(1957) 02 MAD CK 0007

In the Madras High Court

Case No : Civil Revision Petition No. 675 of 1954

The State of Madras APPELLANT

Vs

Thiruvadaimarudur Sri Mahalingaswami Devasth Anam RESPONDENT

Date of Decision : 04-02-1957

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 — Section 103, 57, 70, 75A

Citation : (1957) ILR (Mad) 752

Hon'ble Judges : P.V. Rajamannar, C.J;Panchapakesa Ayyar, J

Bench : Division Bench

Advocate : V.K. Thiruvenkatachari, General and C.A. Vaidyalingam, Government Pleader, for the Appellant; K. Rajah Ayyar, K. Raghavachari and V. Seshadri, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—These two revision petitions raise a point practically covered by our decision in Civil Revision Petition No. 1162 of

1953 where we held that all powers and duties exercisable by a Court under the provisions of a scheme devolved on the Commissioner for Hindu

Religious and Charitable Endowments, Madras, after the passing of the Hindu Religious and Charitable Endowments Act, 1951.

2. The question in these two cases relates to clauses 12 and 13 in the scheme framed by the learned Subordinate Judge of Kumbakonam in

Original Suit No. 8 of 1918, for the temple of Sri Mahalingaswami at Thiruvadaimaruthur. These two clauses run thus :

Clause 12. The trustees shall within two months prior to the commencement of the year prepare and file in Court a budget of the estimated receipts

and expenditure including the proposals to discharge debts if any due by the temple for the coming year under various heads.

Clause 13. The Court may on the application of not less than five worshippers made within three weeks of the said filing after notice to the trustees

alter or amend the budget so filed and the trustee shall conform to the budget with the alteration if any made by the Court.

3. The Commissioner for Hindu Religious and Charitable Endowments directed the Deputy Commissioner to bring to the notice of the Sub-Court,

Kumbakonam, the fact that after the coming into force of the Madras Hindu Religious and Charitable Endowments Act, 1951, the Deputy

Commissioner was competent to pass the budget in view of Section 103(e)(ii) of the Act. The learned Government Pleader, who represented the

Commissioner, submitted that if a budget had been submitted by the trustee to the Court, he, the trustee, may be'' intimated that the appropriate

authority to scrutinize was the Deputy Commissioner, Tiruchirappalli, and not the Court. The learned Judge passed the following order after

referring to the communication from the Deputy Commissioner :-

Direct the hereditary trustee to submit the budget without any delay to this Court as required by the scheme.

and subsequently he passed the following order after the budget for the year 1954, had been filed by the trustee :

The budget is approved in view of the explanatory memo, filed by the Pandarasannadhi, The Commissioner for Hindu Religious and Charitable

Endowments, Madras, seeks revision of these two orders of the learned Subordinate Judge on the ground that after the coming into force of the

Act of 1951, the submission of the budget should be to the Commissioner concerned, and not to the Court as provided in the original scheme. We

agree with the contention of the learned Advocate-General on behalf of the Commissioner, that the power to call for a budget vests in the

Commissioner after the passing of the Act of 1951, and it is no longer open to the Court to take any action either under clause 12 or under clause

13 of the scheme. Wherever the expression Court occurs, it should be substituted by the words Commissioner for Hindu Religious and Charitable

Endowments.

4. The learned Advocate-General also drew our attention to Section 70 of the Act of 1951. That Section makes it incumbent upon the trustee of

every religious institution to submit a budget every year to the Area Committee in certain cases and to the Commissioner in other cases. Though an

attempt was made to attack the validity of this section, the Supreme Court was apparently inclined to hold that the Section was quite valid. In The

Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., , Mukherjee J., who delivered

the judgment of the Court, observed :

Section 70 relates to the budget of religious institutions. Objection has been taken only to clause (3) which empowers the Commissioner and the

Area Committee to make any additions to or alterations in the budget as they deem fit. A budget is indispensable in all public institutions and we do

not think that it is per se unreasonable to provide for the budget of a religious institution being prepared under the supervision of the Commissioner

or the Area Committee. It is to be noted that if the order is made by an Area Committee under clause 3, clause 4 provides an appeal against it to

the Deputy Commissioner.

5. It is obviously not desirable nor convenient that the trustees should be called upon to submit budgets both to the Court and to the Commissioner

with the possibility of having to obey two contradictory directions by the Commissioner and the Court. This could, not have been contemplated by

the new Act.

6. Mr. Rajah Ayyar, learned Counsel for the Respondent trustees, contended that the jurisdiction of the civil Court has not been ousted, and in

support of his contention he relied upon certain observations in Advocate-General, Madras v. Kuppuswami ILR (1948) Mad. 542. We are unable

to see how these observations help the Respondents in any way. Actually in that case the learned Judges were concerned with the scope of

Section 75A which had been added to the Act of 1927, by an amending Act of 1946. The present Section 103(e)(ii) of the Act of 1951, is

significantly different from the old Section 75-A in several particulars. The learned Chief Justice construed the expression administration occurring

in Section 75-A of the old Act as being confined to the actual management superintendence of the subject-matter of the scheme and the execution

of all acts arising and required to be performed in such management and superintendence and held that the appointment of a trustee was not an act of administration of a trust to which he is appointed nor is it an exercise of a power of administration. In dealing with the provision contained in

Section 75-A of the Act of 1927, the learned Chief Justice said :

. . . the jurisdiction of the Court is ousted by Section 75-A. The ouster of jurisdiction of the Court must be clearly and unambiguously expressed

when such is the intention of the Legislature. In considering whether the Section in question does effect ouster, reference can conveniently be made

to some other sections of the Act. Section 57(1) empowers the Board, in the circumstances therein specified, by order to settle a scheme of

administration of a temple. But by Sub section 7, the trustee or any person having interest may within six months of the date of publication of the

order, institute a suit to modify or set it aside. By Sub-section 9 any scheme of administration settled by a Court u/s 57 may be modified or

cancelled by the Court. Clearly, in any action taken by the Board u/s 57 . the Court itself is the ultimate authority to decide finally all matters with

respect to the subject matter of the scheme framed by the Board. By Sub-section 2 of Section 57, the scheme settled by the Board may contain

provisions for (a) fixing the number of trustees, (b) removing trustees and (c) appointing new trustees. Clearly, there the Board is authorized to

name some authority other than itself to appoint trustees. The Sub-section does not indicate that the Board itself must be the authority to appoint

trustees.

7. We are unable to see how these observations materially help the Respondent''s case. The decision in the abovementioned case rested entirely

on the opinion that the appointment of a trustee was not in exercise of the power of administration, and Section 75-A only referred to powers of

administration.

8. We, therefore, are clearly of the opinion that after the coming into force of the Act of 1951, the budget will have to be submitted only to the

Commissioner in this case and not to the Court. But we see no reason why we should set aside the actual order made by the Subordinate Judge

approving the budget for the year 1954 which had been filed as per his directions. The Civil Revision Petitions are dismissed with these

observations, but there will be no order as to costs.

