
(1957) 03 MAD CK 0011
In the Madras High Court

The Commissioner for Hindu Religious and Charitable
Endowments

APPELLANT

Vs

The Mouna Matta Kattalai

RESPONDENT

Date of Decision : 06-03-1957

Acts Referred:

Citation : (1957) 70 LW 365 : (1957) 2 MLJ 431

Hon'ble Judges : Rajamannar, C.J

Bench : Single Bench

Judgement

Rajamannar, C.J.—These two Civil Revision Petitions have been preferred by the Commissioner for Hindu Religious and Charitable

Endowments, Madras, for the purpose of obtaining from this Court a ruling on the applicability of Section 103(e)(ii) of Madras Act XIX of 1951

rather than to upset the actual order of appointment of a manager in one case and a treasurer in the other case on the ground that the persons

appointed are not fit and proper persons. The learned Advocate-General made it clear that the revision petitions were filed only on the question of

the principle involved which is of general importance. C.R.P. No. 438 of 1953 relates to a scheme framed by the Subordinate Judge of

Tiruchirappalli in O.S. No. 25 of 1913 in respect of certain kattalais at the instance of the general trustees of the Rock Fort Temple,

Tiruchirappalli. The scheme framed by the learned Subordinate Judge was modified in certain particulars by this Court in A.S. Nos. 432 and 433

of 1915. It is not necessary to advert in detail to the several provisions of the scheme. It suffices to say that the Court was entrusted inter alia with

the power to appoint a manager to superintend the affairs of the kattalais in suit. In pursuance of this provision, when a vacancy arose in the office

of manager, the Court was apprised of the vacancy and applications were called for to fill up the vacancy. Applications were received by the

Court and eventually one Sri S. Gopalan was appointed manager of the kattalais from 4th October, 1952, for a period of five years. The

Commissioner for Hindu Religious and Charitable Endowments, Madras, came to understand that such an appointment had been made by the

Court and he filed an application to be impleaded as a party to raise the question as to the power of the Court to appoint the manager under the

scheme in view of the provisions of Section 103(e)(ii) of Madras Act XIX of 1951. The learned Judge held that the Court continued to have the

power notwithstanding Section 103(e)(ii) of the Act. As we do not intend to go into the merits of the findings of the learned Judge embodied in his

judgment, we shall briefly indicate the reasoning apparently on which he arrived at the conclusion that the Court's jurisdiction remained unaffected

by Section 103(e)(ii) of the Act. In the learned Judge's view, the kattalais in question were attached to a mutt and if the scheme framed by the

Court should be deemed to be framed under the Act, then it should be deemed to have been framed Under Clause (3) of Section 58, and that

provision was held ultra vires the Legislature, and therefore it followed that if the scheme itself was void because the statutory provision which

empowered the Commissioner to frame the scheme was itself ultra vires, every part of the scheme would fail along with the scheme and therefore

the Commissioner would have no power to make the appointment under one of the clauses of the scheme. The result would be, according to him,

that the Court's jurisdiction under the scheme would remain.

2. When the learned Judge dealt with the application and passed the order under revision, he had before him only the decision of this Court in Sri

Shirur Mutt v. Commissioner, Hindu Religious Endowments, Board (1952) 1 M.L.J. 557 in which it had been held that Section 58(3) was ultra

vires. The Supreme Court has since taken a different view and therefore this part of the reasoning of the learned Judge fails.

3. We are of the opinion that there can be no objection whatever to the contention pressed upon us by the learned Advocate-General as to the

automatic application of the provisions of Section 103(e)(ii) of the Act of 1951 to cases falling within the scope of that provision. All that the Sub-

clause provides is an automatic substitution of the Commissioner for the Court in a scheme framed by the Court. There are two stages as it were.

The first is that the scheme framed by the Court is deemed to be a scheme framed under the Act. That is the effect of Section 103(d). Next under

Clause (e) in such schemes, as well as schemes actually settled under the Act, all powers conferred and all duties imposed by any such schemes on

any Court or Judge or any other person or body of persons not being trustee or trustees or a paid or an honorary officer or servant of a religious

institution shall be deemed to have been conferred or imposed on the Area Committee if the institution is subject to the jurisdiction of such a

Committee and on the Commissioner in other cases. The appointment of a manager in respect of the kattalais concerned in this case, even though it

is made by the Commissioner on account of the provisions of Section 103(e)(ii) of the Act, will be in law an appointment made under the scheme

and not under any of the provisions of the Act. The Commissioner's power of appointment, the method of appointment and the duties of the

manager and the right of supervision over the manager would all depend upon the clauses in the scheme and not the provisions of the Act.

4. It is obvious that this automatic substitution of the Commissioner for the Court in a scheme framed by the Court cannot itself adversely affect the

rights of any party, including the right of a hereditary trustee or madathipathi like the Pandarasannathi, who is the respondent in this case. All that

the learned Judge should have considered is whether there is a scheme framed by the Act, and whether under that scheme powers are conferred

on the Court and then accept the position that wherever powers are conferred on the Court, they will stand transferred to the Commissioner. It

would follow that the Court would cease to have the power to appoint the manager under the scheme. It was not necessary for the learned Judge

to go into an elaborate discussion of the question whether the kattalais were specific endowments attached to a temple or to a mutt. We, therefore,

refrain from dealing with the learned Judge's finding on the point. We may even safeguard the rights of both parties by saying that the said finding

will stand discharged, not because we have gone into the merits and found that it is wrong, but because it is a finding which in our opinion was

unnecessary for the disposal of the matter before him, namely, the applicability of Section 103(e)(ii) of the Act to the instant case. We make it clear

that we have not expressed our opinion on the merits of this finding.

5. If any party including the hereditary trustee has any objection to any of the provisions of the scheme as such, he will of course be at liberty to

take appropriate proceedings to have such obnoxious provisions struck down or it may be that he may even be entitled to have the entire scheme

struck down. Our present order will in no way affect the rights of parties to take such proceedings. We are not declaring that the scheme framed

by the Court, which now should be deemed to be a scheme framed under the Act, is valid in its entirety. We are not called upon in this petition to

deal with that question. It is sufficient to dispose of this petition to say that there is a scheme framed by the Court which scheme should be deemed

to be a scheme framed under the Act and all the powers which could be exercised by the Court under the scheme automatically stood transferred

to the Committee or Commissioner as the case may be on the passing of Madras Act XIX of 1951.

6. With the actual order itself of appointment we do not think we should interfere in exercise of our revisional powers. The Civil Revision Petition is

therefore dismissed. But, in the circumstances, there will be no order as to costs.

7. Civil Revision Petition No. 1678 of 1953.--All that we have said above as regards the appointment of a manager under a scheme framed by the

Court would equally apply to the appointment of a treasurer under a scheme framed by the Court in relation to another institution. There too, on

the passing of Madras Act XIX of 1951, the power of appointment which was vested in the Court would stand transferred to the Commissioner.

Here too we do not propose to interfere with the actual order of appointment. The Civil Revision Petition will therefore stand dismissed. No order

as to costs.