of the affairs of the temple both secular and religious are vested in the members of the Gowd Saraswath Brahmin community, residing at in Moolkypeta, i.e., the villages of Bappanad, Karnad and Manampadi. The Vaideekis who are the temple priests are excluded from this. The actual management of the affairs of the temple, however, has to be conducted by a council of trustees called Moktessors through a Parpathyagar (Manager). Five of the trustees are elected by an electorate consisting of every member of the

community whose name is registered in a book called the register of electors which it is the duty of the trustees to maintain. The qualifications of the electors are enumerated in the scheme as well as the mode of conducting the elections. The Council of Moketessors consists of seven members of whom two shall be senior members for the time being of the families of U. Srinivasa Shanbhogue and T. Vasudeva Shanbhogue, and the rest shall be elected by the general body of electors. Two out of the seven, therefore, may be treated as hereditary trustees. The responsibility for the due and proper administration of the trust is laid on the council of Mokhessedors. Provision is made to elect out of the Mokhessedors two treasurers, and there are other provisions requiring them to meet periodically and providing for the manner and method of conducting the business at such meetings. It is unnecessary to refer to these details. The Parpathyagar is to be appointed by the Mokhessedors on a salary of not less than Rs. 75 a month. The rights and duties of the Parpathyagar have been specified in the scheme. It contains as many as 67 clauses. This scheme was in vogue ever since it was settled by Court.

2. After the new Act came into force on 30-9-1951 the Commissioner for Hindu Religious and Charitable Endowments by his memorandum of 30-9-1951 issued an order stating that the temple of Sri Venkataramana was included in the list published by the Commissioner under Section 38 of the Act. Attempts were being made to enforce the order under the new Act notwithstanding the protests of the trustees. It was, therefore, apprehended by the petitioners that all the provisions of the new Act will be enforced by the Commissioner. The Act was questioned on the ground that it was ultra vires the State Legislature in so far as its provisions relate to the petitioners' temple and its endowments, as the Gowd Saraswath community is a religious denomination which is entitled to protection under Article 26 of the Constitution. It is also further claimed that the Board had no right to impose a contribution under Section 76 of the Act, which is a tax the levy of which is prohibited by Art. 27. The notification proceedings and the other provisions relating to the control and management of the religious institutions were also attacked. It appears, and it is not disputed, that an original petition is now pending in the District Court, South Kanara, O. P. No. 46 of 1950 for amending the provisions of the scheme.

3. The Gowd Saraswath Brahmin community is undoubtedly a religious denomination or at any rate a section of a religious denomination. Therefore, the protection under Art. 26 has been rightly claimed on behalf of the petitioners. The effect of classifying the temple and including it in the list maintained under Section 38 is to decide that it is an institution whose income is not less than Rs. 20000 and that the jurisdiction of the Area Committee does not extend to it. It implies, therefore, that all the provisions of the Act are applicable, the provisions relating to the settlement of the scheme, the notification proceedings and the control and supervision, the duty to obey all lawful directions and so on which have been more fully set out in our judgment in -- 'Shirur Mutt v. Commr. Hindu Religious Endowments, Madras', C. M. P. No. 2591 of 1951 (Mad). As rightly contended by Mr. Nambiar, learned advocate for the petitioners, the provisions of the Act in substance and in effect destroy the community's right of administration. The right to appoint, dismiss, suspend and remove trustees is vested in the Commissioner and also the appointment of non-hereditary trustees--vide Sections 18 and 39(2). This power to appoint trustees under Sections 39 and 41 of the Act can be exercised by the authorities concerned notwithstanding that a scheme has been already settled which scheme is deemed under the new Act to have been settled under that Act in respect of such institution. This institution has among the council of trustees, non-hereditary as well as hereditary trustees. Power is vested under the

scheme in the religious denomination. That power is now taken away.

The power to remove and dismiss trustees which is vested under the scheme in the general body is vested by the new Act in the case of the present temple in the Commissioner. The 'trustees are under an obligation to obey and carry out all lawful directions issued as provided by Section 54 and Section 45 (b) provides that disobedience of lawful orders will entail suspension, removal or dismissal of a trustee. The power to fix the fees for archakas and determine their apportionment as well as fixing the standard of scales of expenditure or the dittam is also taken away from the trustees and vested in the Commissioner. The budget has to be passed. The surplus funds can be diverted to objects other than those of the temple. In other words, the effect of the Act is to reduce the trustees to the position of servants, the Government and the Commissioner being the masters, as the relationship is nothing more and nothing less. In case of disputes with reference to various matters, the determination' by the Government or its servants, the decision of the Commissioner or the Deputy Commissioner is final. The Act vests in executive with judicial functions and the rights guaranteed under the Constitution have been made illusory and nugatory by the provisions of the Act. The trustees cannot have any legitimate objection if the Act should have provided for submitting the accounts or budgets for information; but what they contend is that they should not be dictated with reference to these matters by an extraneous authority so as to seriously interfere with and destroy the religious freedom that has been guaranteed by Article 26. So long as one wants to know what one is doing there may not be a serious objection; but when the other party tries to dictate as to what one should do then comes the rub.

In the light of the various considerations adverted to by us in the judgment in -- 'C. M. P. No. 2591 of 1951 (Mad)', we have no hesitation in holding that the provisions of the Act in so far as they interfere with the autonomy of the religious denomination which own and has the sole and exclusive control of the temple should not be allowed to be enforced including the provision relating to notification procedure which vests an arbitrary power in the Commissioner and the Government to wrest from the hands of the trustees the power to administer the temple. We have held in -- 'C. M. P. No. 2591 of 1951 (Mad)', that the levy of contribution under Section 76 offends Article 27 and, therefore, is illegal.

4. Apart from contending on the lines in which arguments were advanced in the other cases regarding Article 26 which we have already dealt with, on behalf of the respondent one other fundamental objection has been raised and that is that nothing serious has been done by way of infringing the rights of the religious denomination as all that was done was the harmless and innocuous inclusion of the temple in the list maintained under Section 38. The learned Government Pleader relied on the observations of Fazl Ali J. in -- 'Chiranjit Lal v. Union of India', 1951 S. C. J. 29, and also a passage from Willis on Constitutional Law and Cooley's Constitutional limitations. He also relied on the decision in -- 'Chesapeake & Ohio Railway Co, v. William G. Conley', (1912) 230 u S 513. The passage in Willis at page 91 is as follows:

'Who can raise constitutional questions? Who are entitled to raise questions of constitutionality? Any one whose rights are injuriously affected and no one else. It is not enough that the Statute is unconstitutional, as to other persons or classes. The person attacking the statute must come within the class. A party benefited rather than injured by a statute may not question its constitutionality. If no attempt is made to enforce a provision, one cannot attack it.'

To similar effect is the opinion of Cooley in his Constitutional Limitations, Vol. I, at pages 335 to 341 where the matter is fully discussed. Unlike the case in -- 'Charanjit Lal Chowdhury v. Union of India', 1951 S. C. J. 29 the petitioners are personally aggrieved as trustees of the institution as the Endowments Board issued a notice that the temple was included under Section 38, which means that they have taken a definite decision to apply the provisions of the Act to the temple owned by the petitioners. The Commissioner did not stop with pious intentions but has taken a step and perhaps a serious step, in deciding to apply the provisions of the Act to the institution. It is rather difficult, therefore, to accept the contention of the learned Government Pleader that the petition should be thrown out in limine on the ground that the petitioners are not persons aggrieved and that there is at present no danger of the provisions of the Act being applied to the temple. We are, therefore, unable to agree with that contention and the petitioners, in our opinion, are entitled to maintain the petition. The petitioners arc entitled to a rule absolute directing the Board not to enforce any of the provisions of the Act which interfere with the autonomy of the petitioners' institution.

5. In -- 'W. P. Nos. 379 and 380 of 1951', we have held that the sections of the impugned new Act, enumerated in detail in -- 'Sri Shirur Mutt v. Commr. Hindu Religious Endowments, Madras', C. M. P. No. 2591 of 1951 (Mad), were ultra vires the State Legislature. The Sri Venkataramana Temple, Mulki, in South Kanara, with which we are concerned in this petition, is analogous to the Sri Sabhanayakar temple at Chidambaram, with which we had to deal in W. P. Nos. 379 and 380 of 1951. In the case of Sri Venkataramana Temple, Mulki, also, there is a judicial decision, that the temple and its properties belong to the entire denomination of the community resident in Mulki, comprising all the three villages, excluding, of course, the Vaidikis, i.e., the priests of the temple. Therefore, what applies to the Chidambaram temple owned by the denomination of Dikshitars should also apply to this temple, Sri Venkataramana Temple, Mulki, owned by the religious denomination consisting of Gowd Saraswath Brahmins resident in Mulkipetta. It is, therefore, unnecessary to enumerate over again the provisions of the impugned Act which are ultra vires the Legislature in so far as that Act applies to Sri Venkataramana Temple, Mulki, the trustees thereof and the religious denomination that owns it. Those sections have already been enumerated in C M. P. No. 2591 of 1951.

The rule nisi must be made absolute.

The petitioner is entitled to his costs. Advocate's fee Rs. 250. We certify under Article 132 of the Constitution that this is a fit case for appeal to the Supreme Court.