

ANDHRA PRADESH HIGH COURT

Chandru Chowdary

Vs.

Board of Revenue

Writ Petn. No. 14 of 1953

(P. Chandra Reddy, C.J. and Srinivasachari, J.)

10.10.1958

JUDGMENT

P. Chandra Reddy, C.J.

1. This is a petition for the issue of a writ of certiorari calling for records from the Board of Revenue in L. Dis. No. 5422-52 dated 6-12-1952 and to quash the proceedings of the Board or for the issue of a writ of mandamus to the Board of Revenue to hear the parties and dispose of the case according to law.

2. The office of the village Munsif of Machavaram, East Godavari District, was last held by one Venkanna. He died on 30-5-1948. The petitioner, who is the nephew of the said Venkanna, was registered as a minor under Section 10 of the Madras Hereditary Villages Offices Act (III of J895) (hereinafter referred to as the Act) on 11-12-1948. Shortly thereafter, i.e., on 5-3-1949, the widow of Venkanna adopted the respondent. The respondent, as the adopted son of Venkanna, instituted a suit under Section 13 of the Act for registering his name as the next heir to the office after setting aside the registry already made in favor of the petitioner on the ground that his title to the office was superior to that of the petitioner. The suit was decreed by the Sub-Collector, Rajamundry, which was confirmed by the Collector, East Godavari District. The matter was taken in second appeal to the Board of Revenue, but unsuccessfully. It is to quash the order of the Board of Revenue that the petitioner invokes the jurisdiction of this court under Article 226 of the Constitution of India.

3. The point urged in support of this petition is that when once the petitioner was registered under Section 10 of the Act, the subsequent adoption cannot have the effect of divesting him of the office. To substantiate this, reliance is placed on the Board's Standing Order 148 and also certain observations made by Govinda Menon J., in *Rama Rao v. Board of Revenue*¹. On the other hand, the stand taken by the respondent is that by reason of the adoption, though posthumous the respondent has acquired a right superior to that of the registered holder and is, therefore, entitled to be registered in preference to the petitioner.

4. To appreciate the relative contentions of the parties, it is necessary to notice the

¹1953 Mad WN 795

relevant Board's Standing Order as also the statutory provisions contained in the Act. The material section of Board's Standing Order 148 is in these words : Standing Order :

4 (iv) : "..... Posthumous adoption will not have the effect of divesting a person, who had been already appointed by the Collector of his office. But if before an order is actually passed, an adoption takes place, the adopted son will be eligible for appointment as the next heir."

Section 10 of the Act, omitting the portions which are not relevant for this enquiry, runs as follows :

"Section 10(2) :

When a vacancy occurs in any of the village-offices forming class (a) in Section 3 the Collector shall fill up the vacancy in accordance with the provisions of the following Sub-Sections :

X X X

"The succession shall devolve on a single heir according to the general custom and rule of primogeniture governing succession to impartible zamindaries in Southern India."

It is seen that the Section clearly lays down that selection should be governed by the same rule as applies to succession to impartible zamindaries in Southern India. It is the principles of Hindu law relating to succession that apply to the selection with this difference that the rule of primogeniture comes into operation in regard to it as in the case of impartible estates. Whether the office is regarded as 'property' or not about which we shall deal presently, it is an office that devolves on a single heir in accordance with the general custom and the rules of Hindu law of succession with the difference indicated above. It is incontrovertible that an aurasa son is selected to the office, irrespective of whether it is 'property' or not if not otherwise ineligible. The same is the case with an adopted son, if the adoption had taken place before the filling up of the post.

5. The only question is, does it make any, difference not be adoption is a posthumous one ? That the adoption relates back to the date of the death of the male-holder, is not disputed. Of course, the theory of 'relation back' has certain limitations. Although the Privy Council took the view in *Anant Bhikappa v. Shankar Ramchandra*², that a posthumous adoption will divest not only the heir of the last male-holder but also of a collateral, the Supreme Court in *Srinivas v. Narayan*³, restricted this principle to cases of direct ancestors and did not extend it to collateral succession. The rights of an adopted son are not in all respects identical with those of an aurasa son and the rule of 'relation back' is not an absolute one.

6. But, in this case, the adoption is to the last office-holder. That being so, if the adopted son is deemed to be in existence at the time of the death of the last male-

² AIR 1943 PC 196

³ AIR 1954 SC 379

holder having regard to the rule of 'relation back', we are unable to see how a distinction can be made between an adoption that had occurred prior to the registry and the one posthumously made. In this view, we are inclined, to think that the Board's Standing Order in question is not

consistent with Section 10(2) of the Act.

This Order has the effect of depriving the right of a son adopted subsequent to the registry. It is true that under the Act, selection has to be made by the Revenue authorities and the son of the last male-holder, on the basis of the rule of primogeniture, cannot automatically succeed to the office. However, having regard to the mandatory form in which the language is couched, the officers concerned have to recognize the right of succession and select the heir of the last male-holder, unless he is otherwise disqualified.

7. We will next proceed to consider whether the Board's Standing Order 148 has statutory force. If such an order was framed by the Government or by the Board of Revenue with the approval of the Government in exercise of the powers conferred by any of the sections of the Act, it will have the force of a statute. Then the question might arise as to which of the two provisions would prevail, if there is a conflict between B.S.O. 148 and Section 10(2) of the Act. Here the Board's Standing Order in question has not the statutory force as it does not seem to have been framed by reason of any power conferred by the Statute on the Government or on any other agency.

8. Section 20 of the Act confers power on the Board of Revenue to make rules with the approval of the Government in regard to the following matters.

- (i) the division, grouping and amalgamation of villages;
- (ii) the holding of inquiries under Sections 6, 7 and 8 and the hearing of appeals under Section 23;
- (iii) the educational qualifications required of the holders of the village-offices forming class (1) in Section 3;
- (iv) the procedure to be followed in disposing of suits and appeals from decrees or orders passed in suits and the registers to be maintained in connection therewith;
- (v) the execution of decrees and orders passed in suits and the taxation of costs;
- (vi) the salaries and other allowances to be assigned to the holders of the village-offices forming class (1) in Section 3 and the method of their payment;
- (vii) the duties of the holders of the village offices forming classes (1) and (3) in Section 3, and the descriptions and forms of the accounts and registers to be kept by them;
- (viii) the custody, production and transfer of the accounts and other records kept by the holders of the village offices forming classes (1) and (3) in Section 3;
- (ix) the publication of administration reports under the Madras Proprietary Estates' Village Service Act, 1804, and this Act;
- (x) any other matters calculated to enhance the efficiency of the village service. It looks to us that the impugned Board's Standing Order does not come under any of the categories enumerated above. It is also significant that this is not included in the rules framed under Section 20 of the Act, which are printed at page 4 of Vol. IV of the Board's Standing Orders. We are supported in this opinion of ours that this B.S.O. has no statutory force by judicial opinion.

9. In *Thimmiah v. Commr. of Land Revenue, Board of Revenue, Madras*⁴, (Unreported), Govinda Menon and Basheer Ahmed Sayeed, JJ. Ruled :

"After all, the standing orders of the Board of Revenue are merely collections of resolutions made by the Board for its own conduct of business as well as for regulating the procedure in the matter of collection of revenue by subordinate revenue tribunals and executive functionaries."

The same view is expressed in another part of the judgment thus :

"As we have already remarked, Standing Orders of the Board are merely executive instructions by the Board to its subordinate officers whereby they lay down the procedure to be adopted in certain cases."

A Full Bench of the Madras High Court in *Nagarathnammal v. Ibrahim Saheb*⁵, was not prepared to assent to the proposition so broadly stated. They classified the Board's Standing Orders into three categories namely :

- (1) Rules framed either by the Government or by the Board itself in pursuance of a statutory power. Thus, for instance, Section 20 of Madras Act III of 1895 confers on the Board power to make rules on various matters with the approval of the Government after previous publication. Such rules are incorporated in the Board's Standing Orders.
- (2) The Board's Standing Orders consisting of orders issued by the Government.
- (3) Orders issued by the Board itself with the approval and very often with the previous sanction of the Government.

Then the learned Judges observed thus :

"All these have been arranged in the Board's Standing Orders in a manner that should make reference to them easy. It is not therefore entirely correct to say that the orders of the Board are all merely executory instructions devoid of statutory force."

The Full Bench added that in making these observations they, the learned Judges who decided *Thimmaiah v. Board of Revenue*⁶, did not intend to refer to case for which statutory provisions exist. It is thus clear that in the opinion of the Full Bench, Standing Orders made by reason of the powers conferred by an enactment alone will have statutory force and not those which are in the nature of executive instructions. We have already shown that the Standing Order in question is not one which is made under any of the powers derived from the Statute.

⁴ LPA No. 225 of 1952 (Act Mad)
⁵(1935) 2 Mad LJ 49

⁶(LPA No. 225 of 1952) (Mad)

10. The view of Pandrang Row, J., in *Venkateswara Rao v. Mare Gowd*⁷, is to a similar effect. The opinion expressed by Bhimasankaram, J., in *Prabhakara Rao v. District Collector, Nellore*⁸, is in conformity with the principle enunciated above.

11. We will next turn to the decision called In aid by the petitioner in 1953 Mad WN 795 , in support of his contention that the office of the village Munsif is not 'property' which would be affected by a posthumous adoption. There, the adoption was made even before the registry was effected. The Revenue authorities recognized the claim of the adopted son and registered him as the village head-man. One of the heirs of the last male-holder, claiming to be the person entitled to succeed to the office, instituted a suit in the court of the Revenue Divisional Officer for recovery of the Office on the ground that the adoption was neither true nor valid. The suit was decreed, but on appeal, the District Collector set aside the order of Revenue Divisional Officer. The appeal was allowed on ground that the posthumous adoption of the adoptee related back to the elate of the death of the minor registered holder and that had the effect of divesting every other heir. On, Second Appeal, the Board of Revenue reversed the decree of the District Collector and restored that of the Revenue Divisional Officer.

In a petition for the issue of a writ of certiorari, Govinda Menon, J., quashed the order of the Board of Revenue in the view that even at the time of registration the adoption had already taken place and therefore the petitioner (the adopted son) was entitled to the office. In the course of the Judgment, the learned Judge made the following observations which are relied upon by the learned counsel for the petitioner herein :

The distinction which the Board seeks to make out in that the Privy Council decision refers only to the devolution of properties and can have no application to offices under the Government may, to some extent, be correct, because a right to succeed to a hereditary office is not property and the relation back of an adopted son's rights is only with regard to property. See *Venkata Jagannadha v. Veerabhadrayya*⁹, and *Purushotham v. Venkatappa*¹⁰, It is to be noticed that the learned Judge made only a passing observation. That apart, we do not think we can subscribe to the proposition that the office of the village munsif is not 'property'. Undoubtedly, emoluments are attached to the office of village munsif and in several cases, in addition to the remuneration which the village Munsif receives, certain lands are appurtenant to the office. That being so, we find it difficult to subscribe to the proposition that the office of village munsif is not 'property' so as not to attract the operation of the rule that the adoption relates back to the date of the death of the last male-holder.

12. In *Kanteti Sastrulu v. Venkateswara Rao*¹¹, a Full Bench of this court of which both of us were members laid down that the hereditary Dharamakartbanship is 'property' within the ambit of Section 7 of the Guardians and Wards Act. Reference was made therein to a number of rulings of the Privy Council as also of the Supreme Court wherein it was decided that 'shebait' was property. The rationale of the proposition is that a Shebait has some beneficial enjoyment in the properties attached to that office. There is an elaborate discussion on that question in the Full Bench judgment and it is unnecessary to advert to the various

⁷ AIR 1937 Mad 287

⁹ ILR 44 Mad 643

⁸(1958) 1 Andh WR 164

¹⁰1951-2 MLJ 561 (564): (AIR 1952 Mad 150 (151))

¹¹ AIR 1959 And Pra 232 (FB)

authorities which lend support to the doctrine of that case. On the same analogy, we should say that the office of Village Munsif is also 'property'. This is an a fortiori case.

13. Neither ILR 44 Mad 643 nor (1951) 2 Mad LJ 561 (564) : (AIR 1952 Madras 150 (151)) relied on for the petitioner assists him very much. The first-mentioned of the cases was mainly concerned with the question whether the karanam service inam lands which were enfranchised and in regard to which title deed was granted confirming them to the holder of the office were the

separate property of the office-holder or the joint family property. It was answered in the affirmative. In the course of discussion, it was remarked that the office of kuruam was not held by hereditary or as family right but as a personal appointee, although in certain cases the appointment was primarily made of a suitable person from a particular family and that lands held as appurtenant to the office so enjoyed should continue to go with that office and should accordingly be impartible.

This does not have the effect of establishing that the office is not 'property'. The decision in (1951) 2 Mad LJ 561 (564) : (AIR 1952 Madras 150 (151)) also does not in any way detract from the view taken by us. There, the controversy centred round Madras Act XVIII of 1939 which was passed for the purpose of validating the restoration of village officers who had lost their offices by reason of their association or connection with political movements. The petition was filed to quash the order appointing the respondent a karnam in the place of the petitioner who was recognised as karnam when the former renounced his right to the office, in exercise of the powers conferred by Section 2(f) of the Act referred to supra. The validity of the Act was questioned on the plea that its main provisions contravened inter alia Article 19(1)(f) of the Constitution and, therefore became void after the inauguration of the Constitution. They negated the proposition in the view that the 'property' which was contemplated by Article 19(1)(f) could be acquired, held and disposed of and the karnam's office could not be disposed of, and so far as holding was concerned "the incumbent holds it so long as he is not lawfully removed from the office". That does not lend any support to the proposition that an office of this kind is not "property".

We may here point out that same Judges had decided in *Narayanan Nambudripad v. State of Madras*¹¹, that hereditary Dharmakarhaship was 'property' within the purview of Article 19(1)(f) of the Constitution. They were not prepared to put a restricted construction on the expression 'property'.

14. For these reasons, we hold that son adopted pothumously divests every other heir. It follows that the petitioner cannot succeed and the petition has to be dismissed with costs. Advocate's fee is fixed at Rs. 100/- to be divided between both the respondents.

Petition dismissed.

¹¹(1953) 2 Mad LJ 699