APPELLATE CIVIL.

Before Sir Charles Arnold White, Kt., Chief Justice, and Mr. Justice Oldfield.

1913. August 29 and September 8 and 23.

VASUDEVA AIYAR (PETITIONER), PETITIONER,

v.

THE NEGAPATAM DEVASTHANAM COMMITTEE AND ANOTHER (RESPONDENT AND PETITIONER), RESPONDENTS.*

Religious Endowments Act (XX of 1863), sec. 10—Temple Committee—Vacancy—District Judge—Court—Persona designata—*Civil Procedure Code (Act V of 1908), sec. 115.*

An order made by a District Court under section 10 of the Religious Endowments Act is an order revisable by the High Court under section 115, Civil Procedure Code (Act V of 1908).

Meenakshi v. *Subramanya* (1888) I.L.R., 11 Mad., 26 (P.C.), distinguished.

Gopala Ayyar v. *Arunachallam Chetty* (1903) I.L.R., 26 Mad., 85, referred to.

When a temple committee does not do its duty, and arrange for an election, the Court can make the appointment without reference to the committee or direct the remaining members of the committee to fill up a vacancy. The power of the committee in such a case being derived from the Court, an appointment by election thereafter is bad.

Ramanuja Iyengar v. *Anantaraman Iyer* (1896) 6 M.L.J., 1, dissented from.

PETITION under section 115 of the Civil Procedure Code (Act V of 1908) praying the High Court to revise the order of C. G. SPENCER, the District Judge of Tanjore, in Original Petition No. 377 of 1913.

The facts sufficiently appear from the judgment of WHITE, C.J.

K. Srinivasa Ayyangar, G. S. Ramachandra Ayyar and *S. Visvanatha Ayyar* for the petitioner.

The Honourable Mr. *F. H. M. Corbet, the Advocate-General, R. N. Ayyangar, T. Ranga Achariyar, S. Srinivasa Ayyar,* Messrs. *Grant & Grealorex* and *V. Varadaraja Mudaliyar* for the respondents.

WHITE, C.J. WHITE, C. J.—In this case, a preliminary objection has been taken by the learned Advocate-General that a Revision Petition does not lie.

* Civil Revision Petition No. 558 of 1913.

The order against which the Revision Petition has been presented is an order made by the District Judge of Tanjore under the powers conferred by section 10 of the Religious Endowments Act of 1863. Section 10 provides: "Whenever any vacancy shall occur among the members of a committee, a new member shall be elected to fill the vacancy by the persons interested." It goes on to provide "the remaining members of the committee shall . . . fix a day . . . for an election of a new member by the persons interested." It then declares, "whoever shall be then elected, under the said rules, shall be a member of the committee to fill such vacancy." Then the section goes on, "if any vacancy shall not be filled up by such election as aforesaid (within the prescribed period) the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy, or may order that the vacancy be forthwith filled up by the remaining members of the committee." If that order is not complied with, the Civil Court, under the section, may appoint a member to fill the said vacancy. The circumstances in which the order against which the present Revision Petition has been presented for 'order' are these. An application was made to the District Judge of Tanjore with reference to a vacancy in a certain temple committee, more than three months having expired since the vacancy occurred, asking the Court to order the committee to hold an election or to make such order as the Court might deem fit. On that, the District Judge on the 6th January 1913, made an order in these terms: "It is clear to me that it is the duty of the committee to fill up the vacancy by election and that there is no obstacle preventing them from doing so. I therefore order that the vacancy be forthwith filled up by the remaining members of the committee." The remaining members of the committee then proceeded to hold an election, and on the 25th January 1913 the managing members of the committee wrote to the District Judge informing him that an election had been held and that one Balakrishna Odayar had been elected there being no other candidate.

On the 17th April, the District Judge made an order calling on the managing members to show cause why the election should not be treated as invalid, and restraining Balakrishna Odayar from taking any part in the proceedings of the committee. On the 19th July 1913 two applications were made to the

VASUDEVA AIYAR v. THE NEGAPATAM DEVASTHANAM COMMITTEE.

WHITE, C.J.

District Judge of Tanjore. One of them was by Balakrishna Odayar. He asked for a declaration that his election was legal and valid. The other application was by a person interested asking that the vacancy among the members of the committee should be filled by nomination by the Court. The order which the learned District Judge made on these two applications was, "I therefore consider the election of M.R.Ry. T. A. Balakrishna Odayar was regular and I accept him as a member of the committee." It may be that these latter words "I accept him as a member of the committee" are surplusage. All that the learned Judge holds is that a good election had been held. It is obvious as it seems to me that the Judge did not intend to appoint Balakrishna Odayar. All he says is "I accept him." As I understand the order, the Judge accepted him, because in the view of the Judge, the election was good and the vacancy was duly filled up. It is sought to impeach this order on the ground that the procedure by election was bad, and that, if so, the Judge had no power either to accept him as a member of the committee in pursuance of the election or to appoint him. The order of the learned Judge seems to me to be an adjudication on the question whether, the procedure having been by election, Balakrishna Odayar was legally appointed. The question we have to decide is: Does a Revision Petition lie against such an adjudication.

The learned Advocate-General relied on the decision of the Privy Council in *Meenakshi* v. *Subramanya*(1). There, a District Court made an order appointing a certain individual a member of a temple committee. There was an appeal to the High Court and the ground of appeal was that the person appointed was not a suitable person for the office. The Privy Council held that there was no right of appeal from that order from the District Court to the High Court. The first ground upon which they based their decision was that the Act itself conferred no right of appeal. The right of appeal, it is scarcely necessary to say, is a creature of Statute. Their Lordships of the Privy Council say: "There is nothing in the Act which would suggest it, unless it is to be found in section 10." Then their Lordships say: "In the opinion of their Lordships the 10th section places the right of

(1) (1888) I.L.R. 11 Mad., 28 (P.C.).

appointing a member of the committee in the Civil Court not as a matter of Ordinary Civil jurisdiction, but because the officer who constitutes the Civil Court is sure to be one of weight and authority, and with the best means of knowing the movements of local opinion and feeling, and one can hardly imagine a case in which it would be more desirable that the discretion should be exercised by a person acquainted with district and with all the surroundings." They declined to consider the question whether there might not be a serious mischief without a remedy by reason of the fact that there was no appeal. They say "there is force in this argument, but whether a person so improperly appointed could, as has been suggested, be removed by proceedings equivalent to proceedings by *quo warranto* in England, or whether, upon a full consideration of the merits, the appellant could be considered as a person improperly appointed, are questions upon which their Lordships are not called upon to express an opinion." They express no opinion on the question whether proceedings by way of revision would lie, although it would appear from the argument of Mr. Doyne, who contended that there was a right of appeal, that reference was made amongst other enactments to section 622, the revision section of the old Code of Civil Procedure. In the Privy Council case there was no question of jurisdiction or of the powers under the Act and no question of the construction of any section of the Act. As I have said, the ground of appeal to the High Court was that the man whom the learned District Judge had appointed was unsuitable.

The question as to whether there was a right to proceed by way of revision from an order made under section 5 of the Religious Endowments Act, 1863, was raised in *Gopala Ayyar* v. *Arunachallam Chetty*(1), which came before me sitting alone. There the question arose under section 5 of the Religious Endowments Act, 1863. The Privy Council decision was with reference to section 10. But for the purpose of the point I had to determine no distinction can be drawn between the two sections. There was a revision petition to this Court against the order of the District Judge. A preliminary objection was taken that no revision petition lay. My attention was called

(1) (1903) I.L.R., 26 Mad., 85.

VASUDEVA AIYAR v. THE NEGAPATAM DEVASTHANAM COMMITTEE.

WHITE, C.J.

to the Privy Council decision, and it is scarcely necessary for me to say that, if I had been of opinion that the principle of the Privy Council decision applied to the facts of that case, I should have followed it; but the view I took was that the principle did not apply. There I pointed out that the question in the Privy Council case was one of appeal.

Our attention has been called to the decision of the Bombay High Court in *Balaji Sakharam* v. *Merwanji Nowroji*(1). There the question arose with reference to a section of the Bombay District Municipal Act Amendment Act of 1884. That enactment contains a section (section 23) providing that, where the validity of any election of a Municipal Commissioner is brought in question, the District Judge, after such inquiry as he deems necessary, may make an order confirming the election or setting it aside. The Chief Justice and PARSONS, J., were of opinion that "a District Judge acting under section 23 of the Bombay District Municipal Act Amendment Act, 1884, is not a Court within the meaning of the word in section 622 of the old Civil Procedure Code." They suggest that he was a *persona designata* apparently for a specific purpose. That seems to be so. It seems to me that under the Act in question the District Judge is a *persona designata* for a specific purpose and not an officer exercising judicial functions under the Act. As regards the Religious Endowments Act, it is clear that for the purpose of several sections of the Act, the District Court is not a *persona designata* but a Civil Court exercising jurisdiction under the Act. For instance, section 9 provides that no member shall be removed except by an order of a Civil Court. Section 14 is another section; section 16 is another under which the District Judge exercises judicial functions as a Civil Court and not as a *persona designata*. It seems to me it would be inconvenient if for certain purposes the District Judge is a Civil Court exercising judicial functions under the Act, and for other purposes under the Act he is a *persona designata* not exercising judicial functions. My learned brother calls my attention to section 18 which provides, "No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit." When an application is made to the

(1) (1897) I.L.R., 21 Bom., 279.

Court under section 18, the District Judge who constitutes the Court is asked to adjudicate judicially and not to exercise his discretion as a *persona designata*. I am told by my learned brother—he speaks from experience as a District Judge—that it is the practice of the High Court to entertain revision petitions from orders made under section 18 of the Act. I do not want to say more than is necessary for the purposes of this case. All I desire to say is that the order made in this case seems to me to be an order which might be impeached by way of a revision petition.

WHITE, C.J.

The only other point is the argument in connection with section 115 of the new Civil Procedure Code, which corresponds to section 622 of the old Code. It was suggested by the learned Advocate-General that the matter which he has argued was not a case, and that the District Judge was not a Court. It seems to me for the reasons I have already stated that the Judge in dealing with this matter was a Civil Court and that the matter was "a case." I think the preliminary objection fails and that the petition should be disposed of on the merits.

OLDFIELD, J.—I concur.

OLDFIELD, J.

This petition coming on again for hearing on the merits and having stood over for consideration, the Court delivered the following judgment:—

WHITE, C.J.—I have set out the facts of this case in dealing with the preliminary objection.

WHITE, C.J.

The question whether the learned Judge's order can be supported depends on the construction of section 10 of the Act of 1863.

The order of the learned Judge made on July 19, 1913, was a decision to the effect that by virtue of the fact that Balakrishna Odayar had been elected the vacancy in the committee had been legally filled up.

The scheme of section 10 appears to me to be this. In the first instance a vacancy is to be filled up by election, and provision is made for the time within which, and the manner in which, the election is to be held. Then the section lays down what is to be done, if the vacancy has not been filled up by election within the prescribed period. In that event the Court may appoint a person to fill the vacancy, or the Court may order

VASUDEVA AIYAR v. THE NEGAPATAM DEVASTHANAM COMMITTEE.

WHITE, C.J.

that the vacancy be forthwith filled up by the remaining members of the committee. Lastly, if the Court makes the order that the vacancy be filled up by the remaining members of the committee, and the order is not complied with, the Court may appoint a person to fill the vacancy. The object of the section would seem to be to prevent a dead-lock when the committee do not do their duty and arrange for an election, by providing that where an election has not been held within the prescribed time, the Court may make the appointment if it thinks fit, or if it does not think fit to do so, may order the remaining members of the committee to appoint. The section does not say either expressly, or, as it seems to me, by implication, that the remaining members of the committee are to hold an election before they appoint. No provision is made as to the time within which an election is to be held, the word "forthwith" indicates that what is to be done should be done at once. The holding of an election would involve further delay, which, I think, is what the legislature desired to obviate. If the construction adopted by the learned Judge is right, the mode of dealing with the situation created by the remaining members of the committee not doing their duty in the first instance by holding an election, is that the Court, if it does not think fit to make an appointment, should order the committee to do what the section required them to do. I should not be disposed to adopt this construction unless the language of the section was clear. It is not necessary to empower the Court to make such an order as a condition precedent, if it is not complied with, to the Court appointing, as the Court already has the power to appoint, if it thinks fit to exercise it, without reference to the committee.

It is to be observed that the rules made by the Madras Government for the election of Temple Committee members make no provision for the holding of an election after three months have elapsed since the vacancy occurred. The procedure prescribed by the rules would seem to apply only to an election held under paragraphs 1 and 2 of the section.

I should have had little difficulty as regards this question of construction, if it had not been for the decision of this Court in *Ramanuja Iyengar* v. *Anantaraman Iyer*(1). I am not sure

(1) (1896) 6 M.L.J., 1.

whether the facts are fully set out in the report, but the learned Judges no doubt held that where there has not been an election within three months of the vacancy, and the remaining members of the committee are ordered by the Court to fill up the vacancy, an appointment by a majority of the remaining members, without holding an election, is bad.

For the reasons I have stated I find myself unable to agree with the learned Judges as regards the construction of the section. In their judgment they observe that the construction which appears to me to be the right construction, would give the committee the power of taking advantage of their own default in not giving the notice and taking the action which under the section they are bound to take, and that it is reasonable enough to say that, if the committee abstain from acting, the appointment may be made by the Judge, but that it is quite another thing to confer this power on the committee as a result of their omission to comply with the law. With all respect, I cannot follow this reasoning.

No power is conferred upon the committee as a result of their omission to comply with the law. If they fail to comply with the law the Court can make the appointment without reference to the committee. If the Court is not prepared to do this it may direct the remaining members of the committee to fill up the vacancy. In that case the power of the committee is derived from the order of the Court, and the Court is not bound to give them this power unless it thinks fit to do so.

I do not think this question of construction was discussed in *Santhalva* v. *Manjanna Shetty*(1); but in my judgment in that case I made an observation to the effect that the surviving members of the committee must act so that the date of the election should be fixed not later than three months from the date of the vacancy and that, if they did not so act, their powers of election were gone.

The case in the Madras Law Journal to which I have referred has not been reported in the authorised reports and I observe that in Mr. Ganapathi Ayyar's book on the Law relating to Hindu and Muhammadan Religious Endowments the correctness of the decision is doubted. I am not prepared to follow it.

(1) (1911) I.L.R., 34 Mad., 1.

VASUDEVA AIYAR v. THE NEGAPATAM DEVASTHANAM COMMITTEE.

WHITE, C.J.

It occurred to us that, if we were satisfied that the remaining members of the committee would appoint Balakrishna Odayar if they were given an opportunity of doing so, it might not be necessary for us to interfere with the order of the District Court. The case was adjourned in order that the views of the remaining members might be ascertained. It would seem that they are not prepared to intimate what action they would take.

The order of the District Court must be set aside and the case sent back in order that the Court may deal with it by the light of this judgment.

We make no order as to the costs of the petitions to the District Court or of the revision petition to this Court. We direct that the costs of the remaining members of the committee be paid personally.

OLDFIELD, J.

OLDFIELD, J.—I agree.

APPELLATE CRIMINAL.

Before Mr. Justice Sadasiva Ayyar.

1913. September 8 and 25 and October 3.

Re NAGAPPA THEVAN AND ANOTHER (ACCUSED).*

Indian Penal Code (Act XLV of 1860), ss. 188 and 269—Epidemic Diseases Act (III of 1897), ss. 2 and 3—Local Government, delegation of powers to—Regulations under the Act—Rule 104 of the Regulations ultra vires of the Local Government.

A delegation under rule 104 by the Collector to a Divisional Officer of the power to call upon people to evacuate houses is illegal and an omission to comply with the order of such officer acting under such delegated authority is not an illegal omission.

CASE taken up for revision from the file of P. SARANGAPANI, the Stationary Second class Magistrate of Udumalpet, in Calendar Case No. 44 of 1913.

The second accused (Mohideen Khan Sahib) is renter of, and the first accused (Nagappa Thevan) seller in, a toddy shop situated in the eastern portion of Udumalpet.

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* Criminal Revision Case No. 284 of 1913. (Taken up Case No. 14 of 1913.)