
(1980) 03 MAD CK 0046
In the Madras High Court

Sri Kailasanathaswami and Nithyakalyani Amman
Devasthanam and Others

APPELLANT

Vs

M. Chockalingam Chettiar and Others

RESPONDENT

Date of Decision : 04-03-1980

Acts Referred:

Hindu Religious Endowments Act, 1959 — Section 64(5)(a)

Citation : (1980) 93 LW 814 : (1981) 1 MLJ 159

Hon'ble Judges : G. Maheswaran, J

Bench : Division Bench

Judgement

G. Maheswaran, J.—The plaintiffs are the appellants.

The plaint averments are : The suit temple Sri Kailasanatha Swami and Nithyakalyani Amman Devasthanam at Ilayathankudi is a temple founded by the Nagarathars belonging to the Uyathankudi sect of Nattukottai Chettiar community. It was managed by the Nagarathars themselves by people nominated by the Karaikar's family and by other sub-divisions of Nagarathar community. A suit was filed in the Sub-Court, Ramanathapuram at Madurai in O.S. No. 34 of 1912 for framing a scheme for management and finally this Court in A.S. No. 72 of 1923 settled a scheme of management under the Hindu Religious Endowments Act. In the year 1964, the Deputy Commissioner of Hindu Religious and Charitable Endowments Department, Madurai, initiated proceedings u/s 64(5) of Tamil Nadu Act XXII of 1959, for the modification of the scheme settled by the High Court and issued" notice to the Nagarathars to show cause why the scheme settled by the High Court cannot be modified in accordance with the draft scheme. An enquiry was made by the Deputy Commissioner in O.A. No. 4 of 1964 and he passed an order on 28th December, 1967, whereby the draft modified scheme was confirmed with certain modifications, but wholly changing the spirit of the original scheme by appointing an Executive Officer and vesting the properties of the temple with him and limiting the powers of the trustees. An appeal to the Commissioner proved fruitless and the modified scheme was

confirmed with very slight alternations. The plaintiff contended that that order is not just and proper, that the administration of the temple was carried on efficiently and that there is no reason why an Executive Officer should be appointed. The appointment would not be in the, interest of the institution, nor will it be an improvement of the existing arrangement. The plaintiffs have therefore filed the suit to set aside the scheme framed by the Deputy Commissioner in modification of the original scheme framed by the High Court.

2. Defendants 1 and 2 submitted to a decree and the third defendant remained ex parte. The fourth defendant-Commissioner, Hindu Religious and Charitable Endowments Department in his answer contended that the plaintiff-temple is a public temple and the Deputy Commissioner of Hindu Religious and Charitable Endowments Department initiated proceedings suo motu u/s 64(5) of the Tamil Nadu Act XXII of 1959, for modifying the scheme and after an enquiry the Deputy Commissioner passed an order modifying the scheme and the appeal to the Commissioner was also dismissed making some alterations in the scheme and that the allegation that appointment of Executive Officer will amount to withdrawal of most of the management of the trustees is incorrect. The further contention is that it will be in the interest of the institution that a responsible officer of the Government as an Executive Officer is necessary, more particularly when the plaintiff temple is a wealthy temple deriving a good income, and that there are no grounds for cancellation of the order of the fourth defendant.

The learned trial Judge framed the following issues:

(1) Whether the order of the Deputy Commissioner dated 28th December, 1967 in O.A. No. 4 of 1964 and the order of the Commissioner 4th defendant dated 31st October, 1970 in A.P. No. 32 of 1968, are liable to be set aside?

(2) To what relief is the plaintiff entitled?

He came to the conclusion that the order of the Deputy Commissioner, evidenced by Exhibit A-4, and the order of the Commissioner, Exhibit A-5, are not liable to be set aside and that they have to be confirmed. In the end, he dismissed the suit with costs. Aggrieved, the plaintiffs have filed this appeal.

3. The suit temple was managed by the families of Ilayathankudi Kovil Nagarathars. A suit was filed on the file of the Sub-Court, Ramanathapuram at Madurai in O.S. No. 34 of 1912 by one Periannan Chetty for settling a scheme for management. In that suit, the Subordinate Judge found that the temple is a public Hindu temple and that a scheme is necessary. On appeal, the learned Judges of the Division Bench of this Court agreed with the conclusion of the Subordinate Judge that "it is desirable that a scheme should be settled" (Please see *Muthiah Chetti v. Periannan Chetti* (1916) 4 LW 228 : 34 I.G. 551.). Finally, a scheme was settled in A.S. No. 72 of 1923 and C.R.P. No. 258 of 1923 by the High Court. That scheme was in force till the Deputy Commissioner initiated proceedings u/s 64(5) of the Tamil Nadu Act XXII of 1959, for the modification of the scheme settled by the High Court. The Deputy Commissioner, after an

enquiry, modified the scheme. That order with a minor alteration was confirmed by the, Commissioner. The plaintiffs now seek to set aside that order of the Deputy Commissioner as confirmed by the Commissioner.

4. One of the contentions of Mr. Alagar, learned Counsel for the appellants is that the statute has expressly contemplated a particular mode for exercise of the power by the Commissioner u/s 65(4) (a) of Act XXII of 1959(hereinafter referred to as the Act) and so long as that mode has not been prescribed the power itself is incapable of being exercised and having regard to the language of the proviso to Section 64(5) (a) and the object sought to be achieved by it, the prescription of conditions and restriction is a condition precedent to the exercise of the power itself by the Commissioner and so long, as the conditions and restrictions subject to which alone the Commissioner can exercise the power, have not been prescribed, the Commissioner cannot exercise the power conferred on him u/s 65(4) (a). Mr. Alagar raised a second point and that is Section 118(2) (a) of the Act does not deal with the scheme settled or modified by the Court at all and on that ground also the order of the Deputy Commissioner has to be set aside. In support of his contentions, he relies on O. Radhakrishnan and Another and S. Chettiar and Others Vs. Manickam and Others, . It would be relevant to extract Section 64(5) (a) of the Act and the proviso thereunder:

5(a). The Deputy Commissioner may, at any time, after consulting the trustee and the persons having interest, by order, modify or cancel any scheme in force settled under Sub-section (1) or any scheme in force, settled or modified by the Board under the Madras Hindu Religious Endowments Act, 1926, or deemed to have been settled under that Act, or any scheme in force settled or modified by the Deputy Commissioner or the Commissioner under this Act, or any scheme in force settled or modified by the Court in a suit under Sub-section (1) of Section 70, or on an appeal under Sub-section (2) of that section or any scheme in force deemed to have been settled or modified by the Court under Clause (c) of Sub-section (2) of Section 118:

Provided that such cancellation or modification of a scheme in force settled or modified by the Court in a suit under Sub-section (1) of Section 70 or on an appeal under Sub-section (2) of that section or of a scheme in force deemed to have been settled or modified by the Court under Clause (a) of Sub-section (2) of Section 118 shall be made only subject to such conditions and restrictions as may be prescribed.

G.O. No. 4851, Revenue, dated 26th November, 1960 deals with the procedure to be followed by the Deputy Commissioner u/s 64 of the Act. Rules 1 to 4 are relevant in so far as the Deputy Commissioner is concerned. O. Radhakrishnan and Another and S. Chettiar and Others Vs. Manickam and Others, . is a case relating to a mutt in Nerinjipettai, Bhavani Taluk, Coimbatore District. The

Division Bench dealt with the scope of Section 65(4) (a) of the Act and dealt with

the powers of the Commissioner to modify the scheme settled by Court. A reading of both Sections 64 and 65 would show that u/s 64, the Deputy Commissioner is exercising the powers with reference to a temple or a specific endowment attached to it. In dealing with these powers, the following observations of the learned Judges of the Division Bench are relevant:

It could not have been in the contemplation of the Legislature to give a carte blanche to a Commissioner or Deputy Commissioner under the Act to deal with a scheme settled by such a Court in any manner he pleases. As a matter of fact, the power conferred by Clause (a) of Sub-section (4) of Section 65 not merely deals with the power to modify a scheme but even to cancel a scheme. The exercise of the power to cancel a scheme settled by a Court will amount to the reversal of a decree of the Court itself. The Legislature could not have lightly contemplated an officer functioning under the Act reversing a decree of the highest Court of the land and it is in view of this alone, the Legislature has provided for specific restrictions and guidelines for the exercise of the power by the Commissioner with reference to a scheme settled by a Court to be prescribed by indicating the circumstances under which alone the Commissioner will be justified in either modifying or cancelling a scheme settled or modified by a Court. What we are pointing out with regard to the Commissioner will apply to the Deputy Commissioner also u/s 64(5) (a) of the Act. Therefore, we are clearly of the opinion that it was the definite intention of the Legislature that the power of the Commissioner u/s 65(4) (a) of the Act should be a restricted power and should not be an unguided power and that power can be exercised only under conditions and restrictions prescribed by the Government which would certainly take note of the fact that the Commissioner may be dealing with or interfering with a scheme settled or interfering with a scheme settled by the highest Court of the land. Therefore, simply as a matter of construction of the specific statutory provision contained in the Act, against the background indicated above, we have come to the conclusion that the power conferred upon the Commissioner having regard to the proviso to Section 65(4) (a), cannot be exercised by him, unless conditions and restrictions have been prescribed in this behalf for the purpose in question.

In dealing with Section 65(4) (a) of the Act, the learned Judges stated that the statute has expressly contemplated a particular mode of exercise of the power by the Commissioner and so long as that mode has not been prescribed, the power itself is incapable of being exercised. They further observed that as a matter of fact so far as the proviso to Clause (a) of Sub-section (4) of Section 65 is concerned, it does not provide merely a mode for exercising power, but it really constitutes restriction or circumspection on the exercise of the power itself and therefore without there being the prescription therefor, the power itself is incapable of being exercised. They finally came to the conclusion that so long as the conditions and restrictions subject to which alone the Commissioner can exercise his powers, have not been prescribed, the Commissioner cannot exercise the power conferred on him under Clause (a) of subsection (4) of

Section 65 of the Act. What applies to the Commissioner applies to the Deputy Commissioner also. The learned Judges of the Division Bench further observed that having regard to the language of the proviso to Section 64(5) (a) and the object sought to be achieved by it, the prescriptions of conditions and restrictions is a sine qua non for exercise of the power by the Deputy Commissioner.

5. In this case Mr. Alagar points out that no notice was given to Nagarathars. Nothing was produced by the respondent-Hindu Religious and Charitable Endowments Department to show that notice was given to Nagarathars. Exhibit A-2 shows that notice was given to trustees and to Chockalingam Chettiar, a banker. It is pointed out that the conditions and restrictions subject to which alone the Deputy Commissioner can exercise his powers have not been prescribed in this case and therefore the Deputy Commissioner cannot exercise the power conferred on him u/s 64(5) (a). Mr. Suryaprakasam, learned Assistant Government Pleader, after consultation with the Department, stated that in this case the conditions and restrictions have not been published till March, 1975. There is an amendment to the Rules and Rule 8(1) states that the Deputy Commissioner or the Commissioner, as the case may be, shall satisfy himself before modifying or cancelling a scheme settled or deemed to have been settled by a Court, that such modification or cancellation is necessary under the conditions prescribed in G.O. Ms. No. 265, C.T. and R.E., dated 8th March, 1975. Therefore, on the date when the scheme was modified and till the judgment was rendered, no conditions and restrictions subject to which the Deputy Commissioner can exercise his power, have been prescribed. The observations of the Division Bench are binding on me and following those observations with respect, I am of the view that as conditions and restrictions enumerated in G.O. No. 265, dated 8th March, 1975 have not been prescribed the Deputy Commissioner cannot exercise the powers u/s 64(5) (a) of the Act and consequently the order of the Deputy Commissioner as confirmed by the Commissioner has to be set aside.

6. As regards the second contention, the Division Bench is of the view that Section 118(2) (a) does not deal with scheme settled or modified by a Court at all. They further observed that it is not open to the Court to supply the omission. The reasons for so holding are given in the following terms:

We may also point out that it can be contended that as the language now stands, all the schemes settled or modified or deemed to have been settled or modified under the provisions of the Hindu Religious and Charitable Endowments Act, 1951, fall outside the scope of Section 65(4) (a), because that clause refers to "schemes deemed to have been settled or modified by the Court under Clause (a) of Sub-section (2) of Section 118" and consequently excludes schemes deemed to have been settled or modified by other authorities u/s 118(2) (a) and at the same time does not take in schemes deemed to have been settled or modified by a Court since Section 118(2) (a) does not cover such schemes.

My attention was invited by the learned Assistant Government Pleader to R.

Thatha Desika Thathachariar Vs. The Deputy Commissioner, Hindu Religious and Charitable Endowments (Administration) and Others, . There the learned Chief Justice and Gokulakrishnan, J., were of the view that Section 64(5) (a) of the Act includes a scheme (a) of Sub-section (2) of Section 118. Mr. Alagar learned Counsel for the appellant, though argued this point, is not pressing this point for the present, in view of the observation in R. Thatha Desika Thathachariar Vs. The Deputy Commissioner, Hindu Religious and Charitable Endowments (Administration) and Others, , and he says that it may be left open to be decided at the appropriate time. As I am of the view that the appeal has to be allowed on the other point, namely that the Deputy Commissioner will not have jurisdiction to modify the scheme as the conditions and restrictions have not been prescribed when the Deputy Commissioner passed the order, I am not deciding this question. As the Deputy Commissioner has no jurisdiction to pass the impugned order in question as conditions and restrictions under which alone the Deputy Commissioner can exercise the powers conferred on him u/s 64(5) (a), have not been prescribed, the order of the Deputy Commissioner as confirmed by the Commissioner has to be set aside.

7. The appeal is allowed and the judgment and decree of the Court below are set aside and the suit is decreed. No costs in this appeal and in this suit.