

CALCUTTA HIGH COURT

Srijib Nyayatirtha, Secretary

Vs

Sreemant Dandy Swami Jagannath

(B.K. Mukherjea, J.)

23.04.1941

JUDGMENT

(B.K. Mukherjea, J.)

1. This appeal has been filed by six out of nine members of the committee of the Tarakeswar temple endowment and ii directed against the decision of the learned District Judge of Hughli dated 6th February 1939. The mahant maharaj of the said temple is the principal respondent. The remaining three members of the committee are also respondents but they have not taken any active part in the proceedings before us. There is an alternative application in revision in case it be held that no appeal lies. Satish Chandra Giri was formerly the mahant of the endowment. On account of his mismanagement, breaches of trust and for other reasons some members of the public with the requisite sanction instituted a suit (no. 28 of 1922) in the Court of the District Judge at Hughli under Section 92, Civil P. C, for the removal of the said mahant, for appointment of a mahant in his place, for the framing of a scheme of management and control of the trust properties and for other reliefs which it is not necessary to detail now. That suit succeeded. It was held that the endowment was a public one and Satis Chandra Giri was removed. A scheme was framed by the learned District Judge, Mr. K. C. Nag, on 9th June 1930. That scheme with some modifications was accepted by this Court by its judgment dated 24th August 1934. In accordance with the said scheme, the learned District Judge appointed respondent 1 as the mahant. In accordance with the directions contained in the said scheme a committee of nine members was formed. One of them (respondent i) resigned while this appeal was pending and Mr. Ramaprasad Mukherjee has been elected in his place. He has appeared in person and has taken part in the proceedings before us. At this stage it is necessary to notice only paras. 17 and 18 of the scheme as finally approved by this Court. The said paragraphs run thus:

17.-On the occasion of any doubt, difficulty or disagreement in regard to any work connected with the shrine or its property, it will be competent to the mahant or the committee to apply to the

District Judge in this suit (i. e., Suit No. 28 of 1922), for his directions. 18.-If in future it is found necessary to make any alterations in the scheme it will be competent to the District Judge to do the same upon an application in this suit (Suit No. 28 of 1922) by the mahant or the committee.

2. There was disagreement between the mahant (respondent 1) and the majority of the members of the committee principally over the appointment of the Chief Superintendent and the dismissal of the doctor of the hospital at Tarakeswar and ultimately on 3rd September 1938, the mahant applied to the District Judge for the decision of certain points under the provisions of paragraph 17 of the scheme. He named the members of the committee as opposite parties. The points on which he asked the Court's decision and reliefs were: (1) Whether the management of the endowed properties rests with the mahant or the committee, (a) Whether the committee is an advisory body and whether it can set aside any or what orders of the mahant, and if so, under what circumstances. (3) To confirm his order passed on 8th April 1938, appointing Babu Herambo Lal Sanyal as Chief Superintendent of the endowed properties. (i) To set aside the whole of the resolution of the committee passed on 31st August 1938 for the removal of the medical officer Babu Sushil Kumar Bhattacharya of the Tarakeswar hospital as illegal, unjust and without jurisdiction. (5) To set aside resolution No. 1 passed by the committee on 3rd June 1938, a resolution by which a former resolution of the committee which required the latter to refer certain matters to the decision of the Court had been rescinded. (6) For an order from the Court to the effect that the agenda of the business of the committee should have his concurrence and signature before circulation and that resolutions passed at meetings of the committee should be drawn up and signed by the president on the very day of the meeting. (7)' For a decision as to which of the proposed bye-laws should be placed before the committee and for such other orders regulating the procedure of meetings of the committee as may be considered fit.

3. By a further petition dated 4th January 1939 he prayed for it being declared that the order passed by the committee suspending Naresh Chandra Bhadury, assistant temple manager and confirming the manager were ultra vires, improper and unfair. This point we will hereafter call the eighth point. The learned District Judge in his order dated 6th February 1939, decided the broad questions, namely, those covered by points 1 and 2 only raised before him and left it to the mahant and the committee to decide for themselves in light of the observations he had made in interpreting the scheme how far each had acted reasonably and within his or its province in connexion with the different disputes that brought the matter before him.

4. It is against this order that six members of the committee have preferred this appeal and have also filed the alternative application in revision. Mr. B. C. Ghose appearing for the mahant has raised two preliminary points, namely, (1) that the appeal is in-competent and (2) that the alternative application in revision is not maintainable.

5. We will decide these two preliminary points before we enter into the merits of the appeal. In support of his first point he says that no appeal lies (a) because the order in question is not a decree; (b) because it cannot be considered as an order passed under Section 47, Civil P. C; (c) because it is not an order specified either in Section 104 or Order 43, Civil P.C.

6. It is a settled principle of law that the right of appeal is a creature of statute. When no such right is expressly given by the statute it does not exist. An order interpreting a scheme framed in a suit instituted under Section 92, Civil P. C, or giving directions for carrying out the provisions of the scheme cannot be regarded as an order passed in execution, that is under Section 47, Civil P.C.: *Sevak Jeran Chod Bhogilal v. Dakore Temple Committee* and *Sivaram Dubai v. Rajagopala Misra* ¹If the order in question is not a decree the appeal would be incompetent, as it is not an order made under Section 47 nor an order specified in Section 104 or Order 43 of the Code. The first argument only, therefore, requires consideration, and has to be decided on the special facts of this case which we have before us. There can be no doubt that the learned Judge had been asked to decide, and he has in fact decided points 1 and 2 mentioned in the mahant's application. Those points concern the respective rights of the mahant and the committee under the scheme. There has thus been an adjudication and a final adjudication so far as the learned District Judge is concerned, upon the rights of the mahant and the committee. We cannot accept the contention of the learned Counsel of respondent 1 that the learned Judge has merely expressed his opinion on those points. He did not, however, as his judgment clearly shows, give any direction upon the specific points (Nos. 3 to 8) mentioned in the mahant's petition, but has decided once for all, as he himself says, the general questions which concern the rights of the parties before him. His order thus complies with one part of the definition of a decree as given in Section 2, Civil P.C. His order would, however, be a decree if two further conditions are fulfilled, namely, (a) if the order had been passed in a suit and (b) if the mahant and the members of the committee can be regarded as parties to that suit.

7. That the order has been passed in a suit cannot be questioned, for suit No. 28 of 1922 was expressly kept pending for the purpose of enabling the mahant and the committee to apply for directions under para. 17 of the scheme and for the purpose of applying for modification of the scheme under para. 18. The cases cited by Mr. Ghose namely, *Habibar Rahaman v. Saidannesaa Bibi*, *Minakshi Naidu v. Subramanya Sastri*² *Santhappa Sethuram v. Govindaswamy Kandiyar*³ are therefore distinguishable, for the orders passed by the Court in those cases were not passed in suits, but on applications-in the first case on an application by mutwallis to the District Judge as chief kazi for permission to grant a lease, and in the last two cases on applications made under the Religious Endowments Act. The other case cited by him, namely *Behari Lal v. Kedar Nath*⁴ has no bearing upon the point at issue before us. There an application for execution was made by

the decree holder. To succeed he had to get rid of a compromise by which satisfaction of the decree had been entered. He attacked that compromise on the ground that it had been procured by fraud. The judgment-debtor urged that the validity of the said compromise could not be challenged in execution proceedings but could only be so done in a suit filed for the purpose. That contention was overruled by the trial Court, which held that the compromise could be challenged in that execution proceeding. It is against that order that the appeal was filed and it was maintained by the judgment-debtor that the order was appealable as it came within the purview of Section 244, Civil P.C. of 1882. This Court held that the appeal was incompetent on the ground that the order was not a final order which had the effect of terminating the execution proceedings in the trial Court. That decision only recognizes what has been settled that any and every order made in the course of execution is not appealable but those only which finally determine so far as the trial Court is concerned the rights of the decree-holder and judgment-debtor: *Srinivas Prosad Singh v. Kesho Prosad Singh*⁵The only other question that remains for consideration, so far as this part of the case is concerned, is whether the mahant and the members of the committee can be regarded as parties to Suit No. 28 of 1922, which was kept pending for the purposes mentioned in paras. 17 and 18 of the scheme.

8. The learned District Judge has rightly-observed that on the authority of precedents of this Court and some of the other High Courts that it was not beyond the power of the Court which framed the scheme to provide for the modification of the scheme by an application in the very suit itself in which the scheme was framed. It is conceded by Mr. Ghose that an order passed by the District Judge modifying the scheme on an application made under para. 18 would be a decree and in our opinion this concession has been rightly made. A new suit under Section 92, Civil P.C., would lie for the alteration of a scheme and an order altering the scheme in such a suit would be a decree. All that para. 18 does is to avoid as far as possible the formality of filing a new suit, by providing that the scheme could be altered at the instance of the persons named therein in Suit No. 28 of 1922 itself. The scope of that suit was thus enlarged in a sense. In a sense it was not, for the main object of that suit was proper administration of the Tarakeswar endowment. The Court can under O.1 Rule 10, Civil P. C, add parties and what para. 18 does is that as soon as an application is made by the mahant or the members of the committee he or they would, so to say, automatically become parties to Suit No. 28 of 1922, without the formality of an order under O.1 Rule 10. The language of para. 17 closely follows the language of para. 18 and we think that the mahant and the members of the committee must be regarded as parties to Suit No. 28 of 1922 as soon as an application under the former paragraph is made by one with the other or others as opposite parties. This view of ours would not necessarily give all orders passed on applications made under that paragraph the effect of decrees. Only those orders would have that effect which would finally adjudicate the rights of the mahant and of the committee put

in issue. We accordingly overrule this preliminary point and hold that the appeal is competent.

9. Assuming the appeal to be incompetent, we hold that the alternative application in revision is maintainable. The learned District Judge did not give his decision on all the points which he was asked to decide and which fell within para. 17 of the scheme, but left them-namely the matters covered by points 3, 4, 7 and 8-to be decided by the parties. This brings the case within Clause (c) of Section 115, Civil P. C, if not within Clause (b). Mr. Ghose however submits that on that view we can interfere in revision only to the extent of supplying those omissions in the learned District Judge's order by giving our directions on those points and that we cannot consider or reopen in revision the points (points 1 and 2) on which the learned District Judge has given his decision. We cannot agree with this contention, for a consideration of those points (3, 4, 7 and 8), would necessarily involve a consideration of points 1 and 2 and a re-consideration of the learned District Judge's judgment on these two points. When considering the merits we would indicate to what extent we cannot agree with his conclusions on those two points. We are further of opinion that if the appeal had been incompetent we would have considered the case to be a fit one for the exercise of our revisional powers. We accordingly overrule the second preliminary objection also.

10. The committee would be entitled to prescribe its own rules for the conduct of its meetings. How the agenda is to be prepared, signed and circulated, how the minutes and proceedings to be recorded, etc., are matters for the committee to settle and prescribe by its own rules. But in determining the rights and powers of the mahant and the committee over the endowment (the shrine and its properties), we think that certain fundamental principles must be kept in sight. Those principles had been formulated by Lord Shaw in *Ram Prakash v. Anand Das*⁶ and were reiterated with approval by the Eight Hon'ble Mr. M. R. Jayakar in *Satish Chandra v. Dharnidhar Singha* :

The mahant is the head of the institution. He sits upon the guddi; he initiates the candidates into the mysteries of the cult, he superintends the worship of the idol and the accustomed spiritual rites, he manages the properties of the institution, he administers its affairs and the whole assets are vested in him as owner thereof in trust for the institution itself.

11. Under the general law the mahant is the head of the institution; it is he and he alone who has the power of management and administration over the whole institution, over the worship and the properties, and all the (officers are to be under his control and to act according to his direction in all matters concerning the institution. These powers can be curtailed by the civil Court in a scheme framed under Section 92, Civil P.C., but only to the extent indicated in the scheme either expressly or by necessary implication.;The claim of the members of the committee as laid in the

case before us, that the committee is supreme in all matters concerning the management of the properties of the institution, that the mahant is subordinate to the committee and that all the residuary powers beyond those which have been specially given to the committee by the scheme are in the committee and not in the mahant, cannot be supported. We think that the correct position is that the mahant is the supreme head of the Tarakeswar endowment, he is not subordinate to anyone, that all powers concerning the management of the shrine and the properties of the endowment are in him, and all powers incidental to or necessary for the management of the worship and the properties are in him, save and except those powers which have been taken away from him either in express terms or by necessary implication by the scheme itself and vested in the committee, (conveniently termed the committee of management. Bearing in view these principles we will not construe the scheme. The paragraphs of the scheme which have conferred rights and powers on the committee are paras. 9, 10, 11, 12 and 15. "We will hereafter define the rights and powers conferred on the committee by those paragraphs with as much precision as is possible or desirable. The rights and powers conferred by those paragraphs and in respect of the subjects mentioned therein as also rights and powers incidental or necessary to the exercise of those powers expressly given to the committee by those paragraphs of the scheme belong to the committee only and to that extent the rights and powers of the mahant, which he would have had under the general law, has been taken away from him. In residuary matters, namely those outside paras. 9, 10, 11, 12 and 15, the committee can only tender its advice to the mahant, which the latter in the exercise of his discretion may or may not follow, unless expressly directed to do so by the learned District Judge on an application made to him in terms of para. 17 of the scheme.

12. Paragraph 9 confers on the committee the power of appointing three named officers, the manager, the treasurer and the accountant. This power necessarily confers on it the power to appoint those officers on probation and to confirm them in their appointments after the probationary period. Those powers belong to the committee and not to the mahant. After their appointment those three officers are to act under the mahant, because the right to manage the endowment, the shrine and its properties, is in the mahant. But the committee has been expressly given the right of "supervisory control" over them. That necessarily gives the committee "supervisory control" over the management of the endowment, for the committee a "supervisory control" over those officers, and specially over the manager, necessarily implies a supervisory control over the manner in which those officers may be discharging their duties. Through those officers, and especially through the manager, the committee would be able to exercise "supervisory control" over the management and; administration. This in our opinion is necessarily implied. We proceed now to define the phrase "supervisory control." Control means the fact of checking and directing action; the function or power of directing and regulating. That

word is qualified by the word "supervisory." "Supervision" means general management, general direction, oversight or superintendence. It is difficult, and we think also undesirable in this case, to say precisely what matters would, in matters of management of the endowment, come within the term "supervisory control." One thing however seems to be apparent to us. The phrase does not mean interference with day to day administration or management of the endowment. That is the negative aspect. Supervision implies less interference and interference at times only; it implies only oversight or general direction. Control implies more than supervision. There is the additional quality of restraint. The last part of para. 9 would accordingly appear to us to mean that the committee will have the power of general supervision or superintendence over the management to be exercised through the three named officers and the power of giving general directions, regarding management, through those officers, which directions must be obeyed by all officers concerned in the management, and if in the course of its general supervision or superintendence it comes to notice laxity, indifference, negligence, misconduct, dereliction from duty of the manager, accountant or the treasurer or any defect in the system of management and administration it can control, that is, direct and check and provide for safeguards.

13. The members of the committee claim very large powers under para. 10. They maintain that the committee can make under that paragraph even minute and detailed rules of management and the rules so made would be binding on the mahant even if they have the effect of taking away from him the power of appointment, suspension and dismissal of any officer of the institution. In para. 13 (d) and (f) of their petition of objection such a claim has been put forward. We cannot accept that interpretation of para. 10. If that had been the intention of the Court which framed the scheme para. 10 would have been worded in different language. It would have then run as follows : "The committee will frame rules for the management of the estate." We must accordingly give proper significance to the additional words "its own subsidiary rules." The meaning of para. 10, in our judgment, is that the committee can make only such rules which relate to or concern matters within the sphere of its activity as indicated in the scheme, that is to say only in regard to such matters as are mentioned in paras. 9, 11, 12 and the last portion of para. 15 of the scheme. Many of these may be ad hoc matters, but it would be competent to make rules in respect of such of the matters mentioned in the above four paragraphs as may be regulated by rules, and if such rules are made they must be obeyed by the officers of the estate. The committee has no greater power or right under para. 10 of the scheme than that we have indicated above.

14. The control over the purse has been given to the committee. The power to sanction the budget has been vested in the committee and in making the expenditure the budget allotments will have to be followed subject to such rules or special directions that the committee may make.

The committee will have all the rights and powers which may be incidental to or necessary for the purpose of enabling it to sanction the budget. It will have the right to call for documents, papers, statements, account books, etc., from any officer of the institution and ask for all informations from them which may be required for the purpose of sanctioning the budget, and these requisitions must be obeyed by all. As the right of approval of the audit made by the auditor has been given to the committee, the committee will have the like power to call for any document, paper, account book, voucher, etc., from any officer of the estate or to ask for any relevant information from any officer and to enforce the attendance of any officer of the estate whose attendance the committee may consider necessary in order to check or verify the accounts or the auditor's report.

15. Those requisitions must be obeyed by all. In respect of the requisitions made by the committee under the powers which we have called incidental or necessary powers following from the powers expressly conferred on the committee by paras. 11 and 12 of the scheme, the mahant would be bound to assist the committee and it would be regarded as a breach of duty on the part of the mahant if he directly or indirectly encourages the officer concerned not to obey those requisitions or protects or shields an officer disobeying the committee. These observations of ours in respect of the mahant and the officers will cover cases of wilful breach of the rules by the officers of the estate, which the committee may take *intra vires* para. 10. Prayers 1 and 2 of the application of mahant, dated 3rd September 1938, are accordingly decided in the manner indicated above. Regarding prayers 3 and 4 we hold that the right to appoint the Chief Superintendent was in the mahant and we accordingly confirm his order in that respect. The mahant and not the committee had also the power to remove the medical officer. Prayer 5 does not arise for decision. It is not material now as the reference to the District Judge under para. 17 of the scheme has been made. We have already given our decision on prayer 6. The subject-matter of that prayer concerns the committee and its proceedings and it is the committee only which can regulate the matters mentioned in that paragraph. Prayer 7 is premature, for the committee has not yet adopted these bye-laws. It is at this stage only a proposal by some individual members of the committee.

16. The second prayer made in the petition of the mahant dated 4th January 1939, which we have termed the eighth point in the previous part of our judgment is disposed of in the following manner. The right to confirm the manager in his appointment is in the committee and the mahant cannot interfere with the committee's resolution, but the committee has no right to suspend the assistant temple superintendent. The mahant's order in respect of that officer must prevail. The learned District Judge has taken the correct view of the memorandum of agreement between the mahant and the late District Judge, Mr. S. Mukherjee, dated 27th August 1937. That agreement

cannot modify the scheme. It can confer no greater rights and powers on the committee than those given to it by the scheme or take away any of the rights and powers of the mahant which a mahant has under the general law, save and except what had been taken away from him and vested in the committee either expressly or by necessary implication by the scheme.

17. The result is that this appeal is allowed in part and the judgment of the learned District Judge is modified to the extent indicated above. The order of the learned District Judge (No. 33 of 20th February 1939) regarding the amount of costs is confirmed. The appellants and the mahant will have their respective costs of this Court and of the Court below from out of the estate. As Mr. Ramaprosad Mukherjee has appeared in person and does not pray for costs, so we do not allow him costs, nor so far as costs of this Court are concerned any costs to those members of the committee who have been made respondents. We assess the hearing fee of this appeal at 20 gold mohurs. The appellants would therefore get out of the estate as costs of this appeal 20 gold mohurs in addition to the paper-book costs and other costs incurred by them and the mahant would also get out of the estate 20 gold mohurs as hearing fee plus the paper-book and other costs incurred by him.

Cases Referred.

1('30) 17 AIR 1930 Mad 918

2('88) 11 Mad 26

3('18) 5 AIR 1918 Mad 1122

4('91) 18 Cal 469

5('11) 14 CLJ 489 at p. 497

6('16) 3 AIR 1916 PC 256 at p. 76