

(1954) 03 MAD CK 0008
In the Madras High Court

Guruvayur Devaswom Trustees T.M. Krishnan Nambudiripad and Another APPELLANT

Vs

V. Kuttikrishna Menon RESPONDENT

Date of Decision : 28-03-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (1956) 1 MLJ 524

Hon'ble Judges : Ramaswami, J

Bench : Division Bench

Judgement

Ramaswami, J.—This is a Civil Revision Petition filed against the order made by the learned Subordinate Judge of Kozhikode in O.S. No.

76 of 1952.

2. The facts are: The plaintiff Kuttikrishna Menon was employed in the Guruvayur Devaswom of which the present hereditary trustees are

defendants 2 and 3. The plaintiff's services were terminated with effect from 10th July, 1952. The plaintiff then rushed to Court with this suit in

order to nullify this order and also for recovery of damages contending that the order terminating his services was illegal, void and inoperative and

that he was not given an opportunity to explain the charges against him, if any, before removal from service. The contention of the defendants was

that this suit was impliedly barred by reason of Sections 49 and 93 of the Madras Act XIX of 1951 read with Section 9, Civil Procedure Code.

The learned Subordinate Judge relying upon Kallalagar Devasthanam v. Thirumala Nambigal (1943) 1 M.L.J. 496 and Secretary of State v. Mask

& Co. (1940) 2 M.L.J. 140 : L.R. 67 IndAp 222 : ILR (1940) Mad. 599 (P.C.), held that where principles of natural justice or judicial procedure

have not been complied with, civil Courts have jurisdiction to examine into cases, and gave a finding under issue I that the suit was maintainable

and that he had jurisdiction to proceed with the trial of the suit. Hence this Civil Revision Petition by the defeated trustees of the Devaswom.

3. Generally, civil Courts have jurisdiction to entertain all suits of a civil nature except suits of which the cognisance is expressly or impliedly barred

(section 9, Civil Procedure Code). The question of jurisdiction of the civil Courts has to be examined with reference to two aspects, viz., the rules

of implied bar and the rule of express bar. The rule of implied bar may apply by reason of the Constitution of separate tribunals under the Act.

4. The rule has been succinctly stated in the AIR commentaries on the CPC (5th (1951) edition, page 142). Where a special tribunal or a public

body is created by or under the authority of an Act of Legislature for determining questions which are the creation of the Act, like those arising

from the administration and management of temples under the Hindu Religious" Endowment Act the jurisdiction of that tribunal or body is exclusive

and civil Courts cannot take cognizance of such matters. Where in the exercise of such jurisdiction an individual may receive an injury and a party

actually receives such injury still the jurisdiction of the civil Courts is ousted and the method of redress is that which is pointed out by the statute

creating the jurisdiction; R. Krishnamurthy Vs. S. Parthasarathy and Another, , (Lease and Rent Control Act); Mohesh Chandra v. Abdul Gafur

AIR 1946 C. 435, (Debt Settlement Board); Dr. Brij Behari Lal Vs. Emperor, , Bruusgaard Kiosteruds Dampskibs Aktieselskab Vs. The

Secretary of State for India in Council, (Sea Customs Act); Mugi Subbayya Vs. Ravulacheruvu Thippa Reddi and Another, , (Co-operative

Societies Act); V. Panchapakesa Aiyar Vs. The Secretary of State for India in Council, , (Madras Electoral Rules); Ramanatha Gurukkal alias

Parameswara Gurukkal Vs. V.V.R. Arunachalam Chettiar and Another, , (Hindu Religious" Endowment Act); Dayaram Ramdas v. Secretary of

State AIR 1925 Sind 130, (Income Tax); Jogendra Nath Banerjee Vs. Tollyganj Municipality, (Municipal Act); Chandra Sarkar v. Bejoy Chand

AIR 1922 Cal. 4, (Land Acquisition Act); Ramachandra v. Secretary of State ILR (1888) Mad. 105, (Forest Act), Heddon v. Evans (1919) 35

ITR 642 (Military Law). So long as that prescribed tribunal acts within its jurisdiction the jurisdiction of the civil Court is barred in the absence of

mala fides or fraud. Where, however, the tribunal acts ultra vires or refuses to exercise its jurisdiction or acts mala fide or arbitrarily, the civil Court

has power to interfere and set matters aright. (For an exhaustive discussion see the Full Bench decision of Sultan Ali v. Nur Hussain. AIR 1949

Lah. 131

5. Therefore, before the civil Courts can interfere, the party aggrieved must have recourse to the special procedure prescribed under the Act and

exhaust his remedies. In other words, where a mode of redressing an injury caused by the exercise of statutory powers is indicated by the statute

itself, that is the only mode of redress available to the injured person. The ordinary jurisdiction of civil Courts is excluded in such cases: see

Baishanker v. Municipal Corporation of Bombay ILR (1907) 31 Bom. 604, Ramachandra v. The Secretary of State ILR (1888) Mad. 105, and

Sri Iswarananda Bharathi Swami of Ednir Mutt Vs. The Board of Commissioners for Hindu Religious Endowments, .

6. The decision in Kamaraja Pandiya Naicker v. The Secretary of State for India in Council (1934) 69 M.L.J. 695, is not in conflict with this view.

The decision has been explained and distinguished in Mugi Subbayya Vs. Ravulacheruvu Thippa Reddi and Another, . The later decision of the

Privy Council in Secretary of State of India v. Mask & Co. (1940) 2 M.L.J. 140 : L.R. 67 IndAp 222 : L.R. (1940) Mad. 599 (P.O.), which

cited with approval the observations of Willes, J., in Wolverhampton Waterworks Co. v. Hawkesfora (1859) 141 E.R. 486, clearly shows that,

where a statute creates a liability and prescribes the remedy in respect of it, the ordinary jurisdiction of civil Courts is ousted in the matter.

7. In short two principles are well-recognised. As has been laid down by the Privy Council in Ramayya v. Latchmi Narayana (1934) 67 M.L.J. 1 :

L.R. 61 IndAp 177 : ILR 57 Mad. 443 (P.C.), Section 9 of the CPC lays down a general rule in favour of the jurisdiction of the civil Court and

the burden of proof is on the party, who maintains an exception to the general rule. The Madras decisions are in conformity with this Privy Council

decision: Srimath Kidambi Jagannathacharyulu Ayyavarlu Vs. Pidipiti Kutumbarayadu and Another, , see also Ali Mahomed v. Hakim AIR 1928

Lah. 121. But it should be noted that Section 9 of the CPC deals with the jurisdiction of the Courts and not with rights of the parties. In the words

of Trevelyan, J., in *Sabbapat Singh v. Abdul Gaffur* ILR (1896) Cal. 107

Before we can say that the jurisdiction of the civil Courts is excluded it is necessary for us to find that there is an enactment barring their jurisdiction.

8. Therefore, the usual rule of interpretation of statutes is that a statute encroaching on the ordinary jurisdiction of a Court, must be construed

strictly: *Valli Ammal Vs. The Corporation of Madras*, *Sessal v. Swaminatha* AIR 1936 M. 522 , *Vaidyanatha Aiyar and Others Vs. Yogambal*

Ammal and Others, , Subbuswami v. Kamakshi AIR 1929 M. 834 , *Gulam Hussain v. D'Souza*, AIR 1929 Bom. 471 *Sri Iswarananda Bharathi*

Swami of Ednir Mutt Vs. The Board of Commissioners for Hindu Religious Endowments, . But it is equally well recognised that where

infringements of legal rights are involved the Legislature may point the particular modes of redress. The distinction has to be borne in mind between

the general right to resort to civil Court and any particular form of procedure which has to be resorted to before seeking the aid of the civil Court.

Such special procedure has been prescribed for redressing wrongs under the various Special Acts before the Civil. Courts can be approached.

9. Bearing these principles in mind if we examine the facts of this case, we find that this is the case of a person who feels aggrieved that he has been

arbitrarily dismissed and in violation of natural principles of justice and for whom the redress of his grievances is provided for under the Act. The

Act provides for a hierarchy of tribunals to hear the appeals from such dismissal orders. It is only if those special tribunals prescribed by the

Legislature for redressing these grievances fail to comply with the provisions of the Act or do not act in conformity with the fundamental principles

of judicial procedure, there can be recourse to the civil Court. The mere fact that a claim for damages has been added in order to clothe the civil

Court with jurisdiction-as this is a relief which cannot be granted by the tribunals provided under the Act-would not enlarge the rights of the plaintiff

and enable him to approach the civil Court direct. The question of damages would only arise if the dismissal is found to be arbitrary, capricious,

mala fide and *ultra vires*. Therefore, the plaintiff must first establish the illegality of the dismissal and after getting it affirmed must approach the civil

Court for damages. Therefore, no amount of dexterity in drafting the pleadings

would alter or in any way enlarge the rights of parties and enable them to override the provisions of Section 9 of the Civil Procedure Code.

10. In the result, the finding of the lower Court is set aside, this Revision Petition is allowed and the suit is found not maintainable and it is hereby dismissed with costs-throughout including the Civil Revision Petition.