
(1977) 04 MAD CK 0035
In the Madras High Court

M. Krishnaraju Chetty

APPELLANT

Vs

The Commissioner of Hindu Religious and Charitable
Endowments Board

RESPONDENT

Date of Decision : 05-04-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 118, 118(2)(b)(i), 118(2)(b)(ii), 92

Citation : (1977) ILR (Mad) 448 : (1977) 90 LW 432 : (1977) 2 MLJ 188

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Single Bench

Judgement

T. Ramaprasada Rao, J.—This appeal is against the judgment of Sethuraman, J., in application No. 3094 of 1973 in C.S. No. 42 of 1923. Sri Payandi Amman Temple, Nadukuppam, Lloyds Road, Madras is an ancient temple for which a scheme apparently u/s 92 of the CPC was framed by this Court in C.S. No. 42 of 1923 dated 26th March, 1926. Inter alia the scheme provided that for the management and administration of the temple two trustees were to be in charge thereof. On the happening of a vacancy by the death or resignation or otherwise of one or both the trustees of the temple an application shall be made to the High Court by one or more members of the Pattanavar community residing at Nadukuppam, Triplicane, Madras, for filling up the said vacancy. The methodology by which the selection of the trustee in the vacancy so created is also set out. Consequent upon the creation of a vacancy, the applicant came to Court and sought for an order for appointment of a fresh trustee in the vacancy caused by the retirement of one Balajee. The appellant sought for directions to continue in office as sole trustee till another trustee was appointed by the Court so as to satisfy the terms and conditions under which the scheme was framed. The appellant did not make the Commissioner, Hindu Religious and Charitable Endowments, Madras, who is the statutory officer in overall charge of all temples in the State and who is expected to see to its proper administration in accordance with the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 hereinafter referred to as the Act, as a party. The Court

apparently thought that his presence was necessary before a final order could be made. Notice of this application was given to him. The Commissioner filed a counter-affidavit contending that under the provisions of Section 118 of the Act all powers vested in any Court or Judge under any scheme settled by the Court prior to the passing of the Act are to be exercised only by such of the statutory officers expressly nominated under the provisions of the Act. He, therefore, challenged the maintainability of the application in the sense that the Commissioner questioned the jurisdiction of the Court to fill up the vacancy when under the provisions of the Act it has to be done by a specifically nominated, statutory authority. This question was taken up as a preliminary issue by Sethuraman, J., who held on an interpretation of Section 118 of the Act that the application was not maintainable and directed the appellant to approach the appropriate authority forgetting the vacancy filled up. The appeal is against the said order.

2. Various matters touching upon the administration of religious institutions and specific endowments in the State of Tamil Nadu were the subject-matter of various and varied legislation for a considerable length of time. But uniformly in all such pieces of legislation touching upon the administration of temples and religious institutions or specific endowment or endowments, the Legislature took care to preserve an overall power of supervision, management and administration in the bodies or authorities created by such statutes in preference to the Courts which by necessity were by then exercising such functions under the omnibus provision namely Section 92 of the Code of Civil Procedure, which enabled the Court to exercise such jurisdiction and involve themselves in the matters of appointing trustees, settling of schemes etc. One such provision which we find in the Act is Section 118. This appears in Chapter XII captioned as "transitional" provision. Section 118(2)(b)(i) and (ii) are complementary provisions which have made a specific inroad on the powers of civil Courts in the matter of appointment of trustees, supervising religious institutions etc. Whilst Section 118(2)(b)(i) provides that any provision in a scheme settled u/s 92 of the Code of Civil Procedure, 1908, which is repugnant to any provision contained in the Act would be void to the extent of repugnancy. Section 118(2)(b)(ii) which is complementary to the former provides as follows:

All powers conferred and all duties imposed by such scheme on any Court or judge or any other person or body of persons not being a trustee or trustees or an honorary officer or servant of the religious institutions or, endowment, shall be exercised and discharged by the Commissioner, Deputy Commissioner, or the Assistant Commissioner, as the case may be, in accordance with the provisions of this Act.

It is not in dispute that in this case the scheme framed in 1926 vested certain powers on the High Court to fill up a vacancy in the office of trusteeship as and when it arises. But under the provision as above, such powers conferred on any Court shall be exercised and discharged by the officers expressly nominated tin

that section as above and not by the Court which under, the quondam scheme was as of right entitled to act and appoint. This substitution of statutory authority in the place of Court being so very expressive and positive cannot be got over on a priori considerations. Mr. Chari however expresses that a Court like the High Court being a Superior Court exercising original and appellate jurisdiction cannot be said to be included in the word "Court" appearing in Section 118(2)(b)(ii) and if at all, the Legislature could have intended to include within the meaning of the word Court or Judge therein a Court subordinate to the High Court or a Judge who is subordinate to a High Court Judge. We characterised already this argument as an a priori reasoning. This is because the words provided in Section 118(2)(b)(ii) are "all powers conferred and all duties imposed by such scheme on any, Court or Judge...shall be exercised and discharged by the Commissioner, Deputy Commissioner or the Assistant Commissioner, as the case may be, in accordance with the provisions of this Act". "Any Court" is an expression, in our view, which is significant enough to include a High Court as well and "any Judge" would include a High Court Judge also. We are unable to accept the argument of the learned Counsel for the appellant that the meaning to be given to the word "Court" or "Judge" in Section 118(2)(b)(ii) should be circumscribed to a Subordinate Court or a Subordinate Judge. This would be doing violence to both the language and the intendment of the Legislature. By providing provisions like Section 118 the burden and responsibility of civil Courts are taken away and they are passed on to the statutory authorities functioning under the Act for the specific purpose of administering and governing Hindu Religious and Charitable Institutions and Endowments in the State. Srinivasan, J., had occasion to deal with this question in *Subramania Achari v. Commissioner, Hindu Religious and Charitable Endowments, Madras* (1963) 76 L.W. 856. The learned Judge said:

It cannot be contended that a scheme framed by the High Court should stand on a different footing altogether for the reason that a Court as defined by the Madras Hindu Religious and Charitable Endowments Act does not embrace the High Court. What Section 118 in particular States is that where the scheme settled u/s 92, Civil Procedure Code, contains a provision repugnant to any provision contained in the Act, that provision in the scheme shall be void. The section speaks of a scheme settled u/s 92, Civil Procedure Code, and does not in terms make any distinction between a scheme framed by the High Court and a scheme framed by Courts other than the High Court.

3. In fact the language in Section 118(2)(b)(ii) is "all powers conferred and all duties imposed by such scheme....", and it refers to scheme framed or settled u/s 92, Civil Procedure Code, 1908 mentioned in Section 118(2)(b)(i).

4. Rajamannar, C.J., speaking for a Division Bench of this Court in *Commissioner, Hindu Religious and Charitable Endowments v. Janakirama Ayyar* (1957) 1 M.L.J. 249 : 70 L.W. 365 : I.L.R (1957) Mad. 756 : AIR 1958 Mad. 79, while interpreting a provision which is an *pari materia* with Section 118 of the Act

observed that-

Section 103 (e) (ii) of the Madras Hindu Religious and Charitable Endowments Act, 1951, clearly provides that all powers conferred and all duties imposed on a Court by a scheme settled by a Court shall be deemed to have been conferred or imposed on the Area Committee or the Commissioner, as the case may be, that the power and duty of filling up vacancies among the resident trustees should be deemed to have been conferred or imposed on the Commissioner in that case after the passing of the Act and that the Court did not continue to be proper authority for that purpose.

Though directly the question did not arise in that case as to what would happen to a scheme framed by the High Court, we have no hesitation in applying the above principle even to schemes framed by the High Court prior to the passing of the Act. In this view, therefore, there is a bar for the maintainability of this application and the appellant can only seek his redress before the statutory authorities nominated for the purpose. These provisions cannot be by-passed and we therefore agree with Sethuraman, J., and dismiss this appeal. There will be no order as to costs. The appellant is given two months time to take such steps as are necessary under the Act for filling up the present vacancy.