

## APPELLATE CIVIL—FULL BENCH.

Before Sir Lionel Leach, Chief Justice, Mr. Justice Gentle  
and Mr. Justice Krishnaswami Ayyangar.

IN RE A PLEADER, RESPONDENT.\*

1939,  
December 5.

*Legal Practitioners Act (XVIII of 1879), sec. 13—High Court directing District Judge to hold an inquiry—District Judge delegating his power to Additional District Judge—Legality of—Madras Civil Courts Act (III of 1873), sec. 3-A—Applicability of.*

On receipt of a complaint against the respondent, a pleader, for professional misconduct, the High Court directed the District Judge to hold an inquiry into the allegations, the case falling within section 13 of the Legal Practitioners Act. Without making any reference to the High Court, the District Judge directed the Additional District Judge to hold the inquiry, which he did, and his report was submitted to the High Court.

*Held*, that the District Judge had no power of delegation as he had been directed by the High Court to hold the inquiry himself, and that the findings of the Additional District Judge could not be accepted *ex post facto* and should be set aside.

When the High Court directs a District Judge to hold an inquiry into a charge of professional misconduct, the District Judge does not hold the inquiry under the Legal Practitioners Act but under the order of the High Court. He has no authority under section 3-A of the Madras Civil Courts Act, 1873, to transfer that duty to the Additional District Judge.

NOTICE under section 13 (b) of the Legal Practitioners Act issued to a First-Grade Pleader, Coimbatore, calling upon him to show cause why he should not be dealt with under the disciplinary jurisdiction of the High Court for grossly improper conduct in the discharge of his professional duty.

*T. R. Venkatarama Sastri* (with him *M. Krishna Phayathi*) for respondent.—I take a preliminary objection that the

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inquiry held is illegal and this Court cannot take action on it. This case falls under section 13 of the Legal Practitioners Act. The High Court directed the District Judge to hold the inquiry. The District Judge delegated his power to the Additional District Judge. This is illegal. Under the section where a High Court names a particular person to hold the inquiry, he alone has the power. He has no authority to delegate his power to another person. When a person other than the one named by the High Court has held the inquiry, the High Court cannot approve of it. When a case is sent for a finding to the District Judge, he alone must inquire and submit the findings; *Sairi v. Ganeshi*(1), *Ali Sher Khan v. Ahmad Ullah Khan*(2) and *Labh Singh v. Ram Lal*(3) On the analogy of those cases I submit that, when the District Judge is directed to hold the inquiry by the High Court, he alone must conduct it. The inquiry made by a different person is illegal and his report cannot be considered. Section 3-A of the Madras Civil Courts Act applies to the functions he has to discharge under that Act, viz., hearing of civil suits and appeals. That power cannot be availed of for this purpose. It does not apply to a matter like the present which comes up to him by delegation. The proceedings under the Legal Practitioners Act are not of a civil nature. The District Judge has no authority to delegate his power and the inquiry made by the Additional District Judge is illegal and cannot be considered.

*The Advocate-General (Sir A. Krishnaswami Ayyar) for the Crown.*—The respondent has not taken this objection in the lower Court. On the other hand he acquiesced and took part in the proceedings. So he cannot be allowed to raise the objection now. The words “after such inquiry as it thinks fit” in section 13 of the Legal Practitioners Act are wide enough to permit the High Court to give approval to the inquiry made by the Additional District Judge when the High Court thinks that the inquiry is proper. If the High Court is satisfied with the present inquiry, it can act on it though not made by the District Judge. The District Judge has got authority to delegate his power under section 3-A of the Madras Civil Courts Act. The words “any other law

(1) (1891) I.L.R. 14 All. 23.

(2) (1907) I.L.R. 29 All. 660.

(3) (1924) I.L.R. 5 Lah. 252.

for the time being in force" include the Legal Practitioners Act. The inquiry to be held by the District Judge is a function assigned to him as a Court. The normal incidents of that Court are therefore attracted. If the High Court has the power to direct the District Judge to make the inquiry under section 13 of the Legal Practitioners Act, then it becomes a function of the District Court by law, and the District Judge can transfer the case to the Additional District Judge by virtue of section 3-A of the Madras Civil Courts Act. [Sections 3-A, 12 and 13 of the Madras Civil Courts Act were referred to.]

[LEACH C.J.—This is neither a civil suit nor a civil appeal. Under what law can the District Judge transfer the inquiry which the High Court directed him to hold?]

The Letters Patent authorises the High Court to remit cases. On remittal it becomes the function of the District Judge and he can assign the duty to another person under section 3-A of the Madras Civil Courts Act. The Legal Practitioners Act is included in the words "any other law for the time being in force" mentioned in section 3-A. So the delegation of the power by the District Judge to make the inquiry is legal and the High Court can consider the report sent by the Additional District Judge. At best it is a question of procedure. It is not a question of inherent incompetency. Even if the procedure followed is irregular, the party submitted himself to the inquiry made and acquiesced in it. No injustice is caused to the party and there is no allegation to that effect. In these circumstances the inquiry by the Additional District Judge is legal and his report can be considered by the High Court. [*National Telephone Company, Limited v. Postmaster-General*(1) was referred to.]

*T. R. Venkatarama Sastri* in reply.—The words "any other law for the time being in force" in section 3-A apply to special Acts such as the Indian Divorce Act, Indian Companies Act, Indian Succession Act, etc., and does not apply to the Legal Practitioners Act, the proceedings of which are not of a civil nature. The power delegated to the District Judge is personal and not a duty which he has to discharge under the Madras Civil Courts Act. The power to conduct the inquiry does not come under section 3-A and it is

(1) [1913] A.C. 546 at 562.

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a function delegated to him by the High Court to discharge it personally and he has no authority to transfer his power to another person. So the inquiry is illegal and the High Court cannot consider the report.

*Cur. adv. vult.*

### ORDER.

LEACH C.J.

LEACH C.J.—The respondent is a pleader practising in the Coimbatore District. In February 1937 one G. Thimmappa, a merchant, residing and carrying on business in Bellary, presented a petition to this Court in which he charged the respondent with professional misconduct. The Court considered that the charges made called for inquiry and passed an order directing the District Judge of Coimbatore to hold the inquiry, the case falling within section 13 of the Legal Practitioners Act. When the matter came before the District Judge the petitioner filed a statement in which he said that he was satisfied that the respondent, who had been his pleader for a considerable time, had not acted *mala fide*, and that his claim had been settled by the respondent, and he wished to withdraw the petition. In the circumstances, the District Judge thought it unnecessary to proceed with the inquiry and submitted the record to this Court with his remarks. This Court considered that the District Judge should have proceeded with the inquiry, notwithstanding that the petitioner had expressed a desire to withdraw the petition. Where the Court has reason to believe that a practitioner may have been guilty of professional misconduct it cannot allow proceedings to be dropped as the result of an agreement between the complainant and the practitioner or even if the complainant without any agreement does not wish to proceed with the matter.

By an order dated 7th March 1939 the Court remanded the case to the District Judge with direction

to proceed. Without reference to this Court the District Judge directed the Additional District Judge to hold the inquiry, which he did, and his report is now before us. Mr. Venkatarama Sastri on behalf of the respondent has raised a preliminary objection. He says that, inasmuch as the inquiry has been conducted not by the District Judge, who was directed to hold the inquiry, but by the Additional District Judge, it is unlawful and the Court cannot take action on it. In other words, he says that the District Judge, having been ordered to hold the inquiry, could not delegate his power to the Additional District Judge and that this Court is precluded from giving approval *ex post facto* to the inquiry conducted by the Additional District Judge. The learned Advocate-General has contended that if the Court is satisfied with the report it can take action on it. He has also contended that the District Judge had full power by reason of section 3-A of the Madras Civil Courts Act, 1873, to transfer the matter to the Additional District Judge. Further he has said that, inasmuch as the respondent did not take objection to the Additional District Judge holding the inquiry when the matter was in the District Court but appeared and took part in the proceedings throughout, he cannot now be allowed to raise the objection.

I will deal first with the argument advanced by the learned Advocate-General that the finding of a tribunal of inquiry can be accepted notwithstanding that the tribunal was not appointed by the Court for the purpose. The opening clause of section 13 of the Legal Practitioners Act is in these words :

“The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any pleader or mukhtyar holding a certificate as aforesaid.”

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It is said that the words "after such inquiry as it thinks fit" leave it open to the Court to give approval *ex post facto*. I am unable to accept this argument. The Act contemplates the High Court directing an inquiry before action is taken. The Court has duties to perform under the Act and the first duty is to nominate a person or persons to hold the inquiry into the alleged misconduct. Unless the tribunal is constituted beforehand, the inquiry, in my opinion, cannot be lawful. I regard the suggestion that approval of a tribunal may be given *ex post facto* as being repugnant to the spirit of the Act and the wording of section 13.

The argument that, because no objection was raised in the District Court to the Additional District Judge conducting the inquiry, he cannot be allowed to raise the objection now is also one which I cannot accept. If the tribunal which conducted the inquiry was not validly constituted, acquiescence in the proceedings would not turn it into a lawful tribunal. If illegal in its inception, illegal it would remain.

The only argument which calls for serious consideration is the argument that section 3-A of the Madras Civil Courts Act gave the District Judge power to direct the Additional District Judge to conduct the inquiry. That section reads as follows :

"When in the opinion of the High Court, the state of business pending before the Judge of any District Court (hereinafter called the District Judge) so requires, the Local Government may appoint one or more Additional District Judges to that Court for such period as they may deem necessary. The Additional District Judges so appointed shall discharge all or any of the functions of the District Judge, under this Act or any other law for the time being in force which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers as the District Judge."

Therefore an Additional District Judge may lawfully deal with matters which come within the province of the District Judge under the Act or any other law for the time being in force. The Civil Courts Act only refers to civil suits and appeals from Judges subordinate to the District Judge. The matter now before us is neither a suit nor an appeal. The learned Advocate-General has, however, said that the present case falls within the words "or any other law for the time being in force". I consider that the Legislature had here in mind Acts such as the Indian Companies Act, the Indian Divorce Act and the Succession Act, which confer upon a District Judge jurisdiction in specified matters. If there were a clause in the Legal Practitioners Act which directed the District Judge to hold the inquiry in a case like the present one he certainly would have power under section 3-A of the Madras Civil Courts Act to assign the inquiry to the Additional District Judge, but there is nothing in the Legal Practitioners Act which directs the District Judge to hold the inquiry. The Act leaves the matter entirely in the hands of the High Court. The High Court and not the Act nominates the tribunal. Therefore when the High Court directs a District Judge to hold an inquiry into a charge of professional misconduct the District Judge does not hold the inquiry under the Act but under the order of the High Court. Before a District Judge can be allowed to pass on his duty to some one else there must be very clear authority for his action. Certainly the Madras Civil Courts Act does not provide it. In my opinion, the District Judge having been directed by this Court to hold the inquiry he had no power of delegation. No doubt he thought that he had authority under section 3-A of the Madras Civil Courts Act to transfer the duty to

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the Additional District Judge, but I consider that in so doing he erred. It would have been a different matter if he had received the sanction of this Court beforehand, but he directed the Additional District Judge to hold the inquiry without making any reference to this Court.

It follows from what I have said that I am not prepared to read section 3-A of the Madras Civil Courts Act in the way suggested by the learned Advocate-General and I feel bound to uphold the preliminary objection raised on behalf of the respondent. The findings of the Additional District Judge will be set aside and the District Judge directed to hold a fresh inquiry into the allegations made against the respondent and present his own report to this Court in due course. In order to prevent any misunderstanding I would add that this Court has not considered the findings of the Additional District Judge and will deal with the charges against the respondent merely on the report of the District Judge when it is submitted.

GENTLE J.—I agree.

KRISHNASWAMI AYYANGAR J.—I agree.

V.V.C.

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