

(1963) 04 MAD CK 0047
In the Madras High Court
Case No : Writ Petition No. 61 of 1963

M.S. Dharma Mudali

APPELLANT

Vs

O.C. Abdulla, Principal Subordinate Judge and Others

RESPONDENT

Date of Decision : 03-04-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 — Section 58(1)
Tamil Nadu Hindu Religious and Charitable Endowments (Second Amendment) Act, 1961 — Section 113A, 113A(1), 113A(2)
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 10, 6, 63, 70, 9

Citation : (1964) ILR (Mad) 728

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : S. Mohan Kumaramangalam, for the Appellant; A. Sundaram Iyer, S. Mohan and K.S. Baktavatsalam for V. Ramaswami, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—This petition raises the question of construction of Section 113-A introduced by Madras Act XL of 1961 in Madras Act XXII of 1959. The Petitioner along with four other worshippers of the Manikanteswaraswami temple in Tirumalpur village applied before the Deputy Commissioner, Hindu Religious and Charitable Endowments, u/s 58(1) of Madras Act XIX of 1951, for proper administration of the temple, including the settlement of a scheme of management, after removing the third Respondent from trusteeship and appointing new trustees. The Deputy Commissioner dismissed the petition in November 1960. Against that order, the Petitioner as well as other worshippers who were parties, to that petition preferred an appeal before the Commissioner, Hindu Religious and Charitable Endowments. By the time The appeal was ripe for hearing, the Deputy Commissioner who had disposed of the matter was

promoted as Commissioner, Hindu Religious and Charitable Endowments. In the circumstances, he could not himself naturally decide the appeal, and there was no enabling provision in Madras Act XXII of 1959 to meet such a situation. It was to rectify this defect, Madras Act XL of 1961 was enacted, which, as I said, introduced Section 113-A in the main Act. In exercise of the powers conferred by this section, the State Government transferred the appeal to the Subordinate Judge of Vellore for disposal. It appears, he heard the appeal and was about to deliver judgment, but before he did so, the Petitioner moved this Court under Article 226 of the Constitution for a rule of prohibition restraining the Principal Subordinate Judge, the first Respondent, from passing any orders on his appeal.

2. The contention for the Petitioner is that, on a proper construction of Section 113-A read with Section 10, the power of the Government under that section is limited to transfer of appeals or revisions to the file of a judicial officer not below the rank of Subordinate Judge, who is a Hindu. In this case, the Principal Subordinate Judge who heard the appeal happened to be a Muslim. Objection, therefore, is taken, on such a construction of the section, to his jurisdiction to dispose of the appeal. Madras Act XL of 1961 does not specifically set out any particular object of the amending legislation. The preamble only says that it was expedient further to amend Madras Act XXII of 1959 for purposes thereafter appearing in the Act. The object of the Act has, therefore, to be ascertained mainly from the terms of the amending Act. But the objects of or the reasons for the amending legislation show that the main purpose in introducing Section 113-A was to remove the defect or lacuna in the parent Act, and to provide for power to transfer an appeal to a judicial officer for disposal in case the Commissioner, before his promotion to that office, had himself, as Deputy Commissioner, disposed of the matter against which an appeal was preferred. Section 113-A reads:

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, the Government may, by notification, direct that any appeal or revision pending before the Commissioner under this Act shall be disposed of by a judicial officer not below the rank of Subordinate Judge.

(2) For the purpose of this section, the officer referred to in Sub-section (1) shall have all the powers of the Commissioner under this Act and any decision or order passed by such officer under this section shall be deemed to be a decision or order passed by the Commissioner under this Act.

3. The opening words would suggest without doubt that the section will prevail over the rest of the provisions in the existing Act. But it is contended that the words notwithstanding anything contained in this Act should be given a restricted meaning and should not be understood so as to depart from the governing policy of the Act underlying particularly section 10. Since that section says that any person who is appointed as a Commissioner or an officer for the purposes of the Act should be one professing the Hindu religion, it is argued that, in spite of the opening words of Section 113-A, the intention of that section is that the judicial

officer to whom the appeal is transferred should be also a person of that description. That, it is said, is the intention of Section 113-A. In my opinion, this construction is wholly unsound and cannot be accepted.

4. Section 6 of the Madras Act XXII of 1959 defines a Commissioner to be one appointed u/s 9. Section 9 empowers the Government to appoint a Commissioner and such number of Deputy and Assistant Commissioners as they may think fit. Then comes Section 10.

The Commissioner, every Deputy or Assistant Commissioner and every other officer or servant appointed to carry out the purposes of this Act, by whomsoever appointed, shall be a person professing the Hindu religious, and shall cease to hold office as such when he ceases to profess that religion.

5. It may be granted, and indeed it is explicit from Section 10, that no one can be appointed as any one of such officers unless he professes the Hindu religion. Section 10 also extends that requirement not only to the appointment of any such officers but also every other officer or servant appointed) carry out the purposes of the Act. The question is whether Section 113-A makes a departure from that policy. It seems to me that it does not. Section 113-A, notwithstanding its opening words, does not suggest that any such Commissioner or other officer or servant could be a non-Hindu. In fact, Section 113-A does not appear to confer upon the State Government, the power to appoint any officer like the Commissioner, Deputy or Assistant Commissioner or any other officer. All that Section 113-A purports to do is to entrust the Government with the power of transferring an appeal or revision, in its discretion, to a judicial officer not below the specified rank, to dispose it of. That, in my opinion, does not amount to a power tantamount to the one entrusted to Government u/s 9 read with Section 10. Further, I should have no hesitation in holding that, what is done u/s 113-A is to pick out a certain function of the Commissioner and entrust to the Government the power of calling upon the specified judicial officer to exercise that function. That, I think, is by no means inconsistent with Section 10. The scheme of the Act will show that the powers of the Commissioner-or the Deputy or Assistant Commissioner or any other officer or servant appointed to carry out the purposes of the Act are of diverse character, most of them administrative, some judicial and occasionally, a combination of both, calling for a particular religious background in their exercise. But so far as the matter involved in the appeal is concerned, the Act itself contemplates the institution of a suit by a person aggrieved against the orders of the Deputy Commissioner or of the Commissioner settling a scheme of management or making" any orders u/s 63. It is riot required by Section 70, which provides for suits and appeals, that the Civil Court which decides them must be manned by a person of any, religious denomination. Even though the Deputy Commissioner or the Commissioner, who disposed of the matter, is required to be a Hindu, it could also be dealt with by a Civil Court without reference to the religion of the presiding Officer. It necessarily follows, therefore, that so far as the judicial functions touching that matter are

concerned, the policy of the Act in appointing a person of a particular religious denomination to the office of the Commissioner will have no relevance.

6. There is also an additional reason why I am unable to accept the construction placed on Section 113-A on behalf of the Petitioner. While an appeal is disposed of by a judicial officer not below the specified rank on transfer of the same to his file, Sub-section 2 contains a deeming provision by which the decisions or orders passed by such officer are supposed to be the decisions or orders passed by the Commissioner. Implied in this deeming provision is the fact that the judicial officer who disposes of the appeal is, in fact and in law, not acting as a Commissioner appointed as such, but only in his capacity as a judicial officer. But his decision is, by the deeming provision, to be taken as the decision of the Commissioner. From that standpoint also, it seems to me, the policy underlying Section 10 is in no way infringed by and is not relevant to the interpretation of Section 113-A.

7. The purpose of the cardinal rules of construction is, after all, to ascertain the intention of the particular section or enactment. Prima facie, the intention should be gathered from the language or words actually used. Where they are ambiguous, rules of construction are invoked for assistance. Where the words or language are plain enough, there is no room for construction by applying any rule and that words will have to be given their obvious or plain meaning. Where the provision construed is in an amending legislation, even where the words are plain enough, in order to ascertain the meaning, it will be legitimate to refer to the pre-existing law and the defects or lacuna found therein to rectify which the amending legislation is brought. But, I think it is unnecessary to refer to the rules of construction or the authorities which lay them down in construing Section 113-A which, in my opinion, is plain enough, as I have already indicated.

8. On the construction I have placed on Section 113-A, the petition should fail.

9. The petition is dismissed with costs of Respondents 2 and 3.