(1910) 04 MAD CK 0076

In the Madras High Court

Nilayathakshi Ammal APPELLANT

Vs

The Taluq Board RESPONDENT

Date of Decision : 21-04-1910

Acts Referred:
Madras Local Boards Act, 1884 — Section 51

Citation : (1910) 20 MLJ 885

Judgement

1. The plaintiff claims to inspect the account 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 the 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 1884. 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 objection to maintain accounts accessible to all attaches to the Taluq 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 Taluq Board as managers of a charity are not

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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 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 the 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 maintainable against the Taluq 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 Vencatesa Nayudu v. Striman Shatagopa Shri Shatapaswami (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) M. 366. Muthusawmi Aiyar 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. Surla Venkataswarulu alias Venkatakrishna Brahmaswarulu ILR (1907) M. 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 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 Revenue to the control of a Taluk Board, both powers of superintendence and of management are made over. To adopt the words of Munro and Miller 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 seem 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 Aiyar contends that it is competent to the Taluk Board to do so and he relies on the clause in Section 51 of Act. V of 1884 which runs as follows :-"Thereupon all powers and duties

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which attach to the Board of Revenue in respect thereof shall attach to such Local Board as if such Board had been 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 has 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 pre-requisite 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 power of appointment when no local agents can be said to be contemplated as working under the Taluk Board and making reports to it. Reading Ss. 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 Ss. 2, 3 and 5 of the Regulation and not necessarily powers of superintendence over local agents. Section 51 does not continue any duties or 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 power 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 power of appointment it might, no doubt, be contended that the same power passed to the Taluk Board. But in the face of the specific provision 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.

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