(1969) 08 MAD CK 0001

In the Madras High Court

Case No : Appeal No. 188 of 1960

The Hindu Religious and Charitable Endowments (Administrative Department) — APPELLANT

Vs

Sri Singam Chetty B. Ateendrooloo Chetty Charities — RESPONDENT

Date of Decision : 05-08-1969

Acts Referred:

Hindu Religious Endowments Act, 1921 — Section 77
Madras Hindu Religious Endowments Act, 1926 — Section 77, 77(1), 77(2)
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 — Section 103, 57, 62

Citation : (1970) ILR (Mad) 116

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

Bench : Division Bench

Advocate : G. Ramaswami, Additional Government Pleader, for the Appellant; T.S. Raghavachari and K. Raghavan, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishnan, J.—The Defendant in Original Suit No. 245 of 1955, the Hindu Religious and Charitable Endowments, Madras, by the

Commissioner is the Appellant in this appeal.

2. 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

provision of this trust deed a little later in the judgment. A printed copy of the trust deed was marked as exhibit 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 the charities mentioned in the schedule E of the trust deed. This

schedule contains a list of items with details of monies 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 Street, Madras, and another provision for spending Rs. 100 every year for payment of school fees to poor Vaisya students studying in

Pachaiappa''s school. Proceedings were instituted by the Secretary to the Hindu Religious and Charitable Endowments Board u/s 77 of the prior

Hindu Religious Endowments Act (II of 1927) in C.A. No. 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

Section 77 of the above Act was not applicable to the endowments in question because (i) there was no endowment made or property given for

the support of any institution within the meaning of Section 77 of the Act and (2) a mere direction to pay specific sums from the income of certain

properties for religious 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 form the religious endowment to which the provision of the Madras Hindu Religious Endowments Act will apply. The order of the Board is

exhibit B-8 and the annexure setting out the reasons is exhibit B-4.

3. 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 Estates Regulation, 1817, determine what portion of such endowment or property or of the income therefrom shall be allocated to religious uses and if any dispute arises as

to whether an institution or endowment is one to which Sub-section (1) applies such disputes shall be decided by the Board. Section 77(2)

provides, any party affected by an order under Sub-section (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.

4. Though a decision was given in the manner stated above by the Board in 1947, the trustee of the Charities who disputed the claim of the Board

for apportionment failed to move the Court to set aside the order within the time allowed for that purpose. Thereafter the trustees applied u/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 Section 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

exhibit A-10 in the case. The prayer in the petition was to hold that the endowments covered by the trust would not come u/s 57(g) of 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. No. 10 of 1947, might be referred A 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 u/s 77

of Act II of 1927, apportioning 50 per cent of the income for religious purposes to be set aside on the ground that the terms of Section57(g) of

Act XIX of 1951, were wider in their purview than those in Section 77 of the earlier Act. Section 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 religious 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.

The Deputy Commissioner by an order passed on 1st September 1952, after referring to the terms of Section 57(g) of the new Act and Section

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

Section 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 u/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, exhibit A-13, dated 2nd January 1954. Instead the Government at the concluding portion of its

order stated that the president, honorary secretary and treasures were informed that the Deputy Commissioner, Hindu Religious and Charitable

Endowments (Administration) Department, Coimbatore may again be moved for a fresh order u/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 exhibit B-10, to the

order of the Deputy Commissioner in Original Suit No. 55 of 1954, dated 25th June 1954. Their prayer was to pass an Order (1) that the

Charities mentioned in schedule B of 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 Section 57(g) of the Act and that the allotment made by the 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 endowment which

portion of the endowment should be regarded as religious and which secular, stated that Section 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. Therefore, 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 Original Suit No. 246 of 1965.

7. We proceed now to consider briefly the scope of the plaint in the suit. It is filed u/s 62 of the Hindu Religious and Charitable Endowments Act

of 1951, against the order of the Commissioner for Hindu Religious and Charitable Endowments (Administration) Department, 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 the plaint 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, u/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 Section 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 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 u/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 contentions 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 u/s 77 of the Act of 1927, to

pass the order, dated 10th December. 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) Department 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 u/s 62 of the Act of 1951. Section 62 gives right to a party aggrieved by an order passed by the Commissioner u/s 57 of the Act of

1951, to institute a suit in the Court against such order within ninety 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 u/s 77 of the Act of 1927, which had

become final because the aggrieved party had not taken steps and within the period as provided in Section 77 of the Act, to get that order

modified. It is urged by the learned Additional Government Pleader that the scope of Section 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 u/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 Section 77 of the Act of 1927 and Section 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. Section 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 therefrom shall be allotted to the religious uses. Section 57(g)

says that where any property or moneys has been given for the performance of any service of 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. Section 77(1) of the Act of 1927, refers to an endowment,

Section 57(g) of the Act of 1951, does not refer to an endowment, but Section 57(f) 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, Section 57(f) and (g) have to be read together in the Act of 1951, in the context of Section 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 Section 77 of the Act, 1927 and Section 57 of the Act of 1951. That is why the Deputy Commissioner in his

order held that the previous decision of the Board u/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 as to the vires of

the earlier order of the Hindu Religious and Charitable 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 in 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 Sections 57, 61 and62of the Act for determination of that dispute by the Deputy Commissioner, the Commissioner and eventually by a

suit instituted in a Court u/s 62. The present suit is not brought under or in conformity with Section 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 Section 93 of the Act.

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 Section 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 Hindu Religious and Charitable Endowments Board

which was clearly beyond the scope of Section 57. In this suit which is filed u/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 Hindu Religious and Charitable Endowments'' Boards 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 of the present suit u/s 62 of the Act of 1951 is concerned.

10. The learned Counsel for the Respondent urges that this is not exclusively a statutory suit u/s 62 of the Act of 1951, but it is partly a statutory

suit and partly a suit is 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 u/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 u/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 Plaintiff''s 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 so.

11. 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.

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

the trustees have been put in possession of the properties mentioned in 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 he sold by public auction. List B

contains mortgages of landed properties. Their value is given as Rs. 62,475. The value of the jewels in the List C is given as Rs. 14,000

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 disposited 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 ear-marked 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 ear-marked 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 C 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 Vaishnavar, 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 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.

13. The learned Counsel for the Respondents referred us to the decision in Goda Rao v. State of Madras 1966 S.C. 653. The facts in that case

were these. In a deed of settlement, the Appellant''s predecessors-in-interest set out in schedule A, the expense to be spent on the charities

specified in schedule B. The total of the amounts to be spent on the charities come to Rs. 4,311. The instrument also stated that in respect of the

sum of Rs. 4,311 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 A deemed to

form a specific endowment within the meaning of the Act. The Appellant filed a suit u/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 receivable 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. 1,590 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 sum 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 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 settlor 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 u/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 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 u/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 u/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 a 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.

14. 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.

