

31, 1971

IN THE PRIVY COUNCIL

No. 10 of 1971

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

B E T W E E N:

C. SUNTHARALINGAM

Appellant

- and -

THE INSPECTOR OF POLICE KANKESANTURAI,  
CEYLON

Respondent

C A S E      F O R      A P P E L L A N T

- |  | <u>Record</u>            |
|--|--------------------------|
| 10   |                          |
| 1. The Appellant was charged under Section 3 (b), punishable under Section 2, of the Prevention of Social Disabilities Act, No. 21 of 1957, in that he did "prevent or obstruct by reason of the caste of certain Murugesu Sinniah.....a follower of the Hindu Religion from entering the inner courtyard" of the Mawiddapuram Kandasamy Temple, "which inner courtyard is a place of worship to which followers of the Hindu Religion have access". | p. 3 1.30<br><br>p.4 1.1 |
| 20   |                          |
| 2. The said <u>Sinniah</u> admitted:-  | p.5 1.35                 |
| (a) "I have not been worshipping from the inner courtyard of the temple."  |                          |
| (b) "At no time were they (that is the people of my caste) prevented from worshipping outside the Gopura Vasal.....The land outside the Gopura Vasal (the outer court-yard) is part of the temple."  | p.6 1.34<br><br>(HA)     |
| (c) "After washing myself I worshipped from outside first from where the low-caste people  | p.8 1.27                 |

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worship usually."

p.10 1.16

(d) "I do not know the persons who are entitled to go to the "Moolaistanam". I do not know the various mandapams of the temple."

p.12 1.26

P. Krishnar, prosecution witness, stated

(a) "My parents have told me that there was no custom for us to worship from inside and if we go inside we would be cut and murdered".

p.27 1.24

3. The learned Magistrate found, inter alia, :-

(a) "It is quite clear that by ancient usage recognised and validated by the Tesawalamai Regulations the people of the lower caste had no right of entry into a Hindu temple and had to content themselves by worshipping from the outside. This to my mind was the law before the promulgation of the Prevention of Social Disabilities Act No.21 of 1957." 10

p.30 1.37

(b) "I am satisfied on the evidence of the accused that he genuinely believed that he was there to prevent bloodshed and murder. It appears to me that the presence of the accused prevented an ugly situation erupting with violence." 20

p.36 1.30

4. The findings of the Supreme Court were:-

(a) The Prevention of Social Disabilities Act No. 21 of 1957 did not offend the provisions of s.29(2) (d) of the Constitution of Ceylon and was therefore not 'void' for the reason that "the proper conduct and performance of poojas" is not one which relates to the Constitution of that body."

p.37 1.31

(b) "Even therefore if s.4 of the Tesawalamai can be regarded as special law regulating temple entry, the later special law contained in the Act must prevail over the former." 30

p.38 1.20

(c) "With the observation in the judgment in Saventhinathan v. Nagalingam (69 N.L.R.419)....I am unable to agree....that Sections 2 and 3 of the Prevention of Social Disabilities Act No.21 of 1957 do not have the effect of conferring on the followers of any religion a right of entry....which they did not have before the Act came into force." 40

5. The principal questions raised in the Appeal are:-

(a) Whether Section 3(b) of the Prevention of Social Disabilities Act No. 21 of 1957 (as read with Section 2 thereof) is not void as being in contravention of Section 29(2)(a) and (d) of the Ceylon (Constitution) Order-in-Council (Cap.379);

10 (b) Whether, in any event, the said provisions of the said Social Disabilities Act were not inapplicable to the Appellant's case having regard to section 4 of the Tesawalamai Regulation (Cap. 63);

(c) Whether the said Tesawalamai Regulation was not special law which governed the Appellant's case and from which the Social Disabilities Act (which was passed subsequently) did not derogate;

20 (d) Whether on the facts admitted or found there was any evidence on which it could be found that the Appellant prevented or obstructed the said Murugesu Sinniah from entering "any place of worship" (in the words of the Act) to which followers of the Hindu Religion have access;

30 (e) Whether the view expressed by T.S.Fernando J. in the case of *Seventhinathan v. Nagalingam* (69 N.L.R. 419) that sections 2 and 3 of the Social Disabilities Act did not confer on the followers of any religion any right of entering a place of worship which they did not have before but only penalised the prevention or obstruction of existing rights was correct and whether therefore the Supreme Court in the present case was wrong in taking a contrary view.

6. The following statutory provisions are relevant to the case of the Appellant:-

The Tesawalamai Regulation. (Cap.63)

40 Section 2. The Tesawalamai, or customs of the Malabar inhabitants of the province of Jaffna, as collected by order of Governor Simmons, in 1706, shall be considered to be in full force.

Section 4. All questions that relate to those rights and privileges which subsist in

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the said province between the higher castes, particularly the Vellales, on the one hand, and the lower castes, particularly the Covias, Nalluas, and Palluas, on the other, shall be decided according to the said custom and the ancient usages of the province.

The Prevention of Social Disabilities Act No.21 of 1957

Section 2. Any person who imposes any social disability on any other person by reason of such other person's caste shall be guilty of an offence.... 10

Section 3. For the purpose of section 2, a person shall be deemed to impose a social disability on any other person.....  
(b) if he prevents or obstructs such other person, being the follower of any religion, from or in entering, being present in, or worshipping, at any place of worship to which followers of that religion have access..... 20

Ceylon (Constitution) Order in Council (Cap.379)

Section 29. (1) Subject to the provisions of this Order, Parliament shall have power to make laws for the peace, order, and good government of the Island.

(2) No such law shall

(a) prohibit or restrict the free exercise of any religion, or  
.....

(d) alter the constitution of any religious body except with the consent of that body, so, however, that in any case where a religious body is incorporated by law, no such alteration shall be made except at the request of the governing authority of that body.  
..... 30

(3) Any law made in contravention of sub-section (2) of this section shall, to the extent of such contravention be void.

7. The Appellant respectfully submits that the findings of the Supreme Court, as set out in para. 4 foregoing, are erroneous and this Appeal should be allowed with costs for the following, among other,

R E A S O N S

- 10 (1) The Prevention of Social Disabilities Act No. 21 of 1957 contravenes the Provisions of section 29(2)(a) of the Ceylon (Constitution) Order in Council and is therefore void under Section 29(3).
- 20 (2) The Prevention of Social Disabilities Act No. 21 of 1957 is in contravention of section 29 sub-section 2(d) in that as, according to the Constitution of the Mawiddafouram Kandaswamy Kovil, the High Priest and Governing Authority is responsible for the proper conduct of the poojas, and he could not carry out the duty cast on him by the Constitution of the Kovil and is therefore void under Section 29(3);
- (3) The Prevention of Social Disabilities Act No. 21 of 1957 has not repealed the Tesawalamai Regulation;
- (4) On the evidence in the case the Appellant did not prevent or obstruct the virtual complainant from entering "any place of worship."
- 30 (5) The view expressed by T.S.Fernando J. in the case of Saventhinalthan v. Nagalingam (69 N.L.R. 419) was correct.

*not argued  
w/ho -  
we rule out of order*

(Sgd.) C. SUNTHARALINGAM

Appellant.

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- and -  
THE INSPECTOR OF POLICE  
KANKESANTURAI, CEYLON      Respondent

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CASE FOR APPELLANT

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