

(1997) 05 MAD CK 0002
In the Madras High Court

T. Lakshmikumara Thathachariar

APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable
Endowments (Administration) Department and Others

RESPONDENT

Date of Decision : 02-05-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Constitution of India, 1950 — Article 226
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 118,
64(3)

Citation : (1997) 2 MLJ 642

Hon'ble Judges : Shivaraj Patil, J

Bench : Division Bench

Judgement

Shivaraj Patil, J.—Heard the learned senior counsel and Special Government Pleader for the parties.

2. Following are the facts and events leading to the filing of these appeals:

The appellant is one and the same in both these appeals. For convenience, we will refer to the parties as they are arrayed in the writ petitions. The

Writ Appeal No. 122 of 1987 is filed challenging the order dated 29.10.1986 passed by the learned single Judge in Writ Petition No. 5121 of

1982. In Writ-Appeal No. 141 of 1997 the order dated 17.2.1997 made by the learned single Judge in Writ Petition No. 2082 of 1997 is

challenged.

3. In Writ Petition No. 5121 of 1982 the prayer was to quash the order of the second respondent dated 25.6.1982 made in O.A. No. 95 of 1978

proposing to modify the scheme framed by this Court in A.S. No. 175 of 1934 in relation to Arulmighu Devarajaswami Temple, Kancheepuram,

and to direct the second respondent to conduct a fresh enquiry on merits with

regard to the contentions raised before him in O.A. No. 95 of 1978.

In Writ Petition No. 2082 of 1997 the petitioner challenged the validity of Section 64(5) and 118 of the Tamil Nadu Hindu Religious and

Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959).

4. Application in O.A. No. 99 of 1961 was filed on 12.12.1961 u/s 64(3) of the Hindu Religious and Charitable Endowments Act, 1959 (for

short, the Act 1959) to modify the existing scheme of the said temple as framed in A.S. No. 175 of 1934. A notice was issued on 3.3.1965 to

Thathachariar and also Thenkalais indicating the proposal for modification. Writ Petition No. 2469 of 1969 was filed by Thathacharis challenging

the proposed modification questioning the very maintainability of such proceedings. The writ petition was dismissed on merits by the order dated

28.8.1969. On 2.3.1970 Thathacharis filed O.A. No. 109 of 1966 u/s 63 of the Act for declaration that they were hereditary trustees. The order

of dismissal of the writ petition made in W.P. No. 2469 of 1969 was questioned in Writ Appeal No. 91 of 1970 which was also dismissed on

6.9.1970. Even the petition for leave to appeal to the Supreme Court in S.C.P. No. 213 of 1971 was dismissed on 22.10.1971.

5. The second respondent on 3.10.1971 terminated the suo motu proceedings taken in O.A. No. 99 of 1961 as not maintainable u/s 64 of the Act.

Thenkalais preferred Appeal Petition No. 153 of 1974 to the first respondent, who remanded the application, to the second respondent taking a

view that the application was maintainable, and that the same should be heard on merits and disposed of. It is thereafter the application came to be

numbered as O.A. No. 95 of 1978, and the order proposing the modification came to be passed on 25.6.1982. It is this order which was assailed

in Writ Petition No. 5121 of 1982. The said writ petition was dismissed by the order passed on 29.10.1986 which has resulted in Writ Appeal

No. 122 of 1987.

6. Writ Petition No. 6722 of 1986 was filed directing the respondents to hold election for filling up the vacancies to the post of Honorary trustees

from among the members of the eastern and western branches of Sri Kotikanyakadanam Thathadesikar family in respect of the said temple. We

do not propose to go into the details of this writ petition although W.P. No. 5121 of 1982 and W.P. No. 6722 of 1986 were disposed of by the

learned single Judge by the common order dated 29.10.1986 inasmuch as Writ Appeal No. 121 of 1987 filed against the common order dated

29.10.1986 in W.P. No. 6722 of 1986, was already dismissed on 5.3.1997 on the submission that it was not pressed.

7. As already noticed above, the petitioner filed W.P. No. 2082 of 1997 to issue a writ of declaration or any other appropriate writ, order or

direction under Article 226 of the Constitution of India declaring Sections 64(5) and 118 of the Tamil Nadu Hindu Religious and Charitable

Endowments Act, 1959 (T.N. Act, 22 of 1959) as ultra vires Articles 14 and 300-A, and in any view ultra vires Articles 245 and 246 of the

Constitution of India as offending the basic structure of the Constitution of India, in so far as they purport to interfere either by cancellation or

modification of the decree passed by this Court in A.S. No. 175 of 1934 dated 17.1.1941.

8. The learned single Judge, referring to the earlier proceedings dismissed the Writ Petition No. 2082 of 1997 by order dated 17.2.1997, having

regard to the Division Bench Judgment of this Court relating to the very scheme in the case of R. Thatha Desika Thathachariar Vs. The Deputy

Commissioner, Hindu Religious and Charitable Endowments (Administration) and Others, . The learned single Judge noticing the earlier

proceedings between the parties has held that the Deputy Commissioner, in entertaining a proceeding or modifying or cancelling the scheme which

is deemed to have been settled under the Madras Act 2 of 1927, is not acting in a manner, which can be regarded as in excess of his jurisdiction or

in violation of any of the rights of the petitioner under the Constitution, in the light of the facts or the background of the litigation which has

preceded the writ petition. He also held that the question of the legislature modifying a decree of the Court and excluding the jurisdiction of the

court also did not arise. It is this order of the learned single Judge dated 17.2.1997 which has come up before us in Writ Appeal No. 14 of 1997.

9. Shri C. Natarajan, learned senior counsel for the appellant made the following submissions:

(i) Section 118(2)(b)(i) of the Act, 1959, which voids scheme settled by a court including scheme settled u/s 92, C.P.C., 1908, in ultra vires

Article 246 of the Constitution of India, being beyond the legislative competence;

(ii) Section 118(2)(a) does not cover schemes settled u/s 92, C.P.C. or even schemes settled by a court under the 1927 Act in the absence of the

expression ""court"" therein, apart from the use of the words ""settled or done by the appropriate authority"", being the specified authorities like the

Government, the Commissioner, Joint Commissioner, Deputy Commissioner, or Committee or Assistant Commissioner;

(iii) In view of the omission of the word "court" in Section 118(1)(a), whether deliberate or accidental, Section 64(5)(a) has misfired insofar as

dealing with schemes framed by court and therefore the rights of the petitioners under a settled scheme remains saved;

(iv) A scheme settled u/s 92, C.P.C. and deemed to be settled under Act, 1927 cannot be modified or cancelled by a Deputy Commissioner as

the deeming provision under the Act 1927 remained of no consequence on its repeal by Act 1951. Consequently the scheme became effectual

one, settled u/s 92, C.P.C.;

(v) Section 64(5)(a) did not and cannot lose sight of the fact that both u/s 75 of 1927 Act and Section 103(d) of 1951 Act, the scheme framed u/s

92, C.P.C. was only deemed to be under the provisions of the said Acts and not deemed to be settled by a statutory functionary created under the

provisions of those Acts; and

(vi) Section 64(5)(a) and 64(5)(b) provided for exercise of power by a Deputy Commissioner in his administrative capacity, so that any scheme

cancelled or modified under the said sections will remain an administrative order. Hence, that power cannot reach to interfere, modify or cancel an

order passed by a court in the exercise of judicial power of the State.

The learned Counsel in his arguments elaborated his submissions and cited authorities in support of his submissions.

10. Shri R. Alangar, learned senior counsel for respondents 3 to 5, having given the history and background of the long-drawn litigation between

the parties, submitted that O.S. No. 11 of 1907 was filed in the District Court, Chengalpattu for framing a scheme u/s 539 of the Code of Civil

Procedure, 1882 for the temple; During the pendency of the said suit, the Code of Civil Procedure, 1908 was enacted, In A.S. No. 212 of 1909 a

scheme was framed for administration of the temple u/s 92, C.P.C. by the judgment and decree dated 26.4.1912 of this Court. The said scheme

came to be modified by the judgment and decree dated 17.1.1941 passed by a Division Bench of this Court in A.S. No. 175 of 1934; When the above scheme was in force, after repeal of 1927 Act, 1951 Act came into force; the said Act was intended to control the administration of all public temples through the officers appointed by the Government; after the said Act came into force there was no possibility of framing schemes for public temples, mutts and specific endowments attached thereto Section 92, C.P.C. As per Section 5(3)(e) of 1951 Act Section 92 and 93 of the Code of Civil Procedure, 1908 ceased to apply to Hindu Religious institutions and Endowments besides some other enactments ceasing to apply as per Section 5(3)(a) to (d).

11. He further submitted that use of the words ""ceasing to apply"" in Section 5(3) have different consequence in law as against the use of the words repeal"". Section 6 of the General Clauses Act does not apply where a subsequent Act merely lays down that the previous Act shall cease to apply, but in case of repeal, rights acquired and liabilities incurred under the previous Act are preserved. Hence the civil court lost its jurisdiction.

Therefore the legislature thought it wiser to adopt the schemes as provided u/s 103(d). Thus the scheme framed by the civil court u/s 92, C.P.C.

for the temple in question, as modified later u/s 92, was deemed to be a scheme under the 1951 Act. In other words the scheme is deemed to be

framed by the Deputy Commissioner u/s 58 of the Act.

12. He further submitted that the constitutional validity of Act 1951 was challenged. Ultimately the Supreme Court upheld the constitutional validity

of the Act of 1951 except Sections 21, 30(2), 31, 55, 56, 63 to 69, and Section 76(1). The said judgment is reported in The Commissioner, H.R.

& C.E., Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Sirur Mutt and Anr. (1954) 1 M.U. 596. Thus Section 5(3)(e) and Section 103(d)

and (e) are held valid. As can be seen from the decision reported in The Commissioner for Hindu Religious and Charitable Endowments Vs. The

Mouna Matta Kattalai, under the Act 1951 the scheme framed by the court is deemed to be a scheme framed under the Act. No schemes were

framed by civil courts for temples after 1951 because Section 92, C.P.C. ceased to apply. To the schemes framed before 1951 Section 118 of

the 1959 Act was applied as is evident from the two decisions viz., Area

Committee, Hindu Religious and Charitable Endowments,

(Administration Department), Nagapattinam v. K. Kasinathan Padayachi and Ors. (1975) 1 M.L.J. 94 and M. Krishnaraju Chetty Vs. The

Commissioner of Hindu Religious and Charitable Endowments Board, . As per the said decisions, ""any court"" in Section 118(2)(b)(ii) of the 1959

Act is an expression which includes the High Court as well, and ""any Judge"" would include a High Court Judge also. Section 118 made a provision

to take away the burden and responsibility of civil courts and they were passed on to the statutory authorities functioning under the Act for the

purpose of administering and governing the Hindu Religious and Charitable institutions and endowments in the State.

13. In support of his submissions the learned Senior counsel cited a few decisions.

14. The factual position was that when the 1959 Act was enacted repealing 1951 Act civil court could not and did not exercise any jurisdiction

over the scheme in question and it was the authorities under the Act who were having all powers to deal with the scheme. The second respondent

initiated suo motu proceedings u/s 64(5) of the 1959 Act for modifying the scheme framed and modified by the High Court u/s 92, C.P.C., and

notices were issued to the persons interested in O.A. No. 99/61-B2. While the proceedings were pending, one Thatha Desika Thathachariar filed

Writ Petition No. 2469 of 1969 seeking a Writ of Prohibition restraining the second respondent from proceeding with the enquiry, contending that

the Deputy Commissioner had no jurisdiction to modify the scheme settled u/s 539, C.P.C., 1882. The writ petition was dismissed on 18.8.1969.

Writ Appeal No. 91 of 1970 filed therefrom was also dismissed by the Division Bench of this Court on 6.7.1990 holding that the second

respondent has jurisdiction to modify the scheme in question. The said decision is reported in R. Thatha Desika Thathachariar Vs. The Deputy

Commissioner, Hindu Religious and Charitable Endowments (Administration) and Others, SLP No. 213 of 1971 was also dismissed on

22.10.1971. The present appellant was a party to the said proceedings. Hence it is not open to him to challenge the jurisdiction of the Deputy

Commissioner to modify the scheme.

15. However the second respondent, by his order dated 8.10.1973 dropped the

proceedings holding that he had no jurisdiction to modify the scheme in view of the decision reported in O. Radhakrishnan and Another and S. Chettiar and Others Vs. Manickam and Others, Two Thenkalais

- respondents 3 and 5 in O.A. No. 99 of 1961 filed appeal to the first respondent in A.P. No. 153 of 1974. The said appeal was allowed on 18.3.1978 and the O.A. was remanded to the second respondent for fresh disposal. The appellant and others did not challenge the said order dated 18.3.1978 by filing suit u/s 70 of the Act.

16. After remand the O.A. was re-numbered as O.A. No. 95 of 1978. The second respondent by order dated 25.6.1982, which was challenged in the Writ Petition No. 5121 of 1982, tentatively settled the proposed modification and issued notice to all the parties inviting, them to submit their objections on or before 25.7.1982. The second respondent has not passed final order. As against the final order the appellant has got a right of appeal u/s 69 and statutory suit and appeal u/s 70. Hence in the proceedings under Article 226 of the Constitution this Court may not decide on merits when the statutory authority has only issued show cause notice.

17. Referring to various clauses in the scheme, and few decisions rendered by this Court earlier and pointing out to various sections, it is submitted that there is no merit in the challenge to the constitutional validity of Section 64(5) and 118 of the Act 1959.

18. Shri R. Subramaniam, Special Government Pleader for respondents 1 to 3 in Writ Appeal No. 141 of 1997 and respondents 1 and 2 in Writ Appeal No. 122 of 1987, argued justifying the action taken by the second respondent.

19. We have carefully considered the submissions made by the learned Counsel for the parties.

20. It is not disputed that the scheme was framed in A.S. No. 212 of 1909 for administration of the temple u/s 92, C.P.C. by the judgment and decree dated 26.4.1912 in the case of K.A. Veeraraghava Thathacharier and Ors. v. T. Srinivasa Thathachariar and Ors. 23 M.L.J. 134. The said scheme was modified in A.S. No. 175 of 1934 by the judgment and decree dated 17.1.1941.

21. When the said scheme was in force the Act, 1951 came into force. In the preamble of the Act it is stated that it is an Act to provide for the

better administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Madras. It was considered

expedient to amend and consolidate the law relating to the administration and governance of Hindu Religious and Charitable Institutions and

Endowments in the State of Madras.

22. Section 5 of the said Act, so far it is relevant for the purpose of this case, reads:

5. (1) The Madras Hindu Religious Endowments Act, 1926, is hereby repealed.

(2) ...

(3) The following enactments shall cease to apply to Hindu Religious Institutions and Endowments, namely:

(a) ...

(b) ...

(c) ...

(d) ...

(e) Section 92 and 93 of the Code of Civil Procedure, 1908.

From the above section it is clear that the Madras

Hindu Religious and Endowments Act, (Madras Act 2 of 1927), was repealed, and Section 92 and 93 of the CPC ceased to apply to Hindu

Religious Institutions and Endowments. Thus after the Act 1951 came into force no scheme could be framed for public temples, mutts and specific

endowments attached thereto u/s 92, C.P.C. and the civil courts lost their jurisdiction.

23. Section 103 of the Act, 1951, to the extent it is relevant, reads:

Notwithstanding the repeal of the Madras Hindu Religious Endowments Act, 1926 (hereinafter in this section referred to as the said Act)-

(a) ...

(b) ...

(c) ...

(d) all schemes settled or modified by a Court of law under the said Act or u/s 92 of the Code of Civil Procedure, 1908, shall be deemed to have

been settled or modified by the court under this Act and shall have effect accordingly;

(e) ...

The combined effect of Section 5(3)(e) and Section 103(d) of the Act 1951 shows that a scheme framed by the civil court u/s 92, C.P.C. for the temple, and also modified later under the same section, shall be deemed to be a scheme under the Act 1951.

24. Further u/s 103(e)(ii), in respect of any scheme settled or deemed to have settled under the said Act (including a scheme settled u/s 92 of the Code of Civil Procedure, 1908), and in force immediately before the commencement of the Act 1951, all powers conferred and all duties imposed by such scheme of any court or Judge or any other person or body of persons, shall be deemed to have been conferred or imposed on the area committee or the Commissioner, as the case may be, for exercise of such powers and such duties in accordance with the provisions of the scheme.

In the light of the scheme of the Act 1951 including the preamble, it follows that no scheme could be framed by Courts after the Act 1951 came into force as Section 92 and 93 of C.P.C. ceased to apply, and civil courts had no jurisdiction to deal with such schemes, and the Act provides alternate machinery in the matters relating to the schemes either settled or deemed to have been settled under the said Act, including a scheme settled u/s 92 of the C.P.C.

25. It is also to be noticed that the constitutional validity of the Act 1951 was challenged. Ultimately the Supreme Court by the decision in the case of The Commissioner of Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swaimar of Sri Sirur Mutt and Anr. (1954) 1 M.L.J.

596 upheld the validity of the Act except Sections 21, 30(2), 31, 55, 56, 63 to 69 and 76(1). A Division Bench of this Court in the case of The

Commissioner for Hindu Religious and Charitable Endowments Vs. The Mouna Matta Kattalai, has held that a scheme framed by the court is

deemed to be a scheme framed under the Act 1951. In such scheme as well as the schemes actually settled under the Act 1951, all powers

conferred and all duties imposed by any such scheme on any court or Judge or such persons as are mentioned in the section shall be deemed to

have been conferred or imposed on the Area Committee or the Commissioner as the case may be, and the courts, would cease to have the power

to appoint the manager under the scheme.

26. The scheme of the temple in the case on hand was a scheme framed u/s 92, C.P.C. as it existed immediately before the commencement of the Act, 1951. The decision in the case of Sri Jagadguru Kari Basava Rajendraswami of Govimutt v. The Commissioner of Hindu Religious and Charitable Endowments, Hyderabad and Anr. (1965) 1 M.L.J. 128 also supports the view that the scheme framed earlier and which was existing prior to the commencement of the Act, 1951 shall be deemed to be a scheme framed under the said Act. In the light of what is stated above, we have no hesitation to take a view that the scheme of the temple, which was in existence immediately before the commencement of the Act 1951, is the one deemed to have been framed under the said Act, and that no scheme could be framed u/s 92, C.P.C. as the said section ceased to apply after the commencement of the Act, 1951.

27. The second respondent had initiated suo motu proceedings for modifying the scheme framed earlier in A.S. No. 212 of 1909 and as modified by the High Court by Judgment and decree dated 17.1.1941 in A.S. No. 175 of 1934 u/s 64(5) of the Act, 1959, in O.A. No. 99/61-B2. During the pendency of those proceedings R. Thatha Desika Thathachariar filed Writ Petition No. 2469 of 1969 for issue of a writ of prohibition restraining the second respondent herein from proceeding with the enquiry contending that the Deputy Commissioner had no jurisdiction to modify a scheme settled u/s 539 of the Code of Civil Procedure, 1882. The said writ petition was dismissed on 28.8.1969. Writ Appeal No. 91 of 1970 challenging the said order of the learned single Judge dated 28.8.1969 was also dismissed on 6.7.1970 holding that the second respondent had jurisdiction to modify the scheme in question.

28. The said Judgment is reported in R. Thatha Desika Thathachariar Vs. The Deputy Commissioner, Hindu Religious and Charitable Endowments (Administration) and Others, . It may be added that the present appellant was also a party to the said proceedings. It is clear from the said judgment of the Division Bench of this Court that as per Section 75 of the Madras Act 2 of 1927 a scheme framed u/s 92 of the Code of Civil Procedure, 1908 should be deemed to be a scheme settled under that Act, and it might be modified or cancelled in the manner provided in that Act. Further there was no distinction between the scheme settled and a scheme

modified for the purpose of Section 103(d) of the Act 1951 or of Section 118(2)(a) of the Act 1959, and that a scheme modified is as much a scheme settled under the Act, the last paragraph of the said judgment

supports the case of the respondents, which reads:

...We do not think that there is any distinction between a scheme settled and a scheme modified for the purpose of Section 103(d) of the Act 1951

or, of Section 118(2)(a) of the 1959 Act. A scheme modified is as much a scheme settled.

It is stated that the SLP No. 213 of 1971 filed against the aforementioned Division Bench judgment of this Court filed in the Supreme Court was also dismissed on 22.10.1971.

29. Despite the above mentioned Division Bench decision in Writ Appeal No. 91 of 1970, the second respondent by his order dated 8.10.1973

dropped the proceedings initiated u/s 64(5) of the Act, 1959 as stated above, referring to another decision in the case of O. Radhakrishnan and

Another and S. Chettiar and Others Vs. Manickam and Others, wherein the parties were different respondents 3 and 5, two Thenkalais, in O.A.

No. 99 of 1961 filed appeal in A.P. No. 153 of 1974 before the first respondent challenging the aforementioned order dated 8.10.1973 of the

second respondent. The appeal was allowed and the first respondent Commissioner of Hindu Religious and Charitable Endowments remanded the

O.A. No. 99 of 1961 for fresh disposal, by his order dated 18.3.1978. It is to be noticed here that the said order was not challenged further

before any forum or Court, and no suit was filed u/s 70 of the Act, 1959. The said order of the first respondent dated 18.3.1978 became final. In

other words when the case was remanded to the Deputy Commissioner to dispose it afresh, it was, on the ground that the Deputy

Commissioner had jurisdiction to deal with the matter u/s 64(5) of the Act 1959.

30. After the remand O.A. No. 91 of 1961 was renumbered as O.A. No. 95 of 1978. The second respondent by order dated 25.6.1982

tentatively settled proposed modification and issued notice to all the parties inviting them to file their objections if any before 25.7.1982. At that

stage itself the Writ Petition No. 5121 of 1982 was filed to quash the said order of the second respondent dated 25.6.1982 made in O.A. No. 95

of 1978. O.A. No. 95 of 1978 is yet to be decided on merits, in the light of the

objections that were/could be filed by the parties. Section 69 of the Act 1959 provides for an appeal to the Commissioner against the order passed by the Deputy Commissioner under any of the provisions of Chapter V which includes Section 64. Further u/s 70 any party aggrieved by an order passed by the Commissioner can file a suit in relation to orders passed under certain provisions of the Act. An order passed u/s 69 is also covered by Section 70. Thus it is clear that an order passed by the Deputy Commissioner u/s 64(5) can be challenged in the appeal before the Commissioner u/s 69 of the Act within 60 days from the date of that order; and the order passed by the Commissioner u/s 69 can be questioned by filing a suit u/s 70(1) of the Act, as an order passed u/s 69 of the Act by the Commissioner is one such order validity of which can be questioned in the suit. Added to this, u/s 70(2) any party aggrieved by a decree of the court passed u/s 70(1) may within 90 days from the date of the decree, appeal to the High Court.

31. In this view, it is clear that the proceedings taken up u/s 64(5) are quasi judicial proceedings and any order passed in the said section is essentially an order passed by a quasi-judicial authority and it cannot be said as a mere administrative order as sought to be contended by the appellant. The order passed by the Deputy Commissioner u/s 64(5) is not final and it is subject to scrutiny in appeal by the Commissioner and the Order passed by the Commissioner in appeal is subject to further examination and decision u/s 70 by the Court in suit and in appeal therefrom. The contention of the appellant that the schemes framed by the Courts including High Court u/s 92, C.P.C. cannot be modified by the Deputy Commissioner cannot be accepted in view of the position stated above.

32. This apart, the scheme framed by the Court is also a scheme deemed to have been settled under the Act, 1951 by virtue of Section 103(d), and further a scheme settled u/s 118(2)(a) of the Act 1959, as is clear from the decisions in *The Commissioner for Hindu Religious and Charitable Endowments Vs. The Mouna Matta Kattalai, and R. Thatha Desika Thathachariar Vs. The Deputy Commissioner, Hindu Religious and Charitable Endowments (Administration) and Others*, . Further even the decision in the case of *The Commissioner for the Hindu Religious and Charitable Endowments, Madras v. S.S. Janakirama Ayyar and Ors.* (1957) 1 M.L.J. 249 also

in a way supports this case of the respondents. In the said decision it is held that by virtue of Section 103(e)(ii) of the Act 1951 all powers conferred and all duties imposed on a court by a scheme settled by court shall be deemed to have been conferred or imposed on the Area Committee or the Commissioner as the case may be, having regard to the fact that Sections 92 and 93, C.P.C. ceased to apply to all Madras Hindu Religious Institutions and Endowments after the Act 1951 came into force, and the courts did not continue to be the authorities for the purpose of administration of those institutions.

33. A distinction is to be noticed while dealing with the effect of repealing the provisions of the Act, and provisions ceasing to apply. In the case of repeal certain rights accrued and actions taken may be protected and Section 6 of the General Clauses Act may come to the aid. But in case of the provision ceasing to apply the authority-forum or court who could exercise power under a particular provision which cease to apply, lose their jurisdiction and cannot act under such provision. The court having framed a scheme u/s 92, C.P.C. could not exercise jurisdiction and authority for modification or cancellation of the scheme after the Act 1951 came into force as Section 92, C.P.C. ceased to apply to such schemes from the date of the commencement of that Act.

34. By providing a provision like Section 103 of the Act of 1951 and Section 118 of the Act of 1959, the burden and responsibility of civil courts are taken away and they are passed on to the statutory authorities functioning under the Act for the specific purpose of administering and governing the Hindu Religious Institutions and Endowments in the State with sufficient safeguards for further scrutiny, as already stated above, under Sections 69 and 70 of the Act 1959. After the 1951 Act Came into force and in view of Section 92, C.P.C. ceasing to apply to such schemes courts had no power to deal with such Schemes and there could not be vacuum in the matter of administration and governance of the Hindu Religious and Charitable Institutions and Endowments in the State. Viewed from this angle also we can clearly see the alternative machinery provided in the statutory authorities functioning under the Act, 1959.

35. The Division bench of this Court in Area Committee, Hindu Religious and Charitable Endowments (Administration Department), Nagapattinam

(1975) 1 M.L.J. 94 dealing with Section 64(5)(b) and Section 118(2)(b)(ii) of the Act 1959, has held that there being a specific provision, viz.,

Section 47 for appointment of trustees to temples, and the power to make appointment being vested in the authority named by the section, the

provision in the scheme in that case to elect trustees being repugnant, it was void, because it can no longer be in force, and in such case even there

was no need for amendment of the scheme. In paragraph 3 of the said judgment it is stated thus:

But it is contended that, since Section 64(5)(b) states that, if the Deputy Commissioner is satisfied that any such scheme referred to in Clause (a) is

inconsistent with the Act and the rules made thereunder, he may, at any time, after consulting the trustee and the persons having interest, modify it

in such manner as may be necessary to bring it into conformity with the provisions of the Act and the rules made thereunder, and the scheme

should continue to have force until it is amended. In our opinion, this provision will have to be read in conjunction with Section 118(2)(b)(ii).

Section 64(5)(b) applies to a case where the scheme is inconsistent with the Act and Section 118(2)(b)(ii) applies to a provision in the Act. In the

latter case, Section 118(2)(b)(ii) specifically renders the repugnant provision in the scheme void. The effect is that the provision in the scheme

because it is void, can have no longer any force and no amendment of the scheme is necessary in order to bring out the effect which is declared by

the statute. It seems to us, therefore, that the scope of Section 64(5)(b) will have to be confined to the amendment of the scheme not covered by

Section 118(2)(b)(ii).

36. In that case also, the court of the Subordinate Judges of Thanjavur at Mayavaram in O.S. No. 14 of 1919 had settled a scheme for

management of a temple. A Board of trustees was constituted under the scheme providing that if any vacancy occurred by the death or resignation

or removal, it should be filled up by the majority of the resident villagers. The Division Bench of this Court observed that the Act 1951 and the Act

1959 brought about drastic changes in the control and administration of temples and specific endowments. The transitional provisions found in

Chapter XII of the Act 1951 were enacted in order that uniformity could be achieved. In that case also, as already stated above, it was a scheme

settled by the court in 1919. The Division Bench held that Section 118 applies to such schemes also.

37. Yet in another decision in the case of M. Krishnaraju Chetty Vs. The Commissioner of Hindu Religious and Charitable Endowments Board, ,

referring to, and following the decision in The Commissioner for the Hindu Religious and Charitable Endowments, Madras v. S.S. Janakirama

Ayyar and Ors. (1957) 1 M.L.J. 249, a Division Bench of this Court, in paragraph 4, has stated thus:

Rajamannar, C.J., speaking for a Division Bench of this Court in Commissioner, Hindu Religious and Charitable Endowments v. Janakirama

Ayyar, while interpreting a provision which is in pari material with Section 118 of the Act observed that - Section 103(e)(ii) of the Madras Hindu

Religious and Charitable Endowments Act, 1951, clearly provides that all powers conferred and all duties imposed on a Court by a scheme settled

by a Court shall be deemed to have been conferred or imposed on the Area Committee or the Commissioner, as the case may be, that the power

and duty of filling up vacancies among the residue trustees should be deemed to have been conferred or imposed on the Commissioner in that case

after the passing of the Act and that the Court did not continue to be proper authority for that purpose.

Though directly the question did not arise in that case as to what would happen to a scheme framed by the High Court, we have no hesitation in

applying the above principle even to schemes framed by the High Court prior to the passing of the Act. In this view, therefore, there is a bar for the

maintainability of this application and the appellant can only seek his redress before the statutory authorities nominated for the purpose. These

provisions cannot be by-passed and we therefore agree with Sethuraman, J. and dismiss this appeal. There will be no order as to costs. The

appellant is given two months time to take such steps as are necessary under the Act for (sic) up the present vacancy.

[Italics supplied]

That was also a case where a scheme was framed by the Court u/s 92, C.P.C. on 26th March, 1926 in C.S. No. 42 of 1923. Section 118 of the

Act, 1959 was held applicable.

38. In view of what is stated above, the court is unable to agree with the stand

of the appellants that the scheme framed or settled by the court having not been referred to u/s 118(2)(a) of the 1959 Act, stood outside the scope of the 1959 Act and that Section 64(5) of the said Act does not apply to the scheme settled by the court earlier relating to the temple.

39. Now, we shall deal with the contentions challenging the constitutional validity of Section 64(5) and 118 of the Act, 1959. As can be seen from

the decision relating to the same temple in the case of K.A. Veeraraghava Thathachariar and Ors. v. T. Srinivasa Thathachariar and Ors. 23

M.L.J. 134, the office of trustees of the temple is not held hereditary, but the trustees were held as office of appointees for a term. When the

Constitutional validity of the provisions contained in the Act 1951 was challenged, the provisions similar to Sections 64 and 118 of the Act 1959 in

the Act 1951 were held to be valid, In the decision reported in the case of M. Krishnaraju Chetty Vs. The Commissioner of Hindu Religious and

Charitable Endowments Board, , it is held that the scheme framed by the High Court is also within the ambit of Section 64(5)(a) of the Act, 1959.

40. The very scheme came up for consideration in R. Thatha Desika Thathachariar Vs. The Deputy Commissioner, Hindu Religious and Charitable

Endowments (Administration) and Others, . The Division Bench of this Court has held that the second respondent has jurisdiction to modify the

scheme. Section 64(5) or Section 118 do not void any decree inasmuch as when the Act, 1951 came into force on 19.8.1951, the scheme decree

had ceased to be a civil court decree. What is prohibited is that the legislature cannot nullify a Judgment which declares a law by giving its own

interpretation. The legislature can change the basis retrospectively, and validate Acts. If the Act is to change prospectively the court can decide

according to the existing law. When the law is changed, the original scheme cannot be enforced.

41. It cannot be contended that the scheme was void from the beginning, in view of the Act 1959. Section 64(5) enables modification of the

scheme so as to make it consistent with the Act 1959. In this regard to decision of the Apex Court in Comorin Match Industries (Pvt.) Limited v.

State of Tamil Nadu (1997) 1 M.L.J. 41 supports the contention of the respondents. In paragraph 30 of the said judgment, after referring to

various judgments, it is stated:

This is not a case of passing a legislation trying to nullify the interpretation of law given in the judgment of a court of law. This is a case of changing

the law itself on the basis of which the judgment was pronounced holding that the assessment orders were erroneous in law.

42. The thrust of the argument of the learned senior counsel for the appellant was that the scheme framed by court having not been covered by

Section 118(2)(a), the power u/s 64(5) could not be exercised, and it was a misfired legislation, and that the scheme framed and modified by the

court, that too by the High Court, could not be modified or dealt with by the Deputy Commissioner. Covering these aspects we have already

discussed above and expressed our views.

43. The learned single Judge has dismissed Writ Petition No. 2082 of 1997 by his order dated 17.2.1997, which has given rise to Writ Appeal

No. 141 of 1997, stating that the appellant has been unsuccessful in more than one writ petition filed earlier in which he had sought to challenge the

modifications proposed to be made to the scheme, which had been initially settled by this Court and had been last modified in the year 1941; the

validity of Section 64(5)(a) of the Act, 1959 questioned by the appellant had to be examined in the background in which the challenge has been so

made; the matters concerning, the institution for which the scheme had been framed, had been considered by Division Bench of this Court in R.

Thatha Desika Thathachariar Vs. The Deputy Commissioner, Hindu Religious and Charitable Endowments (Administration) and Others, , by that

decision the appellant's challenge to the jurisdiction of the Deputy Commissioner to modify the scheme u/s 64(5) of the Act was rejected; the court

specifically negated the contention that the scheme settled by this Court could not be deemed to be one settled under the Act, 1927 noticing that

such a contention had been rejected by this Court even earlier in O.S.A. Nos. 43 and 51 of 1961 wherein it was held that where the administration

of religious endowment was governed by a scheme framed u/s 92 of C.P.C., such a scheme should be deemed to be a scheme settled under the

Act, 1927, and that the scheme could be modified or cancelled in the manner provided in that Act; the appellant was party to such a decision.

44. The learned single Judge has also noticed the report of the select committee which preceded the enactment; it was noticed that many of the

schemes framed by the courts had already failed to secure efficient management or control, and, therefore, it was considered necessary that power

should be taken to cancel or modify the schemes framed by the courts which were either unworkable or purely unsatisfactory; in that background

the schemes framed by the court were declare by that Act to be the schemes framed under the Act; and the authorities were empowered to effect

modifications in accordance with the procedure prescribed. It was also observed that Section 64(5)(a) of the Act, 1959 merely provided for

continuation of the state-of-affairs which had been brought about by the Act, 1927. The power conferred by Section 64 of the Act on the Deputy

Commissioner exists to modify schemes which were deemed to have been settled under the Act, 1927. The learned single Judge concluded that in

the light of the facts relating to the background of the litigation the question of legislature modifying a decree of the court thereby excluding the

jurisdiction of the court did not arise. In regard to the decision relied on by the appellant, the learned Judge has recorded that the scheme in that

case was not one which was deemed to have been framed under the Act, 1927.

45. We have no good reason or valid ground to differ from the reasoning and conclusion arrived at by the learned single Judge dealing with the

challenge to the constitutional validity of Section 64(5)(a), in view of the discussion made and reasons given by us above. Hence, the Writ Appeal

No. 141 of 1997 is liable to be dismissed.

46. The Writ Petition No. 5121 of 1982 was dismissed by the learned single Judge by his order dated 29.10.1986 rejecting all the contentions of

the appellant. The contention that the impugned order came to be passed only after long delay, only on 25.6.1982 having heard the matter as early

as in June, 1979, was rejected; a notice dated 29.1.1982 was issued by the Deputy Commissioner for re-hearing on 3.2.1992 and on that date the

matter was heard and the impugned order had come to be pronounced on 25.6.1982. As such nothing materially can be turned out on the ground

that there was delay in pronouncement of the judgment. The second contention that the Commissioner had chosen to file counter in the writ petition

taking a particular stand, and that being the position, filing appeal before him would not serve any purpose, was rejected on the ground that the

counter filed was in the administrative capacity and that did not mean that the

Commissioner had abdicated judicial frame of mind and that he would not hear fairly.

47. Dealing with the third contention that there was no speaking order, the learned single Judge has observed that the order ran into several pages

extracting the arguments of either side and ultimately giving his say on merits, and propose into modify the scheme. It is further stated as to why the

appellant should approach this Court at the stage of proposal especially when when he has several remedies under the Act including an appeal, a

revision, and a statutory suit. So saying the third contention also was rejected.

48. Turning to the point of the jurisdiction, referring to the case of O. Radhakrishnan and Another and S. Chettiar and Others Vs. Manickam and

Others, , relied upon by the appellant, the learned Judge has stated that the only question that arose for consideration in that case was whether,

without presiding the conditions which are necessary for the exercise of power u/s 65 of the Act, the power is capable of being exercised by the

Commissioner. It is this principle that came to be applied in Sri Kailasanathaswami and Nithya kalyani Amman Temple v. M. Chockalinga Chettiar

93 L.W. 814. The learned Judge went on to state that as regards the very temple of the appellant, the point relating to jurisdiction which was

sought to be raised in the writ petition, came to be adjudicated upon by a Division Bench of this Court and the very question argued before the

learned single Judge was rejected in R. Thatha Desika Thathachariar Vs. The Deputy Commissioner, Hindu Religious and Charitable Endowments

(Administration) and Others, . The learned single Judge in paragraphs 20 and 21 of the order has extracted the comments of this Court in other

decisions as to the conduct of the appellant. In short, it is pointed out that the attitude of the appellant was unreasonable, and the litigation was

fought ever, giving trouble in the temple administration, putting forward some innovation or other in one form or another, and that there had been

series of litigations pertaining to this temple going on for the last two centuries. Having regard to all aspects the learned single Judge dismissed Writ

Petition No. 5121 of 1982. Consequently he dismissed Writ Petition No. 67.22 of 1986 with which we are not concerned in this Writ Appeal No.

122 of 1987 filed against the order passed in W.P. No. 5121 of 1982.

49. In our view, the reasons given by the learned single Judge to dismiss the

Writ Petition No. 5121 of 1982 are unassailable, and we are in respectful agreement with the reasons given and conclusions arrived at by the learned single Judge. Further this, having considered the facts of the case and the legal position explained above by us, we do not see any merit in the Writ Appeal No. 122 of 1987 also.

50. We do not find any tenable, or good, or valid ground to declare that Section 64(5) and 118 of the Act 1959 are ultra vires of Articles 4 and

300-A and Articles 245 and 246 of the Constitution of India, as offending the basic structure of the Constitution of India in so far as they purport

to cancellation or modification of the decree passed by this Court in A.S. No. 175 of 1934. in our view, the orders passed by the learned single

Judge giving rise to these appeals cannot be interfered with. We reiterate that the impugned order dated 25.6.1982 is only a proposal for

modification of the scheme. The Deputy Commissioner is yet to pass a final order after considering the objections of the interested persons.

Aggrieved by the final order of the Deputy Commissioner the parties have remedies of appeal to the Commissioner u/s 69 of the Act 1959 and, a

statutory suit and further appeal u/s 70 of the Act, 1959. Thus, the Writ Petition No. 5121 of 1982 filed by the appellant was hasty and premature.

For this reason also the order of the learned single Judge made in W.P. No. 5121 of 1982 does not call for any interference. Added to this, having

considered the facts of the case the legal position explained above, and the views we have expressed, we do not see any merit in these writ

appeals.

51. In the result, for the reasons stated and discussion made above, we see no merit in these writ appeals. Hence, they are liable to be dismissed.

Accordingly they are dismissed. No costs.