

(1960) 03 MAD CK 0004
In the Madras High Court

P. Govinda Chetty and Others

APPELLANT

Vs

K. Lingaswami Chetty and Another

RESPONDENT

Date of Decision : 18-03-1960

Acts Referred:

Citation : (1960) ILR (Mad) 1067 : (1960) 73 LW 378 : (1960) 2 MLJ 205

Judgement

1. This appeal involves an interesting question relating to the provisions of the Hindu Religious and Charitable Endowments Act, Madras Act XIX

of 1951. We are not concerned here with most of the particulars of evidence, but we may briefly note that one Rukmani Ammal endowed certain

properties by a registered settlement deed, dated 19th March, 1906, for the celebration of a certain festival in the month of Thai in Sri

Veeraraghavaswami Temple at Trivellore. She appointed six persons as executors, directed them to collect rents and to hand over the rents to two

of the executors for the administration of the endowment. It is alleged that the properties have since come into the possession of the first defendant,

who is misappropriating the rentals, and not administering the religious trust in a proper manner.

2. The matter came to the notice of the Deputy Commissioner of Religious Endowments, Coimbatore, who initiated proceedings suo motu u/s

58(1) of Act XIX of 1951. But as that officer was not satisfied that a scheme should be settled for this religious trust, he dropped the proceedings.

The matter again came up before the Commissioner of Hindu Religious and Charitable Endowments, who also declined to interfere. It is sufficient

to note that u/s 61(1) of Act XIX of 1951, there is a right of appeal provided to the Commissioner against any order by the Deputy Commissioner

under the prior provisions, and that u/s 62(1) of the Act, any party aggrieved by an order passed by the Commissioner may within the period of

limitation specified, institute a suit in a civil Court to modify or cancel such order. The present suit has been instituted upon this basis, and the

question is whether the suit is maintainable; and whether the Civil Court can frame any scheme.

3. The learned Assistant City Civil Judge came to the conclusion that the Court had no jurisdiction to frame a scheme, mainly placing reliance upon

the Bench decision of this Court in T.S. Pichu Ayyangar Vs. Sri Perarulala Ramanuja Jeer Swamigal, Dharmakarthha and Manager of Sri Alagia

Nambirayar Temple, . In that decision, the question whether the civil Courts have jurisdiction to frame a scheme after the passing of the Madras

Hindu Religious Endowments Act, 1927, was dealt with and answered in the negative. The following passages in the judgment of Leach, C.J., are

of significance (at page 885):

The Board cannot be compelled to hold an inquiry. If it decides that an inquiry is not necessary, the applicants can carry the matter no further; so

much is conceded by the learned advocate for the appellant.

4. Again at page 886, the learned Chief Justice observes:

I agree with Venkataramana Rao, J., that Section 63 does not give authority to the Court to frame a scheme in the event of the Board refusing to

do so. The only orders which the section refers to are : (1) An order settling a scheme; (2) an order modifying a scheme, and (3) an order

cancelling a scheme. I consider that the words " institute a suit in the Court to modify, or set aside such order" are intended only to refer to an

order settling a scheme or modifying or cancelling one.

5. It is now argued before me, as was sought to be argued in the lower Court also, that the situation is quite different under Madras Act XIX of

1951, because a variety of orders is contemplated u/s 57 and the subsequent Sections , and because specific rights of appeal to the Commissioner

are given u/s 61(1), and specific rights to prefer suits against an order passed by the Commissioner u/s 62(1). It is not in dispute that u/s 62(2) of

the Act, an appeal to this Court is provided from the decree of the civil Court in the suit instituted u/s 62(1) of the Act.

6. But even so, the question is not whether a suit may not be technically

competent against the order of the Commissioner declining to interfere with the order of the Deputy Commissioner, which itself dropped the proceedings for the settlement of a scheme for this religious trust. The question is whether the Court has now any power to declare that the officer concerned under the statute (Deputy Commissioner) ought to have been satisfied that a scheme should be framed, and whether the Court has any power either to direct him to frame a scheme, or to frame a scheme, itself. This depends upon an analysis of the language of Section 58(1) of Madras Act XIX of 1951, and of the principles upon which the earlier Bench decision held that the Court had no power to frame any such scheme. I think that it can be easily shown that the same principles held the field, under the 1951 Act also, and that the language of Section 58(1) totally precludes the argument that the Court has any power to direct the Deputy Commissioner to be satisfied that a scheme should be framed, or to direct him to proceed to frame a scheme, though he might not have been originally satisfied. Equally, while the power to institute a suit against the order of the Commissioner may not be in dispute, it seems to me very clear that the Court has no power to frame a scheme where this element of subjective satisfaction of the Deputy Commissioner does not exist.

7. Section 58(1) of Act XIX of 1951 runs as follows :

(1) When the Deputy Commissioner has reason to believe that in the interests of the proper administration of a religious institution, a scheme should be settled for the institution or when not less than five persons having interest make an application in writing, stating that in the interests of the proper administration of religious institution a scheme should be settled for it, the Deputy Commissioner shall consult in the prescribed manner the trustee and the persons having interest and the Area Committee, if any, having jurisdiction over the institution; and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, frame a scheme of administration for the institution.

A perusal of this Sub-section therefore shows that the Deputy Commissioner has to be satisfied that it is "" necessary or desirable "" to frame a scheme of administration for the institution, and his consequential order may certainly be taken up in appeal to the Commissioner. Again, u/s 58(6) of the Act, the Deputy Commissioner has even power and jurisdiction to modify

or cancel any scheme settled under Sub-section (1). It will be noted that the Deputy Commissioner may take cognizance of the matter in one of two ways. He may act suo motu, or he may act upon an application preferred by not less than five persons having interest in the endowment. In the present case, it is an admitted fact that the Deputy Commissioner proceeded suo motu. It is equally undeniable that he was not satisfied that it was necessary or desirable to frame a scheme. The result was that he dropped (he proceedings.

8. I find it quite impossible to conceive how the Court can be clothed with a power to compel an administrative authority to be subjectively satisfied as to a certain matter, when that satisfaction has been made the essential condition under the law for the authority to proceed further. The remarks of Leach, C.J., in the earlier Bench decision are also precisely in point here, to the effect that the Hindu Religious Endowment Board cannot be compelled to hold an enquiry, where it considers that no enquiry is necessary. The statute provides a remedy by way of a suit where this subjective satisfaction exists, and the authorities proceed further to frame a scheme, or to alter, modify or cancel it. But the failure of the authority to be satisfied is not a justiciable matter, and I think that this is abundantly clear from the language of Section 58(1) itself. Though Chapter V is now differently worded in other respects, and a variety of orders is contemplated u/s 57 which may be justiciable, this position remains essentially the same.

9. I therefore come to the conclusion that the learned Assistant City Civil Judge was correct in his view that the Court had no power to frame a scheme in the suit, and the dismissal of the suit has hence to be upheld. With regard to any further remedies left to the appellants, I may observe in this context that it is open to the appellants even now to prefer a petition to the Deputy Commissioner afresh, signed by five of the interested persons, when the Deputy Commissioner may consider the situation in the light of this altered fact. Alternatively, though I am not expressing any conclusive opinion in this regard, it may possibly be open to the appellants to institute a suit outside the ambit of the Act, for the framing of a scheme for this private religious trust : it has been held by at least one authority of this Court that Courts can competently frame schemes even in

respect of private religious trusts; Vide Ramaswami Mudaliar v. Aiyaswami Chettiar and Ors. Appeal No. 552 of 1956 an unreported decision, to

which I was a party. Therefore, the appeal is dismissed. The parties will bear their own costs here.