C.M.P. Nos. 27597 and 27601 of 2023
in
W.A. No. 1282 of 2021

THE HON'BLE CHIEF JUSTICE
and
P.D.AUDIKESAVALU, J.

(Order of the Court was made by P.D. AUDIKESAVALU, J.)

This Court in the common order dated 09.11.2023 passed in W.A. Nos. 1218 and 1282 of 2021 and W.P. No. 6130 of 2021 (hereinafter referred to as 'the common order' for short) held, *inter alia,* that the Appellants in W.A. Nos. 1218 and 1282 of 2021 may seek modification or cancellation of the Scheme Decree dated 25.10.1926 in I.A. No. 93 of 1926 in O.S. No. 59 of 1920 passed by the Sub-Court, Chengalpattu (hereinafter referred to as 'the Scheme Decree' for short) by filing application by 30.11.2023 before the concerned authority under Section 64(5) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as the 'Act of 1959' for short).

2. The application in C.M.P. No. 27597 of 2023 has been filed for modification of the common order regarding the provision of law under which the Appellants in W.A. Nos. 1218 and 1282 of 2021 would have to seek modification or cancellation of the Scheme Decree, and the application in C.M.P. No. 27601 of 2023 has been filed for extension of time limit stipulated for filing the same.

3. Learned Counsel for the Appellant in W.A. No. 1282 of 2021 has brought to notice that inasmuch as the matter in the instant case pertains to a Scheme Decree framed for a 'Math', the application for its modification or cancellation would have to be made under Section 65 of the Act of 1959 before the Commissioner of Hindu Religious and Charitable Endowments Department of the Government of Tamil Nadu (hereinafter referred to as 'the Commissioner' for short), instead of the Joint Commissioner or Deputy Commissioner of Hindu Religious and Charitable Endowments Department of the Government of Tamil Nadu under Section 64 of the Act of 1959, which is confined to Religious Institutions other than Maths.

4. Inasmuch as Sections 64 and 65 of the Act of 1959 are similarly worded, Learned Counsel for the parties are in agreement that the principles laid down by the Hon'ble Supreme Court of India in ***T.Lakshmikumara Thathachariar -vs- Commissioner, H.R.C.E.*** [(1998) 6 SCC 643] in respect of 'other Religious Institutions' under Section 64 of the Act would stand extended to 'Maths' under Section 65 of the Act of 1959, and it has become necessary to make changes in that regard and extend time from 30.11.2023 to 31.01.2024 for the Appellants in W.A. Nos. 1218 and 1282 of 2021 to apply for modification or cancellation of the Scheme Decree before the Commissioner, in the common order.

5. In such circumstances, paragraph nos. 12 to 16 of the common order shall stand substituted as follows:-

> "12. In this backdrop, reference must be straight away made to the binding decision of the Hon'ble Supreme Court of India in ***T.Lakshmikumara Thathachariar -vs- Commissioner, H.R.C.E.*** [(1998) 6 SCC 643] cited by Learned Senior Counsel appearing for the Fourth Respondent in W.A. Nos. 1218 and 1282 of 2021 where the legal position arising in analogous circumstances has been discussed in the following words:-

"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 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, 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 i*nsofar 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."
>
> (emphasis ours)

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 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."

(emphasis ours)

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 -vs- Deputy Commissioner, H.R.C.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, negatived 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 -vs- 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 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 118(2)(*a*) is for the purpose of including in Section 64(5)(*a*) all those schemes settled or deemed to be settled under the Act of 1951 and saved by Section 118(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(*d*) 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 -vs-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 -vs- Deputy Commssioner, H.R.C.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 or Joint Commissioner. We do not see any attempt to set aside any decree of the Court by legislation in the present case. ″

In this context, it must be point out that as Sections 64 and 65 of the Act of 1959 are similarly worded and the principles laid down by the Hon'ble Supreme Court of India in ***T.Lakshmikumara Thathachariar -vs- Commissioner, H.R.C.E.*** [(1998) 6 SCC 643] in respect of 'other Religious Institutions' under Section 64 of the Act of 1959 would stand extended to 'Maths' under Section 65 of the Act of 1959, which reads as follows:-

"**65. Power of Commissioner to settle schemes.—**(1) When the Commissioner has reason to believe that in the interests of the proper administration of a math or a specific endowment attached to a math, a scheme should be settled for the math or the specific endowment attached to a math, or when not less than five persons having interest make an application in writing, stating that in the interests of the proper administration of the math or the specific endowment attached to the math, a scheme should be settled for it, the

Commissioner shall consult in the prescribed manner the trustee and the persons having interest ; and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, settle a scheme of administration for the math or the specific endowment attached to the math.

(2) A scheme settled under this section for the administration of a math or a specified endowment attached to a math may contain provision for—

(a) constituting a body for the purpose of assisting in the whole or any part of the administration of the endowments of such math or of the specific endowment:

Provided that the members of such body shall be chosen from persons having interest in such math or endowment

(b) defining the powers and duties of the trustee.

(3) The Commissioner may determine what the properties of the math or of the specific endowment attached to the math are and append to the scheme a Schedule containing a list of such properties.

(4)(a) The Commissioner may, at any time after consulting the trustee, by order, modify or cancel any scheme in respect of a math or a specific endowment attached to a math and in force and settled under sub-section (1) or any scheme in force settled or modified by the Board under the 1[Tamil Nadu] Hindu Religious Endowments Act, 1926 (1[Tamil Nadu] Act II of 1927), or deemed to have been settled under that Act or any scheme in force settled or modified by 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 subsection (2) of 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 of 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 subsection (2) of section 118 shall be made only subject to such conditions and restrictions as may be prescribed.

(b) If the Commissioner is satisfied that any such scheme referred to in clause (a) is inconsistent with this Act and the rules made thereunder, he may, at any time, modify it in such manner as may be necessary to bring it into conformity with the provision of this Act and the rules made thereunder.

(5) Every order of the Commissioner, settling, modifying or canceling scheme under this section shall be published in the prescribed manner and on such publication shall, subject to the provisions of sections 69 and 70, be binding on the trustee, the executive officer and all persons having interest."

Viewed from that perspective, it would necessarily follow that the Appellants in W.A. Nos. 1218 and 1282 of 2021 would have to invoke Section 65(4) of the Act of 1959, if they intend to seek any modification or cancellation of the Scheme Decree.

13. Learned Counsel for the Appellant in W.A. No. 1218 of 2021 attempts to persuade this Court that since the trial of the suit in O.S. No. 8 of 2016 instituted by the said Appellant before the Sub-Court, Chengalpattu, is at an advanced stage, all the disputes raised by the contesting parties could be comprehensively adjudicated in that proceeding. In this regard, it must be recapitulated that the Hon'ble Supreme Court of India in the decision in ***Idol of Sri Renganathaswamy -vs- P.K.Thoppulan Chettiar, Ramanuja Koodam Anandhana Trust*** [(2020) 17 SCC 96] has observed as follows:-

"26. .... Section 108 of the 1959 Act bars the jurisdiction of civil courts to try matters regulated by the provisions of the 1959 Act. Section 108 provides thus:

"**108.** ***Bar of suits in respect of administration or management of religious institutions, etc***.—

No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any court of law, except under, and in conformity with, the provisions of this Act."

In view of Section 108, no suit or legal proceedings in respect of the administration or management of a religious institution or any other matter for determining or deciding which provision is made in the Act shall be instituted in a civil court. Any dispute with respect of administration or management of religious institutions is governed in accordance with the provisions of the 1959 Act. ...."

That apart, any person aggrieved by an order passed by the Commissioner under Section 65(4) of the Act of 1959 is entitled to institute a suit instituted under Section 70(1)(ii) of the Act of 1959 before the jurisdictional Civil Court and further appeal under Section 70(2) of the Act of 1959 before the High Court. It cannot be gainsaid that the aforesaid provisions in the statute, which prescribe the manner in which a Scheme could be eventually modified or cancelled in a suit by the Civil Court and on appeal by the High Court, attracts the celebrated rule in ***Taylor -vs- Taylor*** [(1876) 1 Ch D 426] that has stood the test of time and has been quoted with approval by the Hon'ble Supreme Court of India in various decisions including in ***Ramchandra Keshav Adke -vs- Govind Joti Chavare*** [(1975) 1 SCC 559], that when a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performances are necessarily forbidden.

14. In view of the foregoing discussion, it is held that the suit in O.S. No. 8 of 2016 filed before the Sub-Court, Chengalpattu, by the Appellant in W.A. No. 1218 of 2021, is barred by Section 108 of the Act of 1959, read with Section 9 of the CPC, on account of the remedy available for seeking the said relief in an application under Section 65(4) read with Section 118(2) of the Act of 1959. It is needless to add here that by virtue of the *de facto* doctrine, as highlighted by the Hon'ble Supreme Court of India in ***Gokaraju Rangaraju -vs- State of Andhra Pradesh*** [(1981) 3 SCC 132], the parties are not precluded from making use of the documents produced and the deposition of witnesses examined in that suit as evidence in proceedings under

Section 65(4) of the Act of 1959 for modification or cancellation of the Scheme Decree, in the manner recognized by law.

15. Now what remains to be examined is the validity of the impugned order in W.P. No. 6130 of 2021, which is the Order Na. Ka. No. 1753-2/2020-S1 dated 28.05.2020 passed by the Commissioner, and the correctness of the order dated 02.02.2021 in W.P. No. 1640 of 2021 passed by the Learned Single Judge of this Court for implementing it assailed in W.A. Nos. 1218 and 1282 of 2021.

16. Inasmuch as the said orders are absolutely based upon the Scheme Decree, which was existing at the time when they were passed, they cannot *ipso facto* be invalidated merely because the Appellants in W.A. Nos. 1218 and 1282 of 2021 intend to seek modification or cancellation of the Scheme Decree. In such circumstances, the proper course to be adopted to meet the ends of justice would be to keep the said orders in abeyance till 31.01.2024 so as to enable the said Appellants to apply for modification or cancellation of the Scheme Decree under Section 65(4) of the Act of 1959 by that time, and if such applications are made, the concerned authorities would have to await their outcome, depending upon which further course of action would

follow in accordance with law. It is needless to add here that if the said Appellants fail to take recourse to such procedure within that time limit, it shall become incumbent upon the concerned authorities to forthwith carry out the directions of the Writ Court in the order dated 02.02.2021 in W.P. No. 1640 of 2021 for implementing the Order Na. Ka. No. 1753-2/ 2020-S1 dated 28.05.2020 passed by the Commissioner and file report of compliance by 30.06.2024 before the Registrar (Judicial) of this Court."

In the result, these Applications for modification of the common order, are disposed on the aforesaid terms.

(S.V.G., CJ.) (P.D.A., J.)
22.12.2023

vjt

Note: Registry is directed to issue corrected copy of the common order dated 09.11.2023 in W.A. Nos. 1218 and 1282 of 2021 and W.P. No. 6130 of 2021 to the concerned parties without collecting any extra charges for the same.

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU,J.

vjt

C.M.P. Nos. 27597 and 27601 of 2023
in
W.A. No. 1282 of 2021

22.12.2023