

T.L.Thathachariar vs The Commissioner, H.R.C.E. & Ors on 2 September, 1998

Equivalent citations: AIR 1998 SUPREME COURT 3252, 1998 (6) SCC 643, 1998 AIR SCW 3176, (1998) 5 SCALE 108, (1998) 7 SUPREME 135, 1998 ADSC 6 672, (1999) 1 MAD LW 640, (1998) 4 RECCIVR 296, 1998 UJ(SC) 2 615, (1998) 6 JT 214 (SC), (1999) 1 MAD LJ 4

Author: Sujata V. Manohar

Bench: Sujata V. Manohar

PETITIONER:

T. L. THATHACHARIAR,

Vs.

RESPONDENT:

THE COMMISSIONER, H.R.C.E. & ORS.

DATE OF JUDGMENT: 02/09/1998

BENCH:

SUJATA V. MANOHAR, G.B. PATTANAIAK.

ACT:

HEADNOTE:

JUDGMENT:

JUDGEMENT SUJATA V. MANOHAR, J.

Leave granted.

These appeals pertain to a scheme for the administration of Devarajaswamy Temple at Kancheepuram and Trusteeship of the said temple. The scheme was originally settled in 1909 in an application made originally before the District Court of Chengalpattu, Tamil Nadu being O.S. No. 11 of 1907. This application was filed under section 539 of the Civil Procedure Code of 1882. Ultimately

when the matter came before the High Court and the scheme was settled on 15th of November, 1909, the Civil Procedure Code of 1908 had come into force and the scheme was framed under Section 92 of the Code of civil Procedure 1908. This scheme thereafter remained in force until it was modified by the High Court of Madras on 17.11.1941 in A.S. No. 175 of 1934. This modification was done under the Madras Hindu Religious Endowments Act (Act 2 of 1927) (hereinafter referred to as the Act of 1927) which was then in force. In 1965 the Deputy Commissioner of Hindu Religious and Charitable Endowments, Madras initiated proceedings under Section 64(5) of the Madras (Tamil Nadu) Hindu religious and Charitable Endowments Act, 1959 (hereinafter referred to as the Act of 1959) which was then in force, for the modification of the scheme settled by the High Court by its order of 17.11.1941. These proceedings were contested by Kanchepuram Thathachariar family who contended that the Deputy Commissioner had no jurisdiction to modify the scheme settled by the High Court of Madras in 1941. The Deputy Commissioner, however, passed an order in the proceedings initiated under Section 64(5) of the Madras Hindu Religious and Charitable Endowments Act, 1959 holding that he had jurisdiction to modify the scheme.

The present appellant filed a writ petition No. 2468 of 1969 before the High Court of Madras challenging the order of the Deputy Commissioner. The writ petition was dismissed by a single Judge of the High Court. This judgement was upheld in appeal by a Division Bench of the Madras High Court by its judgement and order dated 6.7.1970 (T.D. Thathachariar Vs. Deputy Commissioner, [1970 2 M.L.J. 475]). The Deputy Commissioner, however, thereafter by his order dated 3.10.1973 decided to drop the proceedings under Section 64(5). In appeal, however, the Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments remanded the matter to the Deputy Commissioner. The Deputy Commissioner thereafter on 25.6.1982 initiated proceedings under Section 64(5) of the Act of 1959 for modification of the scheme settled by the High Court of Madras in 1941. The Deputy Commissioner proposed a modification of the entire scheme against which a writ petition was filed before the High Court of Madras to set aside the scheme so proposed. The writ petition so filed by the appellants was dismissed by a Single Judge of the Madras High Court. Writ Appeal No. 122 of 1987 was filed before the Division Bench of the Madras High Court by the appellant.

On 12.2.1987 another Writ Petition No. 2082 of 1987 was filed by the appellant before the Madras High Court challenging the validity of Section 64(5) and 118 of the Act of 1959. This writ petition was dismissed by the High Court. The appellant preferred Writ Appeal No. 141 of 1987 against the said judgement and order. Both the writ appeals 122 of 1987 and 141 of 1987 were heard together by a Division Bench of the Madras High Court. Both the writ appeals were dismissed by the High Court by the impugned judgement. The present appeals arise from the said judgement dated 2.5.1997 of the Division Bench of the High Court of Madras.

The appellant contends that the Deputy Commissioner has no jurisdiction under Section 64(5) of the Act of 1959 to modify a scheme originally framed under section 92 of the Civil Procedure Code by the Madras High Court. To decide this issue it is necessary to look at the relevant provisions of the various Acts which have governed Hindu Religious Endowments in the State of Tamil Nadu. The scheme as originally framed was under Section 92 of the Civil Procedure Code. Thereafter the Madras Hindu Religious Endowments Act (Act 2 of 1927) came into force. Section 75 of the said Act

of 1927 is as follows:-

"Section 75: Where the administration of a religious endowment is governed by any scheme settled under section 92 of the Code of Civil Procedure 1908, such scheme shall, notwithstanding any provisions of this Act which may be inconsistent with the provisions of such scheme, be deemed to be a scheme settled under this Act; and such scheme may be modified or cancelled in the manner provided by this Act.

Therefore, the scheme in the present case which was settled under Section 92 of the Code of Civil Procedure 1908 was deemed to be a scheme settled under the said Act of 1927. Section 57(9) of the said Act of 1927 provided as follows:-

"Section 57(9): Any scheme of administration settled by a court under this section or which under section 75 is deemed to be a scheme settled under this Act may, at any time for sufficient cause, be modified or cancelled by the court on an application made by the Board or the trustee or any person having interest but not otherwise."

Therefore, under the said Act of 1927 the existing scheme in the present case could be modified or cancelled by the court on an application made by the Board (constituted under the said Act) or the trustees or any person having interest. It was in exercise of this power under Section 57(9) of the said Act of 1927 that the scheme was settled by the Madras High Court by its order of 17th of November, 1941. The said Act of 1927 was succeeded by the Madras Hindu Religious and Charitable Endowments Act (Act No. 19 of 1951) (hereinafter referred to as the said Act of 1951). Section 103 of the said Act of 1951 provided that "notwithstanding the repeal of the Madras Hindu religious and Charitable Endowments Act being Act 2 of 1927 (hereinafter referred to as 'the said Act')..... (d) all schemes settled or modified by court of law under the said Act or under Section 92 of the code of Civil Procedure 1908 shall be deemed to have been settled or modified by the court under this Act". Section 103(d) is as follows:-

"Section 103(d): all schemes settled or modified by a court of law under the said Act or under section 92 of the Code of Civil Procedure, 1908, shall be deemed to have been settled or modified by the Court under this Act and shall have effect accordingly.

Therefore, the existing scheme in the present case was deemed to be a scheme under the said Act of 1951. Section 62(3)(a) of the said Act of 1951 provided as follows:-

"Section 62(3)(a): Any scheme for the administration of a religious institution settled or modified by the Court in a suit under sub-section (I) or on an appeal under sub-section (2) or any scheme deemed under section 103, clause (d) to have been settled or modified by the Court may, at any time, be modified or cancelled by the Court on an application made to it by the Commissioner, the trustee or any person having interest.

Therefore, under the provision of Section 62(3)(a) of the said Act of 1951, the scheme in the present case which was deemed to be a scheme under the said Act of 1927 by virtue of Section 103(d) could be modified or cancelled by the court under Section 62(3)(a) of the new Act of 1951. No such modification was, however, made.

The Act of 1951 was succeeded by the Madras (later renamed as Tamil Nadu) Hindu Religious and Charitable Endowments Act being Act 22 of 1959. Section 118 of the said Act of 1959 repealed the Madras Hindu Religious and Charitable Endowments Act of 1951. However, under sub-section 2(a) of Section 118, notwithstanding the repeal of the said Act (Act XIX of 1951), scheme settled or deemed to have been settled under the said Act, i.e. the Act of XIX of 1951 shall, in so far as they are not inconsistent with this Act, be deemed to have been settled by the appropriate authority under the corresponding provisions of this Act, and shall have effect accordingly. Section 118(2)(a) is as follows:-

"Section 118(2)(a): all rules made, or deemed to have been made, notifications or certificates issued or deemed to have been issued, orders passed or deemed to have been passed, decisions made or deemed to have been made, proceedings or action taken or deemed to have been taken, schemes settled or deemed to have been settled and things done or deemed to have been done by the Government, the Commissioner, a Joint Committee or an Assistant Commissioner under the said Act, shall in so far as they are not inconsistent with this Act, be deemed to have been made, issued, passed, taken, settled or done by the appropriate authority under the corresponding provisions of the Act, and shall have effect accordingly.

As a result, the present scheme which became a deemed scheme framed under the Act of 1951, was now deemed to have been settled under the said Act of 1959 by an appropriate authority under the corresponding provisions of the said Act of 1959.

Under section 64 of the said Act of 1959, the power to settle schemes is conferred on Joint Commissioner or Deputy Commissioner. Sub-section 5(a) of Section 64 deals with modification or cancellation of a scheme in force. It is as follows:-

"Section 64(5)(a): The joint Commissioner or the Deputy Commissioner may, at any time, after consulting the trustee and the person having interest by order, modify or cancel any scheme in force settled under sub-section or modified by the Board under the Madras Hindu religious Endowments Act, 1926 (Madras Act II of 1927), or deemed to have been settled under that Act or any scheme in force settled or modified by the Joint Commissioner/Deputy Commissioner or the Commissioner