

(1932) 02 MAD CK 0019
In the Madras High Court

Ishwaranada Bharathi Swami

APPELLANT

Vs

Board of Commissioners for Hindu Religious Endowments

RESPONDENT

Date of Decision : 22-02-1932

Acts Referred:

Madras Hindu Religious Endowments Act, 1923 — Section 84, 84(2)

Citation : AIR 1932 Mad 593 : (1933) ILR (Mad) 40

Hon'ble Judges : Reilly, J;Anantakrishna Ayyar, J;Anantakrishna Aiyar, J

Bench : Full Bench

Judgement

Anantakrishna Ayyar, J.—This case raises a question of importance. A question was raised before the Board of Commissioners for the

Hindu Religious Endowments, Madras, whether the building in which the petitioner resides and in which the worship of the deity of Sri

Gopalakrishna Devaru is performed was an institution to which the Madras Hindu Religious Endowment Act applies. The Religious Endowments

Board by its order dated 27th April 1927 decided that the institution was a mutt within the meaning of the Act after giving notice to the petitioner

and holding an inquiry. The petitioner filed a plaint in the District Court of South Kanara, on 17th April 1928 for a declaration that the building in

question is not a mutt within the meaning of the Act, nor an institution to which the Act would apply. He also filed an application (O. P. No. 56 of

1928) to the District Court of South Kanara to modify or set aside the decision passed by the Board, and that application was filed within one year

from 27th April 1927. The Original Suit (No. 4 of 1929) as well as the Original Petition (No. 56 of 1928) were both posted for hearing on the

same date in the District Court. The suit was dismissed by the District Court on the preliminary ground that it was barred by the provisions of

Section 84(2) of the Act and that the petitioner's remedy was by means of an application to the Court under that section. Pending disposal of the

appeal preferred to the High Court against the decision in O.S. No. 4 of 1929, the hearing of the original petition (56 of 1928) was adjourned. The

High Court dismissed the appeal on 4th March 1931, holding that when by an Act of the legislature, powers are given to any person for a public

purpose from which the individual may receive injury, and when the mode of redressing the injury is also pointed out by the Statute as has been

done by Section 84(2) of the Act, viz., by an application to the District Court;-a suit for the said purpose is not maintainable. When the suit was

pending before the District Court, a commission had been issued to examine a witness, the warrant of commission being headed as issued both in

O.S. No. 4 of 1929 and O. P. No. 56 of 1928. When the petitioner applied for extension of time for the return of the warrant, the Court passed

the following order on 4th April 1930:

The application for a commission was made in the suit. The suit has been dismissed. In a petition u/s 84, I will not take additional evidence

regarding it as an application for revision or as an appeal. Therefore the order for recording the petitioner's evidence on commission is revoked.

2. The present Civil Revision Petition is against that order of the learned District Judge.

3. On behalf of the petitioner it was argued that the learned District Judge failed to exercise his jurisdiction in the matter by declining to take

evidence, and that he erred in regarding the proceeding before him as an application for revision or as an appeal. It was contended that the

proceeding before the District Court was an original proceeding in which the Court had to decide judicially on the rights of the parties, and that the

Court was bound to allow evidence which the parties wished to let in to be recorded following the procedure prescribed by the CPC in disposing

of suits and Original Petitions (applications). Reliance was also placed on the observations made by the Full Bench in the case reported in

Darnodaran v. H.R.E. Board, Madras AIR 1930 Mad. 392 (of 53 Mad.) to the effect ""that these applications are analogous to a regular suit filed

by an unsuccessful claimant"" and also on Chengazhissari v. Board of Commissioners for Hindu Religious Endowments AIR 1932 Mad. 108, in

which it was held that the District Court had no jurisdiction u/s 84(2) of the Act to direct a remand and rehearing of the case by the Board.

4. On behalf of the Board, the learned Government Pleader argued that when a dispute arises as to whether an institution is a mutt or temple as

defined in the Act, the Board inquires into the matter, records evidence and then passes its decision, and that the only remedy available to any

person affected by such decision is to apply to the District Court to modify or set aside such decision, and that the jurisdiction of the District Court

is confined to allow evidence to be taken when there is a lacuna or defect in the evidence recorded or when the Board had erroneously excluded

evidence or declined to allow evidence to be adduced or when the Court wants additional evidence to enable it to dispose of the matter. He

strongly opposed the view suggested by the petitioner that the proceedings are to be taken do novo in the District Court, ignoring the proceedings

taken before the Board. He submitted that the proceedings before the Court u/s 84(2) of the Act, are not in the nature of "an original petition," nor

of "an original suit," in which the Court would be bound to confine its decision to the evidence adduced therein, and he stated that though the Court

would have jurisdiction to supplement the evidence that was before the Board in proper cases, the proceeding before the Court was in essence

one by way of appeal against the decision passed by the Board. He emphasized on the use of the word "decision" in Section 84, and drew

attention to the circumstances that the aggrieved party's remedy was by an "application" to the Court, and not by way of "suit." He pointed out

that while some sections of the Act provide for a "suit" being filed in the District Court, some other sections provide for an "application" being filed.

He maintained that the Board was a statutory body, that rules and bye-laws had been framed for the conduct of proceedings before the Board,

that witnesses were examined and evidence taken by the Board, and that it was only after consideration of the whole evidence that the Board

passed its "decision" to the effect that the institution in question is a mutt, and that it is opposed to the whole scheme of the Act to ignore all these

proceedings and say that the aggrieved party is entitled to begin a fresh proceeding in the District Court and start investigation from the very

beginning, and practically in the generality of cases adduce the same evidence that was adduced before the Board. Whether viewed as an appeal

or revision, he contended, that the petitioner had no unrestricted right to let in evidence, and that the District Judge's order was right.

5. Mr. B. Sitarama Rao, the learned advocate who appeared for the petitioner, as well as the learned Government Pleader who appeared for the

respondent, invited us to certain provisions of the Land Acquisition Act and of the Provincial Insolvency Act, with reference to the powers of the

Court on applications made to it under certain sections of those Acts; we thought that we are not likely to derive material help in deciding the

present matter by reference to those provisions in the other Acts: and we are of the opinion that the question before us should be decided by

reference to the provisions contained in the Madras Hindu Religious Endowments Act. On going through the material sections of the Act to which

our attention was drawn, we find that the legislature has given the Board the right to decide in the first instance whether a particular institution is a

mutt or temple within the meaning of the Act. It is very rarely that the legislature invests a claimant himself with the right to decide the question in

dispute between himself and another. We are not now concerned with the policy of the legislature. The legislature has however provided for the

decision in the first instance by the Board itself on the question whether an institution which is claimed by the Board as a mutt or a temple coming

within the definitions of the Act is such when the same is disputed by the other party. The question now before us is as to the exact nature of the

proceedings which the aggrieved party is entitled to take in the District Court u/s 24 of the Act with reference to the decision of the Board.

6. It was argued on behalf of the petitioner that the so-called ""decision"" is one by the Board in its own favour holding that the institution comes

within its jurisdiction and powers, and that it is impossible to assume that the legislature made the Board a judge of its own claims as against a party

who contests the same, and that all that the Act provides for is an investigation by the Board of the nature of the institution with a view to deciding

whether the Board should withdraw from the matter or not, and that any inquiry made by the Board in such a matter could not be said to be in any

way a judicial inquiry by a judicial tribunal. It was argued that the so-called decision is really in the nature of an executive order, and, in any event,

a summary order, and that the aggrieved party is entitled to have his rights inquired into and decided by a civil Court in the ordinary manner. The

matter is an important one, and some of the provisions of the Act are difficult to construe. But after the best consideration I have been able to give

to this case, I have come to the conclusion that the contention raised by the petitioner should be upheld.

7. It was pressed upon us by the learned Government Pleader on behalf of the respondent that the only remedy open to the petitioner is "to apply

to the Court to modify or set aside the decision of the Board," as "the order of the Board" is declared to be "final subject to the result of such

application." The ordinary right of suit which a party possesses when his legal rights are interfered with is not available to a person in the position of

the petitioner, since the Act contains special provisions as to the mode of obtaining relief when a person's rights are interfered with under the Act.

It was so decided in a suit between the present parties by the High Court; see *Iswarananda Bharathswami v. Commissioner, H.R.E. Board* AIR

1981 Mad. 574 . Emphasis is laid on the use of the words "apply" and "application" in Section 84, and it was argued that the proper construction

of the section is that the aggrieved party is given the right to apply to the Court to exercise powers in the nature of an "appeal" or "revision," as

contra-distinguished from the right of "suit." Prima facie, this argument is entitled to weight as ordinarily there is a distinction between

an "application" and a "suit" in fact the Act uses the word "suit" in several sections [55(4), 57(3), 57(4), (4), 65, 67(5) and 73, and the word 63

application" in some other sections (44, 62, 70(2), 76(2), 77(2), 78 and 84(2).] But an examination of some of the relevant sections of the Act

discloses that the legislature has not clearly kept the distinction in view throughout this Act regarding the use of the word "application." Turning to

Section 53(3) of the Act, we find the following;

A trustee suspended...under this section may within three months of the date of the communication of the order of suspension removal or dismissal

appeal to the Board against such order provided that a hereditary trustee may in lieu of appealing to the Board, apply within the same period to the

Court to modify or cancel the order of the committee.

8. In the same sentence we see the words "appeal" and "apply" used, "appeal" to the Board and "apply" to the Court. If by the term "apply" it was

intended that the application is by way of appeal why should the legislature not

use the word "appeal" in connexion with the Court also, why not say in lieu of appealing to the Board he may appeal to the Court. This is rather significant. Again, in connexion with the Board it is mentioned in the Act that the trustee may appeal to the Board and nothing is mentioned regarding the reliefs that may be granted by the Board on appeal. One can understand that position. Prima facie, and in the absence of anything to the contrary in the enactment creating the right of appeal the appellate tribunal has got the same powers as the tribunal whose orders are complained against and the appellate tribunal could confirm, modify, reverse or pass other orders as it should think fit. The appellate tribunal may reverse the order appealed against and remand the proceedings for fresh disposal. All these powers could be ordinarily exercised when a right of appeal is conferred on a tribunal. But the legislature has in Section 53(3) enacted that an hereditary trustee may in lieu of "appealing" to the "Board" "apply" within the same period to the Court to modify or cancel the order of the committee. Why were the words "modify" or "cancel" used in connexion with the application to the Court, if by the term "application" the legislature really meant an "appeal." The use of these words in connexion with the application to the Court in such cases u/s 84 of the Act, formed the basis of the recent decisions of this Court in the case reported in *Chengazhisseri v. Commissioner of H.R.E.* AIR 1932 Mad. 108. There, the learned Judges Wallace and Madhavan Nair, J., observed as follows:

In our view the District Court had no authority u/s 84(2), Madras Hindu Religious Endowments Act, to direct a remand and rehearing of the case.

The powers conferred on the Court by the section are only to modify or set aside the decision of the Board and of course to dismiss the application. If the section had meant that the Court was the appellate authority with all the normal powers of an appellate Court, we expect that to have been stated.

9. The use of the word "appeal" with reference to the Board, and "apply" with reference to the Court, coupled with the provision that the Court could modify or cancel the order is prima facie a strong indication that the legislature did not in this section intend to use the two words to connote the same idea. "No doubt the word "suit" is used in some sections in connexion with the aggrieved parties" right to resort to Court; the aggrieved

party is given the right ""to institute a suit in Court to modify or set aside the particular orders,"" or he may ""appeal to the Board against such orders:

see Sections 55(4) and 67(4). The word ""suit"" is used in other sections also as already mentioned. The circumstance that u/s 84 the aggrieved

party is given the right ""to apply"" to Court, and not the right . to institute a suit""; is undoubtedly a very important one, but is it conclusive?

10. We find there is a provision to the following effect in some of the sections of the Act ""the order of the Court when such application is made

shall be final:"" see Sections 76(3) and 53(4). On the other hand, we find no such qualifying words either in Section 77 or in Section 84, and the

omission of these words in those two sections seems to be rather significant. Applications by way of originating summons could be made by

trustees to the Court for advice and directions in particular matters: see Sections 34 and 36, Trustees Act, for example. It is a question for

consideration whether in some of the provisions of the Madras Hindu Religious Endowments Act, the word application"" was not used in that sense,

the Court's order being in such, cases final and not open to appeal and whether when in some other sections the word ""application"" is used,

omitting at the same time the words ""the order of the Court shall be final,"" the legislature did not really mean simply that the aggrieved party may

move the Court, i.e., take appropriate proceedings in Court with a view to have particular orders modified or set aside or cancelled, not caring to

describe the exact technical legal nomenclature of the proceeding to be taken in Court.

11. It is rather curious that the legislature has chosen to use two different expressions in connexion with an aggrieved person's remedy in the

District Court. We have seen that, in Sections 76 and 53, the legislature has said that ""the order of the Court when such application is made shall

be final."" In Sections 77 and 84, on the other hand, the legislature has said that

subject to the result of such application to Court, the order of decision of the Board shall be final.

12. In Sections 55, 57, 64 and 67 we find the following: Subject to the result of such suit, the order shall be final."" The question suggests itself

whether there is any and if so, what difference between saying that ""the order of the Court when such application is made shall be final,"" and saying

subject to the result of such application to Court, the order shall be final." When the legislature stated that "subject to the result of such suit, the

order shall be final," it may be taken that it is the ultimate and final result of the suit by the final appellate authority that was evidently meant. Does

the use of the words "subject to the result of such application" in Sections 77 and 84 suggest any such wider meaning? It is not necessary at

present to pursue this line of discussion. In this connexion I may refer to the circumstances (though by no means a conclusive one) that in Schedule

2, Col. 3 of the Act, the court-fee payable on an application contemplated by Section 84(2) is

the fee leviable on a plaint Under Article 17, Schedule 2 Madras; Court-fees Act.

13. Thus court-fee payable on such a proceeding is that payable on a plaint. This circumstance is not of course conclusive. The learned

Government Pleader emphasized on the use of the word "decision" of the Board in Section 84, and argued that it is the decision of a judicial

tribunal, and that the legislature obviously meant that though the decision may be called in question by way of appeal to the Court it should not be

ignored, and all proceedings preceding it thrown away, as would be the case if the Court has to begin everything de novo, according to the

contention raised by the petitioner. But I do not think that the use of the word "decision" in Section 84 would by itself be conclusive that it is the

opinion arrived at by a judicial tribunal in a judicial manner. The word "decision" occurs also in Section 56(4) of the Act; but it cannot be said that

the word "decision" used in Section 56 imports all the above.

14. It was then contended that the Board inquires into the matter carefully, records evidence, and hears counsel on behalf of the parties interested.

While it speaks very well of the Board that that public body takes every reasonable care that its conclusions are arrived at after careful inquiry and

consideration, it could not be said that the decision of the Board regarding the matters like the one now before us is the decision of a judicial

tribunal arrived at in a judicial manner. The question before the Board was whether the institution in question was a mutt within the definition of the

Act, it being contended on the other side that it was not. The Board would have no jurisdiction over the institution in question unless it be a mutt.

Therefore in a case where the Board claims that it is a mutt, and is in the

position of a claimant while the other party disputes the same, the Board has to decide whether its contentions have been proved. Thus in one sense the Board is to judge on its own claims. It is true that the duty of the Court is only to interpret the statute and give effect to the same, and not to question the policy of the statute. But in considering the effect of an order passed by the Board, when the terms of the statute are not clear, it is, I think, legitimate to start with the assumption that in the absence of a clear provision to the contrary, orders passed by the Board upholding its own claims could have been meant only to be tentative and subject to be agitated before the civil Courts in the usual way. Several other sections to which our attention was drawn deal with matters where the position of the Board is materially different. Our attention has not been drawn to any specific provision of the Act which clothes orders like the one in question with the characteristics and binding nature of, a civil Court's adjudication. The Board is nowhere expressly styled a judicial body, no section expressly gives it the right to administer oath, nor does any section expressly throw upon it the obligation to decide judicially on the rights of parties as a civil Court. The Local Government is, no doubt, given power u/s 71(e) of the Act to make rules with reference to the powers of the President and Commissioners of the Board to make inquiries and compel the production of documents. The Local Government may or may not make such rules, and in making such rules, may restrict the powers of the Board, with reference to those matters, in any way they like. Some of the rules framed by the Local Government were read to us; one of the rules is to the effect that:

it shall not be necessary to take down the evidence of the witnesses in writing at length, but as the examination of each witness proceeds a memorandum of the substance of what each witness deposes shall be written and signed by the presiding Commissioner, or by the Commissioner, as the case may be, and shall form part of the record.

15. A civil Court sitting as an appellate tribunal in such matters may find it extremely difficult to properly appreciate the evidence so recorded in such cases. The Board is entitled u/s 19 to make bye-laws, among others as: to the manner in which their decision shall be ascertained otherwise than at meetings.

The arrangement by which a decision is arrived at by members of a Board by circulation of papers may have something to recommend it, if considered an executive or administrative body. But it is ordinarily unknown to the judicial tribunal system, under which personal discussion among members of the tribunal and open argument in public Court by parties or counsel are given very great importance. A decision arrived at by the Board after full inquiry would no doubt be entitled to great consideration, but we do not think that its decision in the present case could be said to be the decision of a judicial tribunal, or that the legislature treating it like that, has provided only for an appeal to the civil Court u/s 84 of the Act. It may here be noted that, excepting the President, the other Commissioners of the Board need not necessarily be persons having legal qualification: see Section 12 of the Act. Under the Act the Commissioners are not bound to note the points for decision, the findings thereon, nor the reasons for the same.

16. As already mentioned, the dispute relates to the very existence of a mutt in the present case. The Board asserts its existence, whereas the other party denies it. In such a matter, in the absence of clear indication to the contrary in the Act, we should not be justified in holding that the civil Court which has been given jurisdiction in the matter could only proceed on the materials which were before the Board. The absence in Section 84 of the words "the order of the Court shall be final" which find a place in Sections 76 and 53 of the Act, seems to indicate that the legislature pursued a different policy with reference to Section 84, evidently having regard to the importance of the nature of the dispute between the parties. It is curious that these words do not find a place in Section 77 of the Act, which deals with the determination by the Board as to what portion of the endowment or property belongs to religious portion of the institution and what portion to the secular portion of the institution, in a case where the property has been given to an institution which is partly of a religious and partly of a secular character. There also, the Board has to practically decide as between its claims and the claims of another, and so the matter seems to have been dealt with in exactly the same way as in Section 84.

17. It was further argued for the petitioner that right of suit in the District Court is given by the Act to aggrieved parties in respect of comparatively

less important matters, the suggestion being that the right of suit (in effect) in respect of such a vital question, viz., whether an institution in question

is a mutt or not, is not likely to have been withheld. It was also mentioned that the period of one year allowed to aggrieved parties to apply to the

District Court would rather indicate that the real nature of the proceedings is not ""appeal"" as ordinarily understood, the suggestion being that in

respect of appeals properly so called, a comparatively shorter period is fixed by the Act in other cases, and that such a long period of one year is

not likely to be allowed if the proceedings were considered to be ""appeal proceedings,"" as ordinarily understood. It seems to me that these

considerations by themselves would not be conclusive in the absence of other clear indications in the Act itself.

18. No doubt some of the considerations mentioned above are not of great significance; but having regard to general principles and also to the

indications derived from the other portions of the Act, I am inclined to think that the jurisdiction of the District Court in disposing of the matter that

comes before it u/s 84 of the Act is not confined to the jurisdiction of the Court of appeal in the matter of allowing evidence to be adduced. The

decision of the learned Judges in the case reported in *Chengazhisseri v. Commrs. of H.R.E.* AIR 1932 Mad. 108, in so far as it goes, supports this

view. Further, I think that there are some observations in the judgment of the Full Bench of this Court in the case reported in *Damodaran v. H.R.E.*

Board, Madras AIR 1930 Mad. 392, which would directly help us in the decision of the matter before us The question before the Full Bench was

as to the exact amount of court-fee ""payable on an application made u/s 84(2) of the Act. At p. 269, it was observed:

These applications are analogous to a regular suit filed by an unsuccessful claimant. They are not really suits for any declaratory decrees. The

observations of the Privy Council in the case reported in *Phulkumari v. Ganshyam Misra* [1908] 35 Cal. 202 may be considered in dealing with the

matter like the present.

19. Thus, the Full Bench, while holding that they are not really suits for any declaratory decrees, in which case court-fee is to be calculated in a

different way, was of opinion that an application u/s 84(2) is ""analogous to a regular suit."" This opinion of the Full Bench is relevant to the present

case, and is of great help to us. If they are analogous to a regular suit,"" they could not ordinarily be analogous to ""an appeal"" or ""revision."" The

Court's powers in respect of taking evidence in proceedings before it are governed by the provisions of the Civil Procedure Code. In this

connexion the observations of the House of Lords in *National Telephone Co. Ltd. v. Postmaster General* [1913] A.C. 546, are useful; there at p.

562 Lord Parker observed as follows:

Where by statute matters are referred to the determination of a Court of record with no further provision, the necessary implication is, I think, that

the Court will determine the matters as a Court. Its jurisdiction is enlarged, but all the incidents of such jurisdiction, including the right of appeal

from its decision, remain the same.

20. See also *Parthasaradhi Naidu v. Koteswara Rao* AIR 1924 Mad. 561. It might be asked why the words "to modify" or "set aside" such

decision occur in Section 84, if a right to question the decision of the Board in the ordinary way in the civil Court is given to the aggrieved party. If

an explanation has to be suggested for the use of the words in the section, it may be said that the words were probably used to make it clear that it

is not obligatory on the civil Court to simply set aside the order of the Board for irregularity, etc., if it should come to the conclusion that a

modification of the order passed by the Board would represent the real rights of the parties. Compare Article 13, Schedule 1, Limitation Act, with

Article 14 of the said schedule. Suits to alter or set aside a summary decision or order of a civil Court not established by Letters Patent, are well

known to law, and the court-fees due on such suits is provided for by Article 17, Court-fees Act, Schedule 2.

21. Finally, it may be noted that u/s 53(3) of the Act, a hereditary trustee may, in lieu of appealing to the Board apply to the Court to modify or

cancel the order of the Committee. What is the exact nature of the jurisdiction of the Court when dealing with, the order of the Committee, (it is not

an order of the Board)? Is the Committee also a judicial body?. One need not pursue the matter further.

Statutes which limit Common law rights must be expressed in clear and unambiguous language;

and an illustration given is the case of a statute which detracts from rights of

ownership or that which takes away the jurisdiction of the High Court:

see Halsbury's Laws of England, Vol. 27, pp. 150 and 151. The decisions of the Privy Council in the case reported in Rani Veera Raghavulu v.

Venkata Narasimha Naidu AIR 1914 P.C. 87 and Secy, of State v. Chellikani Rama Rao A I.R. 1916 P.C. 21, and of the House of Lords in

National Telephone Co. Ltd. v. Postmaster General [1913] A.C. 546 are not directly useful in solving the exact question before us at this stage of

the proceedings. A passage from the judgment of the Privy Council in the case reported in Secy. of State v. Chellikani Rama Rao A I.R. 1916

P.C. 21 (of 39 Mad.) may however be cited:

The claim was the assertion of a legal right to the possession of and property in land; and if the ordinary Courts of the country are seised of a

dispute of that character, it would require, in the opinion of the Board, a specific limitation to exclude the ordinary incidents of litigation.

22. Section. 84 of the Act does not state that the jurisdiction of the Court is by way of appeal from the decision of the Hindu Religious

Endowments Board, in the same way as it has described, in other sections of the Act, that the nature of the jurisdiction of the Board is by way of

appeal from the orders passed by the Committee. We cannot therefore uphold the contention that the jurisdiction of the District Court is restricted

to that of an appellate tribunal. In a popular sense, it might be said that what the District Court does in such matters is, in a way, similar to an

appeal against the decision passed by the Board. Under Act 28 of 1860 an appeal by way of regular suit"" before the District Court against the

decision of the Survey Officer was provided for: see Kama Raju v. Secy. of State [1888] 11 Mad. 309. It is only in such a sense that the District

Court's jurisdiction could be said to be that of an appellate tribunal; but we are concerned here with the question whether the District Court, in

proceedings u/s 84 of the Act, has got only the powers of a Court of appeal as provided by the Civil Procedure Code. As the legislature has not

specifically mentioned that the jurisdiction is by way of appeal from the decision of the Board, but has given the right to the aggrieved party to

apply to the District Court to alter or set aside the order, I feel that I am not justified in cutting down the rights of the aggrieved party in his

proceedings before the District Court in the absence of any specific provision in

the Act to the contrary.

23. The use of the words "apply" and "application" is not, in my opinion, conclusive in favour of the respondent's contention. In Wharton's Law

Lexicon, the meaning of the word "application" is given as follows.: "A request, a motion to a Court or Judge: the disposal of a thing"--see p. 67.

24. It was observed, in *International Financial Society v. City of Moscow Gas Co.* [1878] 7 Ch. D. 241 that the word "application" is not

inapplicable to the hearing of a suit as well as to an interlocutory proceeding. Thesiger, L.J., observed at p. 246 as follows:

The words used in the rule, "refusal of an application" are certainly not happily chosen to express the dismissal of a bill. But at the same time it

seems to me that they are wide enough to include it, and that they are equally wide enough while they become appropriate to the refusal or relief

applied for in a statement of claim, which is the form of procedure to which this rule is primarily applicable.

25. The question in that case turned on the construction of Order 58, Rule 15, Rules of the Supreme Court. The argument of the appellant's

counsel (see p. 243) was this:

An application as the word is used in the rule, and as it is commonly understood, is made by motion or summons, and when it is refused, no formal

order need be drawn up at all. The decision of the Court on the hearing of the cause is always called in the rules a judgment.

26. In mooted that argument, James, L.J., observed at p. 243 as follows:

it is impossible, as it seems to me, to read the word "application" in any limited sense as an application for an interlocutory order, because it is quite

obvious that the rule applies to other than interlocutory orders.

27. Similarly, Baggallay, L.J., observed at P. 246

It has been suggested that the word "application," as used in the above sentence, has a limited meaning, and that it does not include a motion for

decree at the hearing. I can see no ground whatever, in the ordinary grammatical construction of the rule, to give it so limited a meaning, and

certainly if we refer to other portions of the order and the several rules under the orders, we shall find the word "application" and the word "apply

constantly used with reference to every class of application.

28. Very valuable rights of property are in question. The District Court is given jurisdiction in the matter. The provisions of the Act are not clear

that the jurisdiction of the District Court u/s 84(2) is only that of a Court of Appeal or revision. Nor is it clear that the decision of the Board on a

matter like this is that of a judicial tribunal as ordinarily understood arrived at in the usual judicial manner of Courts. The use of the word "decision

in Section 84, is not conclusive having regard to its use in Section 56 of the Act. Nothing of a conclusive nature could be inferred from the use of

the words "apply" and "application" in Section 84. Those words do not seem to have been used in any technical sense in that section, having regard

to the use of those words in some other sections of the Act. If the term "suit" had been used in Section 84, the matter would have been conclusive

in favour of the petitioner's contention. The omission of the words: "the order of the Court shall be final" from Sections 77 and 84 of the Act, while

they are used in some other sections of the Act (see Sections 53 and 76(3) with reference to orders passed by the Court on applications) would

seem to indicate that the nature of the orders passed by the Court under the two sections is different from the nature of orders passed by the Court

under the other sections of the Act. The court-fee payable in respect of an application u/s 84, is, Under Schedule 2 of the Act, that payable on a

plaint Under Article 17, Schedule 2, Court-fees Act. A Bench of this Court has held that the District Court in proceedings u/s 84, has no

jurisdiction to remand the proceedings to the Board for fresh inquiry. The observations in the Full Bench judgment of this Court in the case

reported in Damodaranv. H.R.E. Board, Madras AIR 1930 Mad. 392, indicate that the proceedings u/s 84 are "analogous to a regular suit. The

use of two different words "appeal" and "apply" in Section 53 of the, Act would prima facie indicate that they were used to connote two different

ideas and not one and the same, the aggrieved person is to "appeal" to the Board, but to "apply" to the Court.

29. On the other hand, the use of two different expressions "institute a suit" and "apply to the Court" by the legislature in various sections of the Act

would seem prima facie to indicate in the contrary direction. I am not now directly concerned with the question whether an appeal lies against the

decision passed by the District Court in such a matter, nor as regards the exact nature of such an appeal. Even in the matter of disposing of original

applications which involve disputes about valuable legal rights, when they are properly filed in the District Court, that Court has jurisdiction to take

evidence and hear arguments before giving its decision; and I am unable to see why it should be different in the case of proceedings taken in the

Court u/s 84, in the absence of any clear provision to the contrary in the Hindu Religious Endowments Act.

30. The provisions of the Act, in my opinion, are not clear in this matter; having regard to the considerations mentioned above, could it be said that

the application made to the Court u/s 84 is by way of "appeal" or "revision" "within the meaning of the Code of Civil Procedure. On the whole, I

think that the learned District Judge was in error in regarding the application before him as an application for revision or as an appeal." His order

will accordingly be set aside, and he will be directed to pass fresh orders on the application to take evidence on commission. Costs of this revision

petition will be cases in the cause and should be provided for by the District Judge when passing final decision on the proceedings pending before

him.

Reilly, J.

31. I agree. I may add that in my opinion the contention of the Board that an application u/s 84(2) of the Act is only in the nature of an appeal or

revision petition, which must be disposed of on evidence taken by the Board, is obviously untenable unless the decision of the Board u/s 84(1) is

the decision of a judicial tribunal reached by procedure appropriate to a Court of law It may be noticed that only one of the members of the Board

need be a person of any legal training or experience. And the legislature has not thought fit to prescribe the procedure of the Board in arriving at its

decision. There need be no pleadings on record. Evidence need not be given on oath, and none need be recorded. No reason need be given for

the decision. No pleader need be heard. The proceedings need not be conducted in public. The Local Government by rules and the Board itself by

bye-laws have provided for some of these things; but they need not have done so.

32. In my opinion it is impossible to suppose that the legislature in giving any person affected recourse to the Court against such a decision of such

a tribunal intended to restrict the Court to such evidence as the Board might

happen to have recorded or even to such evidence supplemented to the extent to which a Court of Appeal can supplement the evidence taken by a Court of first instance. In my opinion the only reasonable interpretation of Section 84(2) is that the application to be made under the subsection is, so far as the Court is concerned, an application, to which the ordinary procedure of the Court will apply and on which the parties have the right to produce such evidence as they wish. Not only are the ordinary powers of the Court and the ordinary rights of parties applying to a Court for relief not taken away explicitly; if they did not exist, the remedy provided by the legislature might will be illusory.