

CASE NO.:
Appeal (civil) 9493 of 1995

PETITIONER:
SRI SINGAM CHETTY ATTENDROOLOO & ORS.

Vs.

RESPONDENT:
THE STATE OF TAMIL NADU & ORS.

DATE OF JUDGMENT: 25/04/2001

BENCH:
S. Rajendra Babu & S.N. Variava

JUDGMENT:

S. N. VARIAVA, J.
L...I...T.....T.....T.....T.....T.....T.....T..J

This Appeal is against a Judgment dated 20th September, 1990. Briefly stated the facts are as follows:

Sometime in 1899 one Shri Singam Chetty Vakulabharanam Chetty registered a Deed of Settlement. For the purposes of this Appeal Clause 7 of this Deed of Settlement is relevant. It reads as follows:

"7. From the rents of landed properties from which incomes are derivable and from the interest and other incomes, the charges for the repair of houses and landed properties, taxes, etc., establishment and other expenses, the permanent expenses mentioned in list E and the expenses mentioned in list G shall be deducted every year, and out of the balance money, 20 per cent, shall be held in reserve and the residue shall be utilized from year to year as the Trustees deem fit, for the repair of the houses of Tengalai Vaishnavas, devotees ascetics, pious men, preachers and the poor, who live in Vaishnava sacred places and other sacred places, their food, education, thread investiture, marriages, and for the education of the poor and the young among us Vaisyas. If, however, the income be less than the expenses mentioned in the said lists E and G such deficiency shall be met from the reserve of 20 per cent, set apart in previous years and even if that reserve be exhausted all the other items of expenses for charity, etc., except the expenses for the worship of the family idols and for lectures shall be adjusted from time to time according to the income."

List E contained various donations of specific amounts, some of which were of a religious character and the others of secular and charitable character. List G contained donations to individuals. On 10th December, 1947 the Endowment Board passed an Order under Section 77 of The Hindu Religious and Charitable Endowments Act, 1927. (hereinafter called the Act). The Order was to the effect that 50 per cent of the income of the Trust should form

religious endowment to which the provisions of the Act would apply. Section 77 of the said Act reads as follows:

"77. (1) Where an endowment has been made or property given for the support of an institution which is partly of a religious and partly of a secular character or for the performance of any service or charity connected therewith, or

where an endowment made or property given is appropriated partly to religious and partly to secular uses, the Board may notwithstanding anything contained in the Madras Endowments and Escheats Regulation, 1817, determine what portion of such endowment or property or of the income therefrom shall be allocated to religious uses. Such portion shall thereafter be deemed to be a religious endowment and its administration shall be governed by the provisions of this Act.

(2) Any party affected by an order under sub-section (1) may within such time as may be prescribed apply to the court to modify or set aside such order but, subject to the result of such application, the order of the Board shall be final."

No application was made to any Court to modify or set aside this Order. Thus the Order became final.

In 1951 the Act was amended. In the amended Act, Section 57(g) was in terms identical to the old Section 77.

As in spite of the said Order the Appellants had not complied with the directions in the said Order, a notice was issued to them on 15th March, 1952. The Appellants then filed Application No. 75 of 1952 before the Deputy Commissioner. The prayer in this Application reads as follows:

"(8) It is therefore prayed that the Deputy Commissioner be pleased to hold that the endowments covered by the trust would not come under Section 57 (g) and that the petitioner be permitted to administer and carry out the endowments in the trust deed as per provisions made therein and the directions made in the order of the Deputy Commissioner dated 15-3-1952 be modified in the light of the provisions of the present Act and in view of the representation aforesaid."

The Deputy Commissioner by his Order dated 13th September, 1952 held that the directions given by him on 15th March, 1952 were in pursuance of the Order dated 10th December, 1947. It was held that that order had become final. It was held that the only remedy of the Appellants, if any, was to file a Petition to the Government under Section 103(b) of the Act.

The Appellants then filed an Application to the Government under Section 103(b). By an Order dated 2nd January, 1954 that Application was rejected as being time-barred. It was, however, mentioned that the Deputy Commissioner could be moved afresh for an Order under Section 57(g) of the Act.

The Appellants then moved the Deputy Commissioner under Section 57 (g) by way of Application No. 55 of 1954. Even

in this Application no challenge was made to the Order dated 10th September, 1947. The only prayer was as follows:

" (14) The Petitioners therefore pray that this Hon'ble Deputy Commissioner will be pleased to hold (a) that the charities enumerated in question in question in Schedule "E" to the trust deed have to be carried out with the amounts provided for therein, to be adjusted if need be at the discretion of the trustees in the contingencies set out in para 7 of the Trust Deed, and (b) to declare that the endowments do not come within the perview of Sec. 57(g) and that the allotment of 50 per cent of the income is illegal and do not binding upon the trust and to pass such further or other orders as are just and necessary in the circumstances. "

By an Order dated 25th June, 1954 the Application was dismissed on that ground that the Deputy Commissioner had no power to sit in Appeal over an order passed by the earlier Board. An Appeal against this Order was dismissed by the Commissioner on 27th October, 1954.

The Appellants then filed Suit No. 245 of 1955 in the City Civil Court at Madras. In this Suit they prayed that the Order dated 27th October, 1954 be set aside as it was ultra-vires the Hindu Religious and Charitable Endowments Act, 1951. This Suit was decreed on 20th November, 1959. The Commissioner filed an Appeal before the High Court of Madras. By a Judgment dated 5th August, 1969 the Appeal was allowed and the Suit was dismissed. In this Judgment it has been held that the Deputy Commissioner was right when he held that he had no jurisdiction to sit in an Appeal over an order passed by the earlier Board. It was held that Order had become final. It was held that the question whether or not there was outright devolution of property for religious and secular purposes was not free from doubt. It was held that in 1947 a bonafide dispute had arisen. The Judgment ends with the following observations:

"We are not mentioning any opinion as to whether the plaintiffs can agitate for their relief in independent proceedings for vacating the order of the Board. It will be open to them to take appropriate proceedings for the purpose if they are so advised."

Basing their case upon these observations the Appellants then filed Suit No. 32 of 1970 praying for an injunction against the Board from interfering with the Trust, its administration and control, either by themselves or from their Officers under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 or the earlier Acts. An injunction was also prayed against defendants on that ground that the previous Acts of the defendants were void and without jurisdiction. Thus now, for the first time, in an indirect method, the Order dated 10th December, 1947 was being challenged. To be noted that it had already been held by the earlier Division Bench, in its Order dated 5th August, 1969, that a bonafide dispute had existed in 1947. It had also been held that the Order dated 10th December, 1947 had become final. The earlier Division Bench had thus held that the Order of the Board dated 10th December, 1947 was with jurisdiction.

The learned single Judge thus dismissed the Suit on 10th

September, 1979. The Appeal as against that Judgment was dismissed by the impugned Judgment dated 20th September, 1990.

Mr. Parikh assailed the Orders on the ground that the Order of the Board dated 10th December, 1947 was without any jurisdiction. He submitted that the Board could only have passed an order provided Section 77 of the 1927 Act was applicable. He submitted that for Section 77 to become applicable there should be an endowment made or property given for support of an institution which was partly of a religious and partly of a secular character. He submitted that in this case there was no endowment to any particular institution. He submitted that therefore Section 77 did not at all apply and the Board had no jurisdiction.

It was next submitted that in any event the Deed of Settlement made specific contributions for specific purposes. It was submitted that where specific endowments have been made for specific purposes Section 77 would not apply. It was submitted that Section 77 would only apply if an general endowment was made or property given and that endowment or property was used partly for religious and partly for secular purposes. It is submitted that for this reason also Section 77 would not apply.

The challenge to Order dated 10th December, 1947, made at such a belated stage, could only be sustained provided the Order was without jurisdiction. The question whether the Order was without jurisdiction had already been decided against the Appellants by Order dated 5th August, 1969. The first portion of Section 77 undoubtedly talks about an endowment made or property given for support of an institution. But that is not the only provision. Section 77 also applies when an endowment is made or property given partly to religious and partly to secular uses. Clause 7 of the Trust Deed and List E show that endowments have been made and property given partly for religious and partly for secular uses. It, therefore, could not be said with absolute certainty that Section 77 did not apply. If there was a dispute as to whether Section 77 applied or not then the Board could decide the question and pass an Order. It did so on 10th December, 1947. Such an Order would be one which was passed with jurisdiction. As the same was not challenged within the time provided it became final as against the Appellants.

It was next submitted that as specific endowments had been made for specific purposes, the Order dated 10th December, 1947 was hit by Article 26 of the Constitution. It was submitted that neither the Board nor the Court could vary the intention of the settlor and sanction a deviation. In support of this submission reliance was placed on the cases of Goda Rao v. State of Madras reported in AIR 1966 SC 653 and Ratilal v. State of Bombay reported in AIR 1954 SC 388.

There can be no dispute with the general proposition that the intention of the settlor cannot be varied. However, in this case there is no variation or deviation from the intention of the settlor. All that has been done is that the provisions of the Act have been applied and the percentage which has to be used for religious purposes have been laid down.

Under the circumstances, we see no reason to interfere. The Appeal stands dismissed. There will be no Order as to costs.

JUDIS