

T. Lakshmikumara Thathachariar

Vs

Commissioner, H.R.C.E. and Others

Civil Appeals Nos. 4570-71 of 1998

(Smt. Sujata V. Manohar, G. B. Pattanaik JJ)

02.09.1998

JUDGMENT

SMT. SUJATA V. MANOHAR, J.

1. Leave granted.

2. 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 OS 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 15-11-1909, 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 AS No. a 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.

3. 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 the Kancheepuram 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.

4. 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 judgment was upheld in appeal by a Division Bench of the Madras High Court by its judgment and order dated 6-7-1970 (R. Thatha Desika Thathachariar v. Dy. Commr., H.R.E. ((1970) 2 MLJ 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.

5. 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.

6. 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 Sections 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 judgment and order. Both Writ Appeals Nos. 122 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 judgment. The present appeals arise from the said judgment dated 2-5-1997 of the Division Bench of the High Court of Madras.

7. 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 a Madras High Court. To decide this issue it is necessary to look at the relevant provisions of the various Acts which have governed the 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 :

"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 :

"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 17-11-1941.

8. The said Act of 1927 was succeeded by the Madras Hindu Religious and Charitable Endowments Act (Act 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 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 :

"62. (3)(a) Any scheme for the administration of a religious institution settled or modified by the court in a suit under sub-section (1) or on an appeal under sub-section (2) or any scheme deemed under Section 103, a 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.

9. 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 19 of 1951), schemes settled or deemed to have been settled under the said Act, i.e., Act 19 of 1951 shall, insofar 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 :

"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 Commissioner, a Deputy Commissioner, an Area Committee or an Assistant Commissioner under the said Act, shall insofar 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 this 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.

10. Under Section 64 of the said Act of 1959, the power to settle schemes is conferred on the 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 :

"64. (5)(a) The Joint Commissioner or the Deputy Commissioner may, at any time, after consulting the trustee and the persons having interest by order, modify or cancel

any scheme in force settled under sub-section (1) or any scheme in force settled 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 under this Act, or any scheme in force settled or modified by the court in a suit under sub-section (1) of Section 70, or on an appeal under sub-section (2) of that section or any such scheme in force deemed to have been settled or modified by the court under clause (a) of sub-section (2) of a Section 118 :

Provided that such cancellation or modification of a scheme in force settled or modified by the court in a suit under sub-section (1) of Section 70 or on an appeal under sub-section (2) of that section or of a scheme in force deemed to have been settled or modified by the court under clause (a) of sub-section (2) of Section 118 shall be made only subject to such conditions and restrictions as may be prescribed."

11. Section 64(5)(a) expressly confers power on the Joint Commissioner or the Deputy Commissioner to modify or cancel a scheme in force which is deemed to have been settled or modified by the court under clause (a) of sub-section (2) of Section 118. The present scheme framed by the Court, becomes under Section 118(2) (a), a scheme deemed to have been settled by the appropriate authority under the said Act of 1959. It was also a scheme which was earlier, during the subsistence of Act 2 of 1927, deemed to have been settled under that Act. Therefore, Section 64(5)(a) expressly confers a power on the Joint Commissioner or the Deputy Commissioner to modify or cancel a scheme framed earlier under previous legislation including a scheme which is deemed to have been settled under a corresponding provision of Act 19 of 1951. The High Court has, therefore, rightly held that the Deputy Commissioner has jurisdiction to modify the scheme in the present case.

12. According to the appellant, only schemes which are settled or deemed to be settled or modified by the court under Section 118(2)(a) would fall within the ambit of the amending power of the Deputy or Joint Commissioner under Section 64(5). He has emphasised the words "deemed to be settled or modified by the court". The appellant contends that under Section 118(2)(a), there is no reference to any scheme being deemed to be settled by a court. Therefore, the present scheme will not be covered under Section 64(5). The same contention was considered by the Madras High Court in the case of R. Thatha Desika Thathachariar v. Dy. Commr., H.R.E. ((1970) 2 MLJ 475). This decision pertains to the same scheme which is being considered here. The Madras High Court, after considering the provision of Section 64(5) and Section 118(2)(a) as also Section 103(d) of the said Act of 1951, negated this contention and also further held that there was no distinction between a scheme settled and a scheme modified for the purposes of Section 118(2)(a). The Madras High Court said that the Deputy Commissioner had jurisdiction to modify the present scheme.

13. The appellant, however, relied upon another judgment of the Madras High Court in the case of O.Radhakrishnan v. Manickam ((1974) 2 MLJ 179). The Court in that case was concerned with the power of the Commissioner to modify or cancel any scheme in respect of a math under Section 65 of the Act of 1959. The Court, however, in the course of its judgment also interpreted Section 118(2)(a) of the Act of 1959 and held that this section makes no reference to a scheme settled or deemed to have been settled by a court.

14. The interpretation put in this judgment on Section 118(2)(a) in the context of Section 65 does

not appear to be correct. In order to correctly analyse the provisions of Section 64(5)(a) in the context of Section 118(2)(a), it is necessary to analyse the two sections. Section 118 is a section dealing with repeals and savings. Under sub-section (1), the said Act of 1951 is repealed. Under sub-section (2) notwithstanding such repeal, certain things are saved. Under clause (a) of sub-section (2), the following are saved :

- (1) Rules, notifications, certificates issued or deemed to be issued under the Act of 1951.
- (2) Orders passed or deemed to be passed under the Act of 1951.
- (3) Decisions made or deemed to be made under the Act of 1951.
- (4) Proceedings or action taken or deemed to be taken under the Act of 1951.
- (5) Schemes settled or deemed to be settled under the Act of 1951, and
- (6) Things done by :
 - (a) the Government;
 - (b) the Commissioner;
 - (c) the Joint Commissioner;
 - (d) the Deputy Commissioner;
 - (e) the Assistant Commissioner; and
 - (f) the Area Committee or deemed to be done by these authorities under the Act of 1951.

These are all now deemed to be done under the Act of 1959 and these are deemed to have been done by the appropriate authority under the Act of 1959. Thus all these actions under the Act of 1951 are saved by virtue of Section 118(2)(a). Thus, schemes settled or deemed to be settled under the Act of 1951 are expressly saved. In this context, if one looks at Section 64(5)(a) which deals with the power of the Joint Commissioner or the Deputy Commissioner to modify or cancel schemes in force, the Joint Commissioner or the Deputy Commissioner has been given the power to modify or cancel the following schemes :

- (1) a scheme settled under Section 64(1) (the Act of 1959);
- (2) a scheme settled or modified by the Board under the Act of 1927;
- (3) a scheme deemed to be settled under the Act of 1927;
- (4) a scheme settled or modified by the Joint Commissioner, Deputy Commissioner or Commissioner under the Act of 1959;
- (5) a scheme settled or modified by the court in a suit under Section 70(1) or in appeal under Section 70(2) of the Act of 1959; and

(6) a scheme deemed to be settled or modified by the court under Section 118(2)(a).

Therefore, under Section 64(5), apart from the schemes framed under the current Act of 1959, the scheme settled by the Board as well as by the court under the Act of 1927 or deemed to be so settled are covered by Section a 64(5)(a). Similarly, schemes which are settled or deemed to be settled under the Act of 1951 are covered by the last part of Section 64(5). The reference in the last part of Section 64(5)(a) to Section 11 8(2)(a) is for the purpose of including in Section 64(S)(a) all those schemes settled or deemed to be settled under the Act of 1951 and saved by Section 1 18(2)(a). In Section 64(5)(a), the words "by the court" have a reference to schemes which were settled or deemed to be settled or modified by the court under the Act of 1951. In respect of schemes deemed to be settled by the court under the Act of 1951, the reference is clearly to the schemes covered by Section 103 (a) of the Act of 1951. All those schemes which were so settled or modified or deemed to be so settled or modified by the court under Section 103(d) of the Act of 1951, are now covered and validated under Section 118(2)(a). These schemes so validated and continued under the Act of 1959 can also be modified under Section 64 (5)(a) of the Act of 1959.

15. Therefore, under Section 64(5)(a), all schemes in force deemed to have been settled or modified by the court under the Act of 1951 and covered by clause (a) of sub-section (2) of Section 118, are subject to modification or cancellation under the provisions of Section 64(5)(a). The decision of the Madras High Court in the case of O. Radhakrishnan v. Manickam ((1974) 2 MLJ 179) does not give, in this context, a correct interpretation of law. The scheme in the present case can be modified under Section 64(5)(a) of the said Act of 1959. What is more, it was expressly so held in the case of this very scheme by the Madras High Court in the case of R. Thatha Desika Thathachariar v. Dy. Commr., H.R.E. ((1970) 2 MLJ 475).

16. It is next contended that the provisions of Section 64(5) are an attempt by the legislature to nullify orders of the court in the form of schemes framed by the court under earlier legislations and, therefore, Section 64(5) must be considered as unconstitutional being an attempt to set aside or modify a decree of the court. The High Court has rightly held that this is not a case of passing a legislation in order to nullify the interpretation of law given in the judgment of a court of law. The schemes which were framed by the courts under earlier legislation were schemes which were capable of modification or cancellation in accordance with law even under the legislation under which such schemes were framed. While repealing the earlier legislation when the new legislation came into force, the power to modify and cancel such schemes was expressly transferred under the new legislation to the authorities specified therein. Under the present legislation of 1959, the authority which has the power so to modify the scheme is the Deputy Commissioner of Joint Commissioner. We do not see any attempt to set aside any decree of the Court by legislation in the present case.

17. The High Court has, therefore, rightly rejected this contention. In the premises, the appeals are dismissed with costs.