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higher rent provided in the deed in case of breach of a covenant; but for future periods he is certainly entitled to claim the enhanced rent for the reasons given above. I would therefore set aside the decision of the lower Court and restore that of the District Munsif with costs here and in the Court below.

K.W.R.

APPELLATE CIVIL.

Before Mr. Justice Pakenham Walsh and Mr. Justice Varadachariar.

1934, December 12.

GUNDA NARANNA NAIDU (PLAINTIFF), APPELLANT,

v.

BHAIRI VENKATARAMAYYA BHUKTHA GARU AND TWO OTHERS (DEFENDANTS), RESPONDENTS*.

Madras Hindu Religious Endowments Act (I of 1925), ch. VI and sec. 59 (1) and (2)—Excepted temple under sec. 5 (5) (a)—Powers of the Hindu Religious Endowments Board—Code of Civil Procedure (Act V of 1908), sec. 92—Powers of Court under—Restrictions on the powers of the Board under Chapter VI.

In the case of "excepted temples" the Hindu Religious Endowments Board does not possess the powers which the Court has under section 92 of the Code of Civil Procedure except with regard to the framing of a scheme and calling for accounts as provided for in section 59 (1) of the Madras Hindu Religious Endowments Act (I of 1925), and there is clear indication in the Act that the powers in Chapter VI are restricted and do not go beyond those given to the Board under that chapter.

APPEAL against the decree of the District Court of Ganjam in Original Suit No. 55 of 1927.

* Appeal No. 120 of 1930.

H. Suryanarayana for appellant.

D. Ramaswami Ayyangar for *Government Pleader* (*P. Venkataramana Rao*) for respondents.

The JUDGMENT of the Court was delivered by PAKENHAM WALSH J.—The appellant brought this suit to set aside a scheme framed by the Hindu Religious Endowments Board with regard to the temple of Sri Hatakeswaraswami at Bhairi Singupuram. The scheme briefly was that the temple was to be administered by a body of trustees, three in number, who were appointed for a period of three years. The plaintiff, stating that he was the hereditary trustee, that he had not been guilty of mismanagement and that the scheme framed is unnecessary and *ultra vires*, brought the suit for setting aside the same. The Court held that the scheme was not *ultra vires*, and that it was not inadvisable, and upheld it with a small alteration that, though the plaintiff was not a hereditary trustee, he could not be turned out except by a suit at the end of three years. The finding was that the suit temple was an "excepted temple" under section 5 (5) (*a*) of the Act of 1925 and for the purpose of this appeal we propose to confine ourselves to that Act.

This being an "excepted temple", the power of the Board to frame a scheme is under Chapter VI ; and section 59 (2) of that chapter says :

> "If in settling a scheme for the administration of the endowments connected with a math, the Board considers it necessary to associate any person with, or constitute any separate body for participating or assisting in, the administration of such endowments, such person shall be a person having interest and such body shall consist exclusively of persons having interest in such math."

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The learned District Judge has overlooked the important fact that it is only a math which is here spoken of and not an "excepted temple"; and the question at issue is whether the Board has, in settling a scheme for an excepted temple, power to appoint such body as is contemplated under section 59 (2). The answer to this question will have to be looked for in the general scheme of the Act.

The definition of an "excepted temple"—this being one such—is as follows :—

Section 5 (5) (*a*).—"A temple which before 1801 was, and since 1863 has continued to be, under the sole management of a trustee whose nomination did not vest in, nor was exercised by, the Government nor was subject to the confirmation of the Government or of any public officer, . . . ".

We need not deal with the second clause (*b*) because the Court has found that the trustee here is not a hereditary trustee. Therefore, *ex hypothesi*, this is a temple in which the Government did not exercise the right of appointment of the trustee. Turning to section 69 of the Act, we find :

"The Board or Committee having jurisdiction over any math or temple . . . may institute a suit in the Court to obtain a decree—(*a*) appointing or removing the trustee of a math or excepted temple, . . . ".

Then follow further matters about which a suit may be brought, and it has to be noticed that clauses (*a*) to (*d*) correspond with section 92 of the Civil Procedure Code with the exception of the framing of a scheme and calling for accounts. When we find that the framing of a scheme and calling for accounts are the two matters specially provided for in section 59 (1) in the case of excepted temples, it seems quite clear that the Board does not possess the powers which the Court has under section 92 except with regard to

these two matters. This is clear indication that the powers in Chapter VI are restricted and do not go beyond those given to the Board under that chapter.

Virtually the argument which has been addressed to us for the respondents is to show that section 59 (2) was not intended to confer special power on the Board in the case of a math but merely to make a special restriction when the power under section 59 (1) is exercised with reference to maths. That view we cannot accept, looking to the general scheme of the Act. Similar arguments were adduced before one of us in Civil Miscellaneous Petition No. 3053 of 1934 where the question of the right of the Board to appoint a receiver to an excepted temple was under discussion. It was there argued that such rights were implied in the general powers of management which were conferred upon them. It was even argued that the provisions in section 73 of the Act of 1927 which correspond to section 69 of the Act of 1925 were merely to enable the Board *if they chose* to bring a suit for the purpose of appointing or removing a trustee. If the argument urged before us, that the general power of administration presumed to be given under section 14 covers everything which is not expressly forbidden, be correct it would follow that the methods prescribed for appointing or removing a trustee, as well as other reliefs for which section 69 expressly states the Board may go to the Court, are really superfluous. It is beside the point that the Court acting under section 92 of the Code of Civil Procedure or the Board or Committee when dealing with non-excepted

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temples can appoint *additional* trustees, because here we are dealing with the powers of the Board in respect of an "excepted temple" which is clearly differentiated throughout the Act.

In this view, it is clear that the first three clauses of the scheme, (*a*), (*b*) and (*c*), are *ultra vires*. Clause (*d*) of the scheme states that the trustee shall take immediate possession of all the temple properties and lease them out by public auction. This is apparently intended to refer to property in the possession of the number of persons mentioned and referred to in issue No. 3. The whole extent of the temple properties appears to be about forty-eight acres, of which sixteen acres and odd are in the possession of the plaintiff. The lower Court says that he is one of the alienees, but that is clearly wrong. His possession is evidently on behalf of the temple. As regards the other properties they admittedly have been held for a long time by those in possession, and there are no materials available on the record as to the terms of the grant and whether the property was granted to them or to the temple. Therefore the direction that the trustees shall take immediate possession of all the temple properties and lease the same appears inadvisable without further enquiry. Malfeasance with regard to the land was the only charge which the Board found established against the plaintiff and in our opinion it has not been proved that he was at fault in this matter. There is no evidence which would justify us in saying that he was necessarily remiss in this matter or that this is a wise direction to give to him. We therefore consider that the whole scheme should be set

aside and this appeal allowed. The plaintiff will be well advised in his own interest to take proper advice as to whether any of these lands in the possession of the alienees can be recovered for the temple and if so to take the necessary steps.

In the circumstances of the case, as there is a question of law and as the appeal is partly due to the fact that the lower Court did not at all notice that section 59 (2) mentions only maths and not excepted temples, we direct that each side shall bear its own costs both here and in the lower Court.

G.R.

APPELLATE CRIMINAL.

Before Mr. Justice Cornish.

IN RE P. R. SUBBIER AND SIX OTHERS (ACCUSED), PETITIONERS.*

1934, September 5.

Madras City Police Act (III of 1888), secs. 6, 42, and 47—Search warrant issued by Deputy Commissioner—Validity of, in absence of proof that power to issue same has been deputed by Commissioner—Sworn information not required—Faulty description of premises not fatal to validity of warrant, if description sufficient to identify—Forfeiture under sec. 47.

By virtue of section 6 of the Madras City Police Act (III of 1888), a Deputy Commissioner of Police has power to issue a warrant under section 42 of that Act. The power is conferred on the Deputy Commissioner by the Act and not by an order of the Commissioner. Such a warrant issued by the Deputy Commissioner is therefore valid even in the absence of proof that the power to issue the same had been deputed to him by the Commissioner.

Forsyth v. *Wilson*, (1893) I.L.R. 20 Calc. 670, followed.

* Criminal Revision Case No. 965 of 1933.