
(1969) 08 MAD CK 0004

In the Madras High Court

Case No : App. No. 188 of 1960

The Hindu Religious and Charitable Endowments
(Administration Dept.) Madras, by the Commissioner

APPELLANT

Vs

Sri Singam Chetty S. Ateendrooloo Chetty's Charities and
others

RESPONDENT

Date of Decision : 05-08-1969

Acts Referred:

Hindu Religious Endowments Act — Section 77

Citation : (1970) ILR (Mad) 116

Hon'ble Judges : Ramanujam, J; Ramakrishnam, J

Bench : Division Bench

Advocate : T. S. Raghavachari and K. Raghavan for 1st and 6th to 9th, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishnan, J.—The defendant in O.S. No. 245 of 1955, the Hindu Religious and Charitable Endowments, Madras, by the

Commissioner, is the appellant in this appeal. The prior facts of the case can be briefly stated : The plaintiffs are the trustees of Sri Singam Chetty

S. Ateendrooloo Chetty's charities, Madras. Ateendrooloo Chetty was a wealthy man who executed a comprehensive deed of trust on 28th June

1899. We shall refer to the main provisions of this trust deed a little later in the judgment. A printed copy of the trust deed was marked as Ex A.

19 in the suit. Some correspondence ensued in the year 1946 between the secretary of the Hindu Religious Endowments Board and the trustees of

the charities in regard to the correct apportionment of the amounts to be devoted to the items of charities mentioned in the schedule E of the Trust

deed. This schedule contains a list of items with details of moneys to be spent on

religious services in several well-known temples in the State. It also sets out the exact amount to be spent for the religious services. Included In the above schedule are some items which are patently non religious, for example, there is a provision for the spending of Rs. 50 every year for the Maharaja of Vizianagaram's Hindu Girls School situated in Narayana Mudali St, Madras, and another provision for spending Rs. 100 every year for payment of school fees to poor Vaisya students studying in Pachaiaappa's school. Proceedings were instituted by the secretary to the Hindu Religious and Charitable Endowments Board under S. 77 of the prior Hindu Religious Endowments Act (Act II of 1927) in C.A. 10 of 1947 to determine what portion of the endowments in question should be allocated to religious uses. At this enquiry the charities were represented by an advocate. The trustees filed their statement pleading inter alia that S. 77 of the above Act was not applicable to the endowments in question because (1), there was no endowment made or property given for the support of any Institution within the meaning of S. 77 of the Act and (2) a more direction to pay specific sums from the income of certain properties for religions purposes cannot be deemed to constitute specific religious endowment. By its order dated 10th December 1947, the Board held that it had jurisdiction to go into the question of apportionment between the religious part of the charities and the secular part of the charities in regard to the suit trust. The Board concluded that by reason of the relative amounts earmarked for the religious and non-religious portion of the charities, as stated In the deed of trust, 50 per cent of the income from the institution known as S. Ateendrooloo Chetty Charities should from the religious endowment to which the provisions of the Madras Hindu Religious Endowments Act will apply. The order of the Board is Es. B. 8 and the annexure setting out the reasons is Ex. B. 4.

2. Now we come to the crucial part of the provisions of the aforesaid Act of 1927. It says that where property given is appropriated partly to religious and partly to secular uses, the Board may notwithstanding anything contained in the Madras Endowments and Escheats Regulation, 1817, determine what portion of such endowment or property or of the income therefrom shall be allocated to religious uses. If any dispute arises as to whether an institution or endowment is one to which sub-s. (1) applies,

such dispute shall be decided by the Board. S. 77 (2) provides, any party affected by an order under sub S. (1) may within such time as may be prescribed apply to the court to modify or set aside such order, but, subject to the result of such application, the order of the Board shall be final.

3. Though a decision was given in the manner stated above by the Board in 1947, the trustees of the charities who disputed the claim of the Board for apportionment failed to move the court to set aside the orders within the time allowed for that purpose. Thereafter the trustees applied under S.

57 (g) of Madras Act XIX of 1951 for a declaration that the scope of that Section was far wider in its purview than S. 77 (1) of the earlier Act

(Act II of 1927) and therefore the decision given under that Act would not apply to the suit charities. This application dated June 1952, is marked

as Ex. A. 10 in the case. The prayer in the petition was to hold that the endowments covered by the trust would not come under S. 57 (g) of the

Act XIX of 1951 and that the petitioner may be permitted to administer and carry out the endowments in the trust deed as per provisions made

therein. The prayer also Included a request that the proceedings and the statement of the trustees in O.A. 10 of 1947 might be referred to at the

time of the hearing of the petition. A reference to the body of the petition shows that in substance the trustees wanted to get the earlier order

passed under S. 77 of the Act II of 1927, apportioning 50 percent of the income for religious purposes to be set aside on the ground that the terms

of S. 57 (g) of Act XIX of 1951 were wider in their purview than these in S. 77 of the earlier Act. S. 57(g) of Act XIX of 1951 states:

Subject to the rights of suit or appeal hereinafter provided, the Deputy Commissioner shall have power to inquire into and decide the following

disputes and matters: (g) where any property or money has been given for the support of an institution which is partly of a religions and partly of a

secular character, or the performance of any service or charity connected with such an institution or the performance of a charity which is partly of

a religious and partly of a secular character or where any property or money given is appropriated partly to religious and partly to secular uses, as

to what portion of such property or money shall be allocated to religious uses.

4. The Deputy Commissioner by an order passed on 13th September 1952 after referring to the terms of S. 57 (g) of the new Act and S. 77 of

the old Act observed that the earlier order which determined the amount of the income to be divided to religious purposes based upon S. 77 (2) of

the Act II of 1927 had become final. The only remedy available to the petitioner under those circumstances, if he wanted to get that order modified

or rescinded, was to apply to the Government under S. 103 (g) of Act XIX of 1951.

5. Acting on this last mentioned direction the plaintiffs applied to the Government of Madras for modifying the earlier order of the Board, but the

Government declined to interfere by its order, Ex. A. 13, dated 2nd January 1954. In short the Government at the concluding portion of its order

stated that the President, Honorary Secretary and Treasurer was informed that the Deputy Commissioner, Hindu Religious and Charitable

Endowments (Administrative) Department, Coimbatore, may again be moved for a fresh order under S. 57 (g) of the Hindu Religious and

Charitable Endowments Act, 1951, if the petitioner is so advised. Acting on this direction, the plaintiffs again applied to the Deputy Commissioner,

Hindu Religious and Charitable Endowments, Coimbatore. The terms of their request in this application are set out in the annexure, Ex. B. 10 to

the order of the Deputy Commissioner in O.S. No. 55 of 1954 dated 25th June 1954. Their prayer was to pass an order (1) that the charities

mentioned in Schedule E to the trust deed are to be carried out with the amounts provided for therein and (2) to declare that the endowments do

not come within the purview of S. 57 (g) of the Act and that the allotment made by the Ex-Board in its order dated 10th December 1947 is illegal.

The Deputy Commissioner, after observing that he had power to determine in the case of a mixed endowments which portion of the endowment

should be regarded as religious and which secular, stated that S. 57 (g) does not confer on him the power to declare that an order passed by the

Ex-Board is illegal and not binding, and that the present Act (Act of 1951) does not confer on him the power to sit in judgment over the order of

the ex-Board, which had become final. Thereafter the Deputy Commissioner dismissed the application.

6. The plaintiffs thereafter appealed to the Commissioner. The Commissioner rejected the appeal by his order dated 17th October 1954.

Thereafter the petitioner has filed the present suit O.S. 245 of 1955.

7. We proceed to consider briefly the scope of the plaint in the suit. It is filed under S. 62 of the Hindu Religious and Charitable Endowments Act 1951, against the order of the Commissioner for Hindu Religious and Charitable Endowments (Administration Dept.) Madras, dated 27th October 1954, for a declaration that it is ultra vires of the Hindu Religious and Charitable Endowments Act of 1951 and not binding on the plaintiffs. The second prayer is to set aside the above order. The third prayer is that the defendant may be Interdicted and prevented from interfering with the administration and management of plant charities in regard to their income and also in regard to the corpus. There is also an alternative prayer that if the Court holds that the statute of 1951 applies, then an allocation of the income commensurate with the direction contained in the deed and the will may be made. In the body of the plaint, there are precise averments in paragraph 6 attacking the vires of the order of the Hindu Religious and Charitable Endowments Board dated 10th December 1947 under S. 77 of the Act of 1927. It has set out the reasons for the attack against that order. The principal ground is that there was no appropriation of a common fund for mixed purposes which required classification as religious and secular within the scope of S. 77 of the Act of 1927. Because of the plea that the earlier order was ultra vires, the plaintiffs averred that that order would not be a bar to the present suit. In the written statement of the Commissioner for Hindu Religious and Charitable Endowments (Administration) Department, the plea was taken that the order, dated 10th December 1947, making an apportionment of 50 per cent of the income from the E schedule properties to religious purposes, was a valid order passed by the Board with jurisdiction. In any event, that order had become final long ago and could not be questioned either in a suit or in any other separate proceeding. In view of the above circumstances, the present application under S. 57 of the Act of 1951 was not maintainable at all. The learned Judge of the City Civil Court, in an elaborate judgment, upheld the contention of the plaintiffs. After a perusal of the trust deed, the learned Judge found that separate sums of money were set apart in the deed of trust for a few religious items and separate sums were set apart for secular uses. In such circumstances, there was no common fund for the common use of both secular and religious object. Consequently, the Board had no jurisdiction under S. 77 of the Act of 1927 to pass the order

dated 10th December 1947. It is therefore a void order and it cannot debar the plaintiffs from filing the present suit. Acting upon the above

mentioned interpretation of the trust deed, the learned Judge found that the proceedings dated 10th December 1947 were void. He also declared

the order of the Deputy Commissioner dated 25th June 1954 and the order of the Commissioner dated 27th October 1954 to be invalid and

inoperative and not binding on the plaintiffs. Against the above decision, the Hindu Religious and Charitable Endowments (Administration Dept.)

by the Commissioner (the defendant in the suit) has filed this appeal.

8. The learned Additional Government Pleader appearing for the appellant urges in the first place that the scope of the present suit is that of a

statutory suit under S. 62 of the Act of 1951. S. 62 gives right to a party aggrieved by an order passed by the Commissioner under S. 57 of the

Act of 1951, to institute a suit in the Court against such order within 90 days from the date of the receipt of the order. The Court in that suit may

modify or cancel such order. It is submitted by the learned Additional Government Pleader that the Commissioner's order confirmed the order of

the Deputy Commissioner dated 25th June 1954. The last mentioned order held that the Deputy Commissioner had no power to interfere or

modify or declare as invalid an earlier order of the Hindu Religious and Charitable Endowments Board under S. 77 of the Act of 1927, which had

become final because the aggrieved party had not taken steps within the period as provided in S. 77 of the Act, to get that order modified. It is

urged by the learned Additional Government Pleader that scope of S. 57 (g) of the Act of 1951 under which the power of the Deputy

Commissioner is now invoked is only to make an apportionment when there is a dispute as to how a property endowed for partly religious and

partly secular purposes should be apportioned. But it is entirely outside the jurisdiction of the Deputy Commissioner in statutory proceeding under

S. 57 (g) of the Act of 1951 to determine the vires of an earlier order, passed by the Board on an identical matter dealing with the question of

apportionment.

9. It appears to us that this contention of the Additional Government Pleader is entitled to weight. It forms, in our opinion, a valid preliminary

objection, to the maintainability of the suit. A comparison of the relevant

provisions of S. 77 of the Act of 1927 and S. 57 of the Act of 1951 can be made. It shows that so far as the present dispute is concerned, the provisions are practically identical. The differences if any are immaterial. S. 77 (1) of the Act of 1927 says that where an endowment made or property given is appropriated partly to religious and partly to secular uses, the Board may determine what portion of the property or income there from shall be allotted to the religious uses. S. 57 (g) says that where any property or money has been given for the performance of any service or charity connected with a religious institution or the performance of a charity which is partly of a religious and partly of a secular character or where any property or money given is appropriated partly to religious and partly to secular uses and a dispute arises as to what portion of such property or money shall be allocated to religious uses, the Deputy Commissioner shall have power to enquire and decide the question. S. 77 (1) of the Act of 1927 refers to an endowment, S. 57 (g) of the Act of 1951 does not refer to an endowment, but S. 57 (b) provides for the determination as to whether an endowment is wholly or partly of a religious or secular character and whether any property or money has been given wholly or partly for religious or secular uses. Therefore S. 57 (b) and (g) have to be read together in the Act of 1951, in the context of S. 77 (1) of the Act of 1927. So far as the question as to whether the trust in this case provides for an apportionment of property between religious and charitable uses is concerned, there is no essential difference between S. 77 of the Act of 1927 and S. 57 of the Act of 1951. That is why the Deputy Commissioner in his order held that the previous decision of the Board under S. 77 of the Act of 1921 dealing with the same question of apportionment under the same deed of trust, would preclude him as the corresponding authority under the amended Act of 1951, from going into the matter over again. This appears to us to be a correct view of the matter. Nevertheless in the suit before the lower court the plaintiffs wanted the point the vires of the earlier order of the Hindu Religious and Endowments Board, to be decided by the court itself, even though the Deputy Commissioner and the Commissioner held that its determination was beyond their jurisdiction. The learned Additional Government Pleader appearing for the appellant drew our attention to the decision of the

Supreme Court reported is State of Madras Vs. Kunnakudi Melamatam and Another, , where the Supreme Court observed at page 1573 :

Now one of the disputes in this suit is whether the institution is a religious institution within the meaning of Act XIX of 1951. Specific provision is

made in Ss. 57, 61 and 62 of the Act for determination of that dispute by the Deputy Commissioner, the Commissioner and eventually by a suit

instituted in a court under S. 62. The present suit is not brought under or in conformity with S. 62 and consequently in so far as the suit claims the

relief of injunction restraining the levy of contribution and audit fees under Act XIX of 1951, it is barred by S. 93 of the Act.

10. It is urged by the learned Additional Government Pleader that one of the points for decision in the present suit is whether the order of the

Board dated 10th December 1947 was ultra vires and without jurisdiction. Such a dispute was entirely outside the jurisdiction of the Deputy

Commissioner whose powers are limited to the objects set out in the several clauses of S. 57. The Deputy Commissioner had therefore rightly

refused to entertain for this decision a point about the ultra vires of the prior order of the H. R. B Board, which was clearly beyond the scope of S.

57. In this suit which is filed under S. 62 of the Act of 1951, by the aggrieved party against the above mentioned Deputy Commissioner's order

which in turn was confirmed by the Commissioner's order the aggrieved party cannot dispute the correctness of the H. R. E. Board's decision

after the Deputy Commissioner had held that he had no jurisdiction to reopen the earlier decision of the Board. The finding of the Deputy

Commissioner that he had no jurisdiction to reopen the Board's order is correct. That seems to be the proper view to be taken so far as the scope

or the present suit under S. 62 of the Act of 1951 is concerned.

11. The Learned Counsel for the respondent urges that this is not exclusively a statutory suit under S 62 of the Act of 1951, but it is partly a

statutory suit and partly a suit in which the common law remedy of vacating the earlier order of the Board in 1947 is sought. But a reference to the

preamble of the suit shows that the plaint was filed only under S. 62 of the Act of 1951 as a statutory suit. The main prayer is for declaring the

order of the Commissioner dated 27th October 1954 as ultra vires. Coupled with this is a prayer for injunction restraining the defendant from

interfering with the administration and management of the plaint charities This last mentioned relief again is not one which can be obtained under S.

57(g) of the Act of 1951, which does not provide for relief by way of an injunction. This relief by way of an injunction cannot be combined with a

relief which cannot be obtained in the statutory suit. We are not expressing any opinion in the course of the present appeal as to whether the

plaintiffs' remedy under the ordinary law for the relief they have claimed is available or not. It is sufficient for us to observe that in this suit, which is

clearly a statutory suit, the plaintiffs cannot reopen the earlier decision of the Board which had become final so far as the authorities of the Hindu

Religious and Charitable Endowments Board are concerned and which the Deputy Commissioner and the Commissioner refused to invalidate

because they had no power to do.

12. We will refer to the further contentions of both the respondent and the appellant in regard to the dispositions on trust deed, and their legal

effect. Because of our finding mentioned above that the lower court had no valid justification to interfere with the order of the Deputy

Commissioner and the Commissioner in the circumstances of this case, only a brief reference will be made to the above contentions.

13. Paragraph 1 of the trust deed appoints ten trustees who are to be co-trustees with Ateenderooloo Chetty, the founder. Paragraph 2 states that

the trustees have been put in possession of the properties mentioned in the lists A, B, C and D. From the income of the properties in list A the

charities set out in list F have to be maintained. List F provides for out right sums of money to be incurred once for all for various purposes which

are mostly connected with temples. It is provided that after the expenditure for the charities in list F is met with the income from the properties in

list A by sale of some of them, the balance may be invested in securities. List C contains jewels which are to be sold by public auction, List B

contains mortgages of landed properties. Their value is given Rs. 61175. The value of the jewels in the List C is given as Rs. 14000 approximately.

List D contains the Government securities of the face value of Rs. one lakh. Paragraph 4 provides that outstandings from the list B and the sale

proceeds of the jewels in list C shall be invested in suitable securities and deposited along with list D securities in the office of the official Trustee or

any other office in the name of the charities and the interest accruing therefrom should be drawn and expended on the permanent charities, mentioned in list E. List E mentions several religious services for which specific sums are earmarked. It also mentions secular objects like payment of money towards school and school fees for which fixed amounts are provided. The Board in 1947 while dealing with the question of allocation obtained the total value respectively of the religious and secular charities, mentioned in list E. It decided that since the total amounts earmarked for these two purposes were approximately equal it was justified in holding that 50 per cent of the income from the trust properties, should be earmarked for religious purposes. Paragraph 7 of the trust deed provides that from the rents of landed properties (list A) and from the interest and other incomes derivable from the properties, the charges for the repair of houses and landed properties; taxes, etc., establishment and other expenses, the permanent expenses mentioned in list E and the expenses mentioned in list G shall be deducted. List G mentions certain payments to specified persons during their lifetime. Paragraph 7 also provides that out of the balance of money, 20 per cent shall be used as reserve and the residue shall be utilised for repairing the houses of Tengalai Vaishnavites devotees in sacred places. If the income was not sufficient to meet the expenses for any year, such deficiency should be met from the reserve of 20 per cent set apart in previous years. If that reserve were to be exhausted, only the expenses for the family idol and religious lectures should be incurred, but all other items of expenses for charity etc. should be adjusted from time to time according to the income. There is a scope for an argument that as only payment of fixed sums should be made under this endowment, there cannot be a question of apportionment. Equally, it is possible to argue that as there is outright devolution of property in this case for religious and secular purposes, the question whether fixed payments are to be made for the two purposes or they can be properly substituted by a ratio or percentage can be considered as a question of apportionment.

14. The Learned Counsel for the respondents referred us to the decision in *M. Radhakrishna Gade Rao Sahib Vs. State of Madras*, The facts in

that case were these. In a deed of settlement, the appellant's predecessors-in-interest set out in schedule A, the expenses to be spent on the

charities specified in schedule B. The total of the amounts to be spent on the charities came to Rs. 4311. The instrument also stated that in respect

of the sum of Rs. 4311 set apart for the charities, a charge was created on the A schedule properties. The Commissioner for Hindu Religious and

Charitable endowments, Madras passed an order declaring that 21 per cent of the income of the properties in schedule A would be deemed to

form a specific endowment within the meaning of the Act. The appellant filed a suit under S. 62 of the Act of 1951 for cancellation of the order.

The trial Court decreed the suit. In appeal, the High Court decided that under the instrument a specific endowment was created of 15.9 per cent of

the income for the time being receive able from the properties in the A schedule. The appellant took the matter in appeal to the Supreme Court.

The Supreme Court observed that under the terms of the instrument, a percentage of the total income was not the subject matter of the

endowment. What was given under each of the charities was more or less a fixed sum. The learned Judges of the Supreme Court did not agree

with the view of the High Court that an endowment had been created of 15.9 per cent of the income from the properties. They held that the

settlement created an endowment in respect of the right to receive a specific sum of Rs. 1590 out of the income of the properties. It was of course

open to the owners of the properties in their discretion to increase or decrease the amounts slightly. The Learned Counsel for respondent wanted

us to treat the endowment in the present case on the same footing as in the above decision, constituting an outright endowment of specific sums for

religious charities in which a question of apportionment did not at all arise. On the other hand, the learned Additional Government Pleader for the

appellant contended that there is scope for drawing a distinction between the case before the Supreme Court, and the present case. In the decision

of the Supreme Court, the endowment was treated as a charge on the properties. The properties continued to devolve on the settler and his heirs

subject to the charge. In the present case, there was outright divestiture of the properties from the owner to the trust. They were completely

entrusted to the trustees. Thereafter the owner had directed the manner in which the trustees should devote particular sums of money from the

income for particular charities, which were partly religious and partly secular. They also created a reserve fund for future needs of charities. There

is, therefore, a possibility of a view being taken from the provisions in the deed of trust that this was a case of properties completely divested from the owner and vested in the hands of trustees which involved apportionment of the income not necessarily on the basis of a percentage, but on the basis of fixed sums of money between religious and secular purposes. The dispositions in the trust deed, so viewed, may be considered as an apportionment and the dispute may be held to fall within the jurisdiction of the Board under S. 77 of the Act of 1927. But as we mentioned earlier, it is not necessary, in view of our finding in the earlier portion of the judgment, to find out which of these rival contentions is the proper one. It is sufficient for our purposes that a bona fide dispute about the apportionment could and did arise in 1947. We have already held that viewed as a statutory suit, the scope of the present suit has to be limited to the points which the Deputy Commissioner can investigate and decide under S. 57 of the Act of 1951. The scope of the suit has to be confined to determining whether the decision of the Deputy Commissioner (subject to the decision in appeal by the Commissioner) was a proper one or not and whether it should be modified. There can be no doubt at all that, in the circumstances of this case, the Deputy Commissioner had no jurisdiction under S. 57 of the Act of 1951 to decide an issue about the vires of the earlier decision of the Board on a dispute about apportionment. Therefore the lower court was not justified in setting aside the order of the Deputy Commissioner and Commissioner and in passing thereafter decree in favour of the plaintiff. The appeal is therefore allowed. We are not mentioning any opinion as to whether the plaintiffs can agitate for their relief in independent proceedings for vacating the order of the Board. It will be open to them to take appropriate proceedings for that purpose if they are so advised. The appeal is allowed, the judgment and decree of the lower court are set aside and the suit is dismissed. There will be no order as to costs.