(1910) 04 MAD CK 0039

In the Madras High Court

Nelayathakshi Ammal APPELLANT

Vs

The Taluk Board RESPONDENT

Date of Decision : 21-04-1910

Acts Referred:

Citation : (1911) ILR (Mad) 333

Hon'ble Judges : Krishnaswami Ayyar, J;Benson, J

Bench : Division Bench

Judgement

1. The plaintiff claims to inspect the accounts of a charity and has made the Taluk Board of Mayavaram defendants. By the will of the plaintiff''s

deceased husband, certain charities were created and trustees appointed. The plaintiff was,one of them. In consequence of alleged mismanagement

the Board of Revenue intervened. It must be assumed for the purposes of this case that the management and superintendence of the endowment

were made over to the Taluk Board u/s 51 of Madras Act V of 1881. The possession of the endowment property passed to the Taluk Board in

due course. The plaintiff has ceased to be a trustee of the endowment and claims the right to inspect under a special clause in the will which runs as

follows: ""I have appointed certain persons (named) as trustees. The said persons shall properly conduct the said charities according to their present

scale and maintain correct accounts therefor in bound books accessible to all the persons."" The power is given by the instrument to the trustees

appointed for the nomination of their successors after their death. If the trustees make default in management and resign office the Government is

given the power of appointing other trustees in their stead. There is no mention of the duty of maintaining correct accounts accessible to all in the case of the successors to be appointed by the trustees named or by the Government, It may however be assumed that it was the testator''s

intention that such a duty should be attached to the successors as well. But it is another question altogether whether the obligation to maintain

accounts accessible to all attaches to the Taluk Board which takes the place of the trustees appointed by the testator under special statutory

authority in the absence of a special direction in the statute itself. We do not suggest that the Taluk Board as managers of a charity are not bound

to maintain accounts like all managers of charitable institutions. But, as conceded by the learned Advocate-General, there would be no duty in such

a case to allow inspection to any member of the public when there is no averment of mismanagement, The question merely is whether, in the

absence of a charge of mismanagement, the direction contained in the will as to the maintenance of accounts accessible to the public will ipso facto

impose the obligation upon the statutory body which enters upon management under statutory powers. ""We think we must answer this in the

negative. The duty to keep and give inspection of accounts is part of the function of management. When it is transferred by a special law to a

statutory body, we must look to that law and not to the instrument of trust for the duties of the manager. There being no provision in the Act

requiring him to give the inspection sought for and no general right of inspection on a charge of mismanagement being now in question, we must

negative plaintiff''s claim. This is sufficient to dispose of the second appeal. But the question has been argued at some length as to whether the

action is maintain able against the Taluk Board, when it has transferred the management to another person, as in this case it is alleged to have done.

This raises the further question whether the Taluk Board, which has taken over the management u/s 51 of the Local Boards Act, can appoint an

independent trustee so as to divest itself of its duty of management It has been held that, under Regulation VII of 1817, the Board of Revenue has

merely the powers of superintendence and not the right of actual management. The case Venkatesa Nayudu v. Shrivan Shatagopa Shri Shatagopa

Swami (1872)7 M.H.C.R. 77 if it does not actually decide it suggests this view in more than one place as the proper view to take with regard to

the powers of the Board of Revenue. In Panduranga v. Nagappa ILR (1889) Mad. 366, Muthuswami Ayyar and Parker, JJ., point out that the powers of the Board of Revenue were primarily powers of supervision and control and that the committee constituted under Act XX of 1863,

which was given the same powers as the Board of Revenue had under Regulation VII of 1817, was not entitled to sue for possession. In the

Chairman, Municipal Council, Rajahmundry v. Susurla Venkateswarulu alias Venkata Krishna Brahma Sastrulu ILR (1908) Mad. 111, it has been

held that powers and duties of management did not attach to the Board of Revenue under Regulation VII of 1817, and that they had no right to

maintain a suit upon a bond executed in favour of a charitable foundation. But where u/s 51 an institution is transferred by the Board of Ravenue to

the control of a Taluk; Board, both powers of suparintendanee and of management are made over. To adopt the words of Miller and Munro JJ.,

to the facts of this case, the contention that the Taluk Board has merely stepped into the shoes of the Board of Revenue and has no greater powers

does not seam to be correct. What was made over to the Taluk Board u/s 51 of the Local Boards Act was not only the superintendence of the

charity but also the actual management. Is it competent to the Taluk Board to divest itself of the management given to it by virtue of Section 51 of

the Local Boards Act? Mr. Seshagiri Ayyar contends that it is competent to the Taluk Board to do so and ha relies on the clause in Section 51 of

Act V of 1884 which runs as follows:

Thereupon all powers and duties which attach to the Board of Revenue in all respects thereof shall attach to such Local Board as if such Board

had bean specifically named in the said Regulation."" It is said that the power to appoint trustees is among the powers of the Board of Revenue

under the Regulation and that therefore the Taluk Board has a like power. It is again contended that the provision that all powers of the Board of

Revenue shall attach as if the Local Board had been named in the Regulation effects the substitution of the Local Board for the Board of Revenue

wherever the latter term is employed in the Regulation. The question does not appear to us to be free from difficulty, but we are inclined to hold

that the contention is not right. In the first place, unlike the Board of Revenue which be no management, the Taluk Board is given powers of

management which must be deemed to be inconsistent, in the absence of specific authority, with a right to delegate the management. In the second place, the power of appointing trustees vesting in the Board of Revenue u/s 13 of the Regulation and the prerequisite of such appointment being the

receipt of a report from local agents, designated or appointed under the Regulation it is difficult to argue that the Taluk Board has the same powers

of appointment when no local agents can be said to be contemplated as working under the Taluk Board and making reports to it, Reading Sections

7 and 8 of the Regulation together, it seems fairly clear that the local agents are public officers. We cannot suppose that Section 51, which

continues to the Taluk Board the powers and duties of the Board of Revenue has the effect of continuing to maintain local agents who are public

officers under the authority of the Taluk Board. The powers and duties which are continued are probably those that are referred to in Sections 2, 3

and 5 of the Regulation and not necessarily powers of superintendence over local agents. Section 51 does not continue any duties of local agents

towards Taluk Boards. The substitution of the Taluk Board for the Board of Revenue is limited to the powers and duties which attach to the Board

of Revenue. We are inclined to hold that the Taluk Board does not possess the power of appointing trustees which the Board of Revenue had in

virtue of the provision contained in Section 13 of the Regulation. It was suggested that Section 3 of the Regulation might be so construed, as

including the powers to appoint trustees. We doubt whether it is admissible to include such an important power as that of appointing trustees under

the general words of taking ""such measures as may be necessary to ensure that all endowments are duly appropriated to the purposes for which

they were destined. ""If Section 3 included such powers of appointment it might no doubt be contended that the same power passed to the Taluk

Board But in the face of the specific provisions contained in Section 13 of the Regulation we are disinclined to hold that the same power is to be

swept into the somewhat general language of Section 3 of the Regulation. In this view it follows that the Taluk Board has not the power to appoint

independent trustees for the management of institutions taken over by it u/s 51 of the Local Boards Act. Having regard, however, to the opinion

already expressed as to the plaintiff''s right to claim inspection, we must dismiss the second appeal but in the circumstances without costs.

