
(1972) 10 MAD CK 0035
In the Madras High Court

The Commissioner, Hindu Religious and Charitable
Endowments

APPELLANT

Vs

H.H. Perarulala Ramanuja Jeer and Others

RESPONDENT

Date of Decision : 24-10-1972

Acts Referred:

Citation : (1973) ILR (Mad) 534 : (1973) 86 LW 444 : (1973) 2 MLJ 17

Hon'ble Judges : K. Veeraswami, C.J

Bench : Single Bench

Judgement

K. Veeraswami, C.J.—The appeal is by the Commissioner, Hindu Religious and Charitable Endowments, Madras, from an order of Kailasam, J., which quashed the appellant's order dated 7th July, 1967. The first respondent, Sri Ethiraja Jeer, as the head of the Mutt at Sriperumbudur, Chingleput District, applied to the appellant claiming that in accordant with a resolution dated 18th December, 1966, he was nominated as successor to Sri Thirunayyan Thiruvengada Ramanuja Jeer, who had abdicated and surrendered his office. On that basis, they wanted the Commissioner to appoint him as the religious trustee of the Sriperumbadur temple under Clause (5) of the Scheme Rules. The Commissioner dismissed that petition on the view that the scheme of management for the temple, which was settled in O.S. No. 30 of 1921, on the file of the Court of the Subordinate Judge at Chingleput, had been rendered inoperative by a notification dated 10th October, 1938, under Chapter VI-A of Madras Act II of 1927 and the continuance thereof until 18th July, 1966, and that the scheme of management did not revive on the expiry of Act XVI of 1965. The Commissioner was of further opinion that in any case the provisions of the scheme were inconsistent with the provisions of Section 118 (2) (b) (i) of Madras Act XXII of 1959. He, therefore, held that the first respondent was not entitled to be appointed as the religious dharmakarta of the temple, though, of course, as Kailasam, J., pointed out, this Court, in C.S. No. 85 of 1958, had recognised the right of the head of the mutt to be the religious dharmakarta of the devasthanam Kailasam, J., thought that the scheme would revive as the Legislature had not, as the provisions of Madras Act

XXII of 1959 stand, provided to the contrary. On a consideration of the scheme, the learned Judge was satisfied that the first respondent was entitled to be the religious trustee of the devasthanam.

2. Under the scheme of management settled by the Court in O.S. No. 30 of 1921 provision was made for the appointment of two trustees, one of them to manage the affairs of the temple and the other to be in charge of the religious affairs, who was called the religious dharmakarta. In O.S.No. 85 of 1958, as we noticed earlier, this Court recognised the right of the head of the mutt to be the religious dharmakarta of the devasthanam. Section 65-3 of Madras Act II of 1927 provided that on publication of a notification u/s 65-A, which, in this case, was done on 10th October, 1939, the scheme of administration, if any, settled for a temple, should cease to apply to such a temple. In that case, the Board should appoint a salaried Executive Officer for the conduct of the affairs of the temple. By Section 103 (c) of Madras Act XIX of 1951, which repealed Madras Act II of 1927, a notification made u/s 65-A of the 1927 Act should be deemed to be a notification published u/s 64 of the later Act. Sub-section (4) of Section 64 of the 1951 Act limited the operation of a notification under that section to a period of five years but vested power in the Government, to cancel or continue from time to time any such notification, but every time, in the case of continuance, for a further period or periods not exceeding five years at a time. It is common ground that the notification in exercise of this power was extended from time to time. Madras Act XIX of 1951 was repealed and re-enacted in the form of Madras Act XXII of 1959. Section 75-A of this Act provided that a notification made under Chapter VI-A of Madras Act II of 1927 would continue to be in force and shall be deemed always to have continued in force upto and inclusive of 18th July, 1965 and for a period of one year thereafter. This section was introduced by Madras Act XVI of 1965, superseding Ordinance X of 1965. The notification originally made under Chapter VI of Act II of 1927 thus ceased to operate on and from 16th July, 1968 by efflux of time. The question is, whether on expiry of the notification, the scheme settled for the devasthanam would revive.

3. We agree with the learned Judge that it did. The learned Judge thought that because Section 75-0 (4) (a) of Madras Act XXII of 1959 confined itself to a case of cancellation of the notification under Sub-section (i) or Sub-section (3) of that section, and as none of the subsections of the section stated that the scheme should not revive when the notification ceased to operate by efflux of time the scheme in this case revived. It is true that in the case of a cancellation of such a notification, by reason of the express provision made in the Act the scheme and the rules made thereunder would not be revived. But the reason why we consider that the scheme was revived in this case is on the principle of interpretation of a reviver of the old state of affairs on the expiry by efflux of time of a notification or temporary statutory provision by reason of which the operation of the earlier state of affairs had been cancelled or kept suspended for a limited period. If an enactment or a rule, which repealed an earlier Act or rule, is itself only a temporary Act or rule, the general rule is that the earlier Act or

rule is revived once the temporary Act or rule is spent. On that principle, Craies "On Statute Law" in his seventh edition, at page 419, states that inasmuch as ex hypothesi a temporary Act expires and is not repealed, the rules of construction laid down by Sections 11(1) and 38 (2) of the Interpretation Act, 1889, did not apply. There will, however, be no revivor if it was clearly the intention of the Legislature to repeal the earlier Act absolutely. That intention may appear either expressly or by necessary implication. Crawford is of the same view in his "Statutory Construction"--1940 edition. He points out that where a statute is temporary and limited to a given number of years, its effect upon a statute which has been repealed and supplied by it, is the repealed statute is revived ipso facto. Madras Act XIX of 1951, by Section 65, expressly stated that a scheme and the rules made thereunder, which had ceased to apply to the institution by reason of the notification under Chapter VI of that Act, should not be deemed to be revived by reason of the cancellation of the notification or by reason of its having ceased to be in force by efflux of time. But this provision, except as to cancellation cases, was not reiterated by Section 75-C (4) (a) of Madras Act XXII of 1959. It may be asked, however, that if in the cancellation cases there is an express provision in Section 75-0 (4) (a) against revivor, can it be said that in the case of expiration of a notification by efflux of time, the intention of the Legislature could have been different? The only answer which can be given is that whereas the earlier Act speaks against revivor even in the case of a notification going out by efflux of time, the later Act is silent about it. In such a case, the general interpretation applicable to expiry of a temporary statute by efflux of time should apply. We see no necessary implication in Section 75-C (4) (a) that in the case of a notification ceasing to have effect by efflux of time, there should be no revivor of the scheme. A temporary statute may do one of two things. It may repeal permanently an earlier statute and after the expiry of the temporary statute, the earlier statute in such a case will not be revived. A temporary Act may instead of repealing an earlier Act hold up or cancel the operation of an earlier Act without actually repealing the earlier Act permanently. In such a case, on the expiry of the temporary statute, the earlier statute will be revived, unless of course, the temporary statute again provided expressly or by necessary intendment to the contrary.

4. On that view, we agree with Kailasam, J., that the scheme of administration settled by the Court of the Subordinate Judge at Chingleput has revived on the expiry of the notification with effect from 16th July, 1966. Since, by and large, the basis of the Commissioner's order, which is impugned, was that the scheme was not revived, it was rightly quashed. The Commissioner was of the view that the scheme was also inconsistent with the provisions of the Act. But he has not chosen to examine carefully which of the provisions of the scheme are inconsistent with the provisions of the Act in the sense, that the two provisions examined side by side cannot stand together or operate at the same time. It is true, as pointed by the learned Government Pleader, that Madras Act XXII of 1959 only contemplates two kinds of trustees, hereditary and non-hereditary

trustee. But the point still remains whether the functions of a trustee, whether hereditary or non-hereditary, can be bifurcated as religious and secular, and trustees be appointed on that basis under the provisions of the Act. It is in the light of this, the Commissioner will have to see whether there is any provision in the scheme which is inconsistent with any provision of the Act. We have no doubt that the Commissioner will apply his mind to this aspect and dispose of the application made by the first respondent in accordance with this judgment.

5. The appeal is dismissed with the costs of the first respondent. Counsel fee Rs. 100.