

(1952) 07 MAD CK 0005

In the Madras High Court

Case No : Civil Revision Petition No. 2167 of 1951

C.P. Kunhambu Nair

APPELLANT

Vs

Kunnuntara Vadakka Veetil Ambu and Others

RESPONDENT

Date of Decision : 17-07-1952

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 103, 106, 6(6)

Citation : AIR 1953 Mad 214 : (1952) 65 LW 939 : (1952) 2 MLJ 476

Hon'ble Judges : Basheer Ahmed Sayeed, J

Bench : Single Bench

Advocate : M.K. Nambiar, for the Appellant; A. Achuthan Nambiar, for the Respondent

Judgement

Basheer Ahmed Sayeed, J.—Mr. M.K. Nambiar appearing for the petitioner is seeking to revise the order of the learned District Judge of

South Kanara whereby he declared that the pending proceedings in O.P. No. 26 of 1951 stood automatically transferred to the appropriate court

or authority and that they should be deemed to be pending before that court or authority by virtue of Section 103(3) and (k) of Act 19 of 1951,

the New Hindu Religious Endowments Act.

2. O.P. No. 26 of 1951 was originally filed u/s 84(2), Hindu Religious Endowments Act, 2 of 1927 praying that the District Court might set aside

the order of the Hindu Religious Endowments Board that the Vishnumoorthi temple of Cheemani village, Kasargod taluk was a private temple

within the meaning of the Hindu Religious Endowments Act. When this petition was pending before the learned District Judge of South Kanara, the

old Act was re-enacted as Act No. 19 of 1951. In the old Act, Section 9(3)

defined court as meaning the District court. Under the new Act, which came into operation on the 29th September 1951, by a notification, Section 6(1) and (2) defined the court as the City Civil Court instead of the High Court and as sub-court instead of the District Court. The effect of this enactment is that instead of the District court, as in the previous Act, the Sub-Court became substituted for purpose of filing applications to set aside orders passed by the Hindu Religious Endowments Board. Similarly, instead of the High Court for purposes of proceedings " within the City of Madras, the City Civil Court was substituted. Similarly u/s 103(j) instead of the Board the authority by or against whom any proceedings could be instituted in the court became the Commissioner of Religious Endowments instead of the Hindu Religious Endowments Board, as was the case under the old Act. The Explanation to Section 103(j) of the new Act provides for the continuation of the proceedings so far as the; High Court was concerned. Instead of the pending proceedings being continued in the High Court this provision states that they should be continued in the City Civil Court Therefore, while there is a specific provision that proceedings now pending before the High Court should be continued in the City Civil Court, there is no corresponding provision in the new Act governing pending proceedings in the mofussil courts, apart from the substitution of the Sub-court for the District Court, provided for by Section 6(6) (i).

3. Mr. Nambiar contends that in the absence of a specific provision on similar lines as the one contained in the-Explanation to Section 103(j), pending proceedings in the District Court cannot be transferred or cannot be deemed to have been automatically transferred to the Sub Court. There is no provision, according to him, In the whole of the new Act which authorises the District Judge to transfer these proceedings to the Sub-court. Simply because the District court had been specifically mentioned in the old Act, and in its place the Sub court has been specifically mentioned the general law, namely, the CPC also would not entitle the District court to transfer such proceedings to the Sub-court. The provision in the new Act 19 of 1951 which has been relied upon by the learned District Judge, namely, Section 103(j), only refers to the ""continuation"" of the pending proceedings by the ""concerned authority"". It states that instead of the

Board, as was the case previously, under this Act, it should be the Commissioner. The learned counsel for the respondents seeking to support the interpretation put upon this provision by the learned District Judge would seek to import into the meaning of this provision that the continuation by the Commissioner in place of the Board also would mean continuation in the new court that has been substituted for the old court.

A reading of the language of this Sub-clause (j) of Section 103, in my opinion, does not warrant this extension of the meaning sought to be given to it by the learned District Judge or the learned counsel for the respondent in this court. That section has reference only to suits, applications or proceedings taken by or on behalf of or against the Board under the provisions of the said Act and pending at the commencement of that Act and provides that they may be continued by or on behalf of or against the Commissioner subject to the provisions and in so far as they are not inconsistent with this Act. All that seems to have been intended and aimed at by this provision is only the substitution of the authority which is to continue the proceedings and that has been made the commissioner instead of the Board, It does not have any reference to the ""forum"" before which those proceedings have to be continued. It might be that it might have been the intention of the framers of this Act that the forum also would become substituted by this provision whereby it is provided that the pending proceedings shall be continued by the Commissioner instead of by the Board. But actual language used does not warrant any such interpretation so far as I could see. That intention does not appear to have been carried into effect by the language used.

The learned counsel for the respondent would seek to emphasise upon "the words ""subject to the provisions of and in so far as they are not inconsistent with this Act"", to mean that the forum in which the continuation should take place also gets automatically substituted according to the new definition provided in this court. I do not think that I can agree to this interpretation as I think it will be straining far too much the language of this Sub-clause (j) of Section 103 of the Act. As a matter of fact, while the explanation to Section 103(j) provides that ""all suits, and applications under the said Act in the High Court in respect-;of religious institutions within the presidency town and pending on the date of the commencement

of this Act, which would have been instituted in the Madras City Civil Court. if this Act had been in force at the time when such suit or applications

were instituted shall be continued in, and disposed of by the High Court, no such provision has been made in regard to the pending proceedings in

the courts in the mofussil outside the presidency town the effect being that pending proceedings will have to be dealt with by the District court only.

This seems to be an obvious omission on the part of the legislature and it is not for this court to go into the reasons or causes for such omission.

When there is a specific language available, the language alone has to be construed and understood and in interpreting and construing the language

it is not for the court to make up the lacuna that might have occurred in the process of enacting any legislation. This court is concerned only with

express language found in any provision and not with any possible intention behind it which is not expressed. Filling up of any omission or making

up any lacuna is the business of legislation and it is not open to the court to go outside the strict "language that is found in the provision that it is

called upon to interpretate and apply.

4. Mr. Nambiar has invited my attention to certain provisions in certain other Acts which have been made for the purpose of meeting situations of a

similar kind. For instance in the Act passed by the Dominion Legislature to provide for the enlargement of the appellate jurisdiction of the Federal

court in civil cases, namely, Act 1 of 1948, in order to meet a similar situation in respect of pending proceedings before the Judicial Committee of

the Privy Council the Legislature thought it fit to enact Section 5 specifically so as to provide for the transference of pending proceedings from the

Privy Council to the Federal court. There the section is to the following effect:

Every application to His Majesty in Council for special leave to appeal from a judgment to which this Act applies remaining undisposed of

immediately before the appointed day shall on that day stand transferred to the Federal court by virtue of this Act, and shall be disposed of by that

court as if it had been -an application duly made to that court for special leave to appeal from the said, judgment.

5. This illustrates the necessity for a specific provision in situations like the one under consideration to meet the need for continuing pending

proceedings in one court by their transference to another court. Even so, in an

Act passed by the Parliament of India, viz., Act 33 of 1950, to provide for the extension of certain opium and revenue laws to certain parts of India, there is found a specific section, viz., Section 3(a) setting forth modifications of state laws, relating to Income Tax investigation, in order to bring within the scope of the Investigation Commission appointed by the Central Government investigation proceedings pending in Part B State and it is in the following terms:

If immediately before the commencement of this Act there is no force in any Part B State other than Jammu and Kashmir any law (hereinafter in this section referred to as "the State law") corresponding "to the Taxation on Income (Investigation Commission) Act, 1947 (Act XXX of 1947) that law shall continue to remain in force with the following modifications, namely, (a) all cases referred to or pending before the State Commission (by whatever name called) in respect of matter relating to taxation on income other than agricultural income shall stand transferred to the Central Commission for disposal.

This again illustrates the necessity felt by the legislature to introduce specific provision for the transfer of pending proceedings from one court to another when the forum gets altered by means of a new enactment. That no such thing has been done in the new Act 19 of 1951 only goes to show that it is an omission which "has gone unnoticed by the legislative body which was responsible for the enactment.

6. Mr. Achuthan Nambiar appearing for the respondent contends that the remedy for the aggrieved party in cases like this is provided by the provision in Section 106 of the new Act, which is to the effect that if any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require by order, do anything, which appears to them necessary for the purpose of removing the difficulty.

He would suggest that the aggrieved party, namely, Mr. Nambiar's client, should approach the Government and get his grievances redressed. I do not think there is any force in this argument. That section is not intended for the purpose for which Mr. Achuthan Nambiar thinks it may be

available. That section, in my view, appears to be intended only to remove difficulties in the administration of the Act in matters other than the strict interpretation of the provisions of the Act and their applicability. It is first of all

very doubtful whether a provision of this kind does not offend against the doctrine of delegated legislation. But it is not necessary for me to go into that question as it does not arise and it is not relevant to the issue before me. However I do not think I can agree with the contention of the learned counsel for the respondent that this section gives the remedy to the aggrieved party in the present case. Even Section 103(k) which only refers to any remedy by way of application, suit, or appeal which is provided by this Act which was available in respect of proceedings under old Act pending at the commencement of the new Act, and provides that such remedies should still be available as If the proceedings in respect of which the remedy is sought had been instituted under this Act. This again has no reference to the forum in which the remedy could be sought. It only applies to the remedy which was available under the old Act and which is being preserved under the new Act.

Therefore in the view I have taken of the meaning and import of Section 103(j) and explanation thereof, I do not think I can agree with the construction put upon this by the learned District Judge. In my view it cannot be said by reason of Sub-clause (j) and the Explanation to it, that Section 103 lays down that the pending proceedings stand automatically transferred to the new forum contemplated by the new Act, namely, the Sub Court, and that all that the District Judge is called upon to do is to resort to the physical act of transferring the papers concerned with the petition now pending. If that was really the intention of the legislature, then it should have been made clear even as the provisions in the Indian Independence Act of 1947. namely, Section 15 has made it clear that all actions pending against the Secretary of State at the time when the Indian Independence Act was passed were to be dealt with by the High Commissioner for India in Britain.

In such circumstances it is difficult to make good the omission by an interpretation of Section 103(j) or the Explanation thereof and consequently this revision petition has to be allowed. I make no order as to costs.