

APPELLATE CIVIL.

*Before Sir Lionel Leach, Chief Justice, and
Mr. Justice Kunhi Raman.*

R. V. & CO. (APPLICANTS), PETITIONERS,

v.

HINDU RELIGIOUS ENDOWMENTS BOARD, MADRAS,
AND TWO OTHERS (RESPONDENTS), RESPONDENTS.*

*Madras Hindu Religious Endowments Act (II of 1927), ss. 76
and 34—Former section if an exception to latter—Sec. 76 (1)
—Lease lawfully sanctioned by temple committee under, and
executed by the trustee and registered—Cancellation of, by
the Hindu Religious Endowments Board, under sec. 34 of
Act—Power of.*

The trustee of a non-excepted temple granted a lease of lands belonging to the temple to the petitioner and the lease was duly sanctioned by the temple committee. A third party feeling aggrieved at the granting of the lease moved the Hindu Religious Endowments Board to cancel it. The Board considered that the resolution of the committee sanctioning the lease was improper and not in accordance with the requirements of the law and made an order calling upon the petitioner to show cause why the lease should not be cancelled. Pursuant to that order the Board called upon the temple committee to submit a report on the action taken by the committee in sanctioning the lease. In passing those orders the Board purported to be exercising powers conferred upon it by section 34 of the Madras Hindu Religious Endowments Act, 1927. On an application by the petitioner for the issue of a writ of *certiorari* with the view to the quashing of the proceedings taken by the Board for the cancellation of the lease,

held: The temple committee had full power under section 76 (1) of the Madras Hindu Religious Endowments Act to sanction the lease and, inasmuch as the lease was lawfully

* Civil Miscellaneous Petition No. 2002 of 1939.

sanctioned by the committee, executed by the trustee and registered, the petitioner obtained a title which could only be taken away from him under the procedure contemplated by section 76 (2) of the Act, namely, an application to the Court. The action of the Board in taking steps with a view to the cancellation of the petitioner's lease under section 34 of the Act was unlawful and the proceedings must be quashed.

Section 76 of the Madras Hindu Religious Endowments Act must be regarded as an exception to section 34 of that Act.

Churchill v. Crease(1) relied upon.

PETITION praying that in the circumstances stated in the affidavit filed therewith the High Court may be pleased to issue an order calling for the records and the order in Original Application No. 121 of 1939 on the file of the Hindu Religious Endowments Board, Madras, and to quash the said proceedings by the issue of a writ of *certiorari*.

Srinivasaraghavan and *Thyagarajan* for petitioner.

V. V. Chowdary and *M. Seshachalapathi* for first respondent.

T. V. Ramiah and *K. Parasurama Ayyar* for second respondent.

N. T. Raghunathan for third respondent.

The JUDGMENT of the Court was delivered by LEACH C.J.—The petitioner has applied for the issue of a writ of *certiorari* with the view to the quashing of the proceedings taken by the Hindu Religious Endowments Board for the cancellation of a lease granted to him by the trustee of the temple of Sri Adimoolleswarar, Agaram, Chidambaram Taluk, South Arcot district. Notice was issued to the Board and the Court has heard the arguments of the learned Advocates who have appeared for the respective

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parties. In August 1938 the petitioner applied to the trustee of the temple for a lease for a term of ninety-nine years of certain lands belonging to the temple. His intention was to utilize the lands for salt pans. The trustee granted the lease and it was registered on 29th of August, but it had not been sanctioned by the South Arcot temple committee and therefore admittedly it was invalid. On 30th November 1938 the matter of the lease was considered by the committee which resolved to cancel it, but decided to sanction a new lease for a period not exceeding twenty-five years. In pursuance of the resolution passed by the committee the trustee granted a lease to the petitioner on the same terms as the cancelled lease except that the period was reduced from ninety-nine years to twenty-five years. The resolution of the committee can only be read as sanctioning a lease on the same terms as the previous lease with this modification.

In the neighbourhood of the land covered by the lease are salt pans owned by a salt contractor carrying on business under the style of Sri Sivananaintha Nadar & Co. The proprietor of this firm felt aggrieved at the granting of the lease to the petitioner and moved the Board to cancel it. The result was that the petitioner was called upon to show cause why his lease should not be cancelled. The decision of the Board was embodied in an order, dated 5th April 1939. The Board considered that the resolution of the committee sanctioning the lease was improper and not in accordance with the requirements of the law. The reasons for this opinion are stated and are these: the committee had not shown why a lease for twenty-five years should be granted; when a lease is granted for more than five years, section 76 of the Madras Hindu

Religious Endowments Act, 1927, requires it to be established that it is necessary or beneficial to the temple and this had not been done; the lease had been given privately and not as the result of public auction; the lease would not be beneficial to the temple and it would change the character of the land, there being on it seventy tamarind trees bearing fruit. The area covered by the lease is twenty-four acres. In pursuance of this order the Board called upon the temple committee to submit a report on the action taken by the committee in sanctioning the lease. It is admitted that in passing these orders the Board purported to be exercising powers conferred upon it by section 34 of the Act. The petitioner says that the section does not vest the Board with power to cancel the lease and that action with a view to its cancellation can only be taken under the provisions of section 76.

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Section 34 of the Act reads as follows :

“(1) The resolutions of a committee shall be carried into effect by its President in whom the entire executive power of the Committee shall, save as hereinafter provided, be vested.

(2) (a) All the resolutions of a committee shall be notified to the Board within one week after they are passed.

(b) The Board may call for any record or proceedings or other document or paper from any committee for the purpose of satisfying itself as to the correctness, regularity or propriety of any order or proceedings recorded or passed by such a committee.

(3) (a) The Board shall have the power of staying, for reasons to be recorded by it, the execution of any of the resolutions of the committee and remitting the same to the committee for reconsideration.

(b) If the committee upon such reconsideration confirm the said resolutions, the Board may, whenever it deems such

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step necessary in the interests of the temple affected or the proper management of the affairs of the committee, modify or cancel the said resolutions.”

Section 76 is in these terms :

“ (1) No exchange, sale or mortgage and no lease for a term exceeding five years of any immovable property belonging to any math or temple shall be valid or operative unless it is necessary or beneficial to the math or temple and is sanctioned by the Board in the case of maths and excepted temples and by the committee in the case of other temples.

(2) The trustee of the math or temple or any person having interest may, within one year of the date of the order of the Board or committee under sub-section (1), apply to the Court for modifying or cancelling such order.

(3) The order of the Board or Committee under sub-section (1) when no application is made under sub-section (2) and the order of the Court when such application is made shall be final.”

The temple with which this application is concerned is a non-excepted temple and therefore the temple committee had full power under sub-section 1 to sanction the lease.

The learned Advocate for the petitioner contends that inasmuch as the lease was lawfully sanctioned by the committee, executed by the trustee and registered, he has obtained a title which can only be taken away from him under the procedure contemplated by sub-section 2 of section 76, namely, an application to the Court. There can be no doubt that this contention is sound, unless section 76 must be read as being subject to section 34. For the Board it is said that section 76 must be read as being subject to section 34 because all the provisions of section 34, except those of sub-section 1, were added by a later Act, namely, the Madras Hindu Religious Endowments Act of 1930.

The rule of construction to be applied here was stated by BEST C.J. in *Churchill v. Crease*(1).

“The rule is, that where a general intention is expressed, and the Act expresses also a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an exception.”

There has been no modification of this rule by subsequent decisions. Therefore section 76 must be regarded as an exception to section 34. I cannot accept the argument that the fact that sub-sections 2 and 3 of section 34 were inserted later affects the rule. No doubt it was the intention of the Legislature in amending section 34 to invest the Board with large powers and it is the intention of the Act that the Board shall have powers of superintendence, but this does not mean that the Board has the power to interfere with the rights of third parties. That is what the Board is contemplating doing here. The Board would have power to interfere with a resolution of the temple committee before the resolution is carried into effect and in some cases it may have power to interfere after the resolution has been given effect to, but it has not got the power to cancel a lease. The Legislature has placed the power of interference expressly in the Court and if the action of the temple Committee in sanctioning the lease was improper, the Court, and the Court alone, can interfere. The action of the Board in taking steps with a view to the cancellation of the petitioner's lease under section 34 is unlawful and the proceedings must be quashed. This does not mean that the Board will not be able to call for a report from the temple committee with a view to possible action under section 76, but it cannot cancel the lease as it obviously intends to do.

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I would add that the learned Advocate for the petitioner appeared before the Board before the passing of the order on 5th April 1939 and made representations which he has made to us to-day, but there is no reference in the proceedings to this and action was taken by the Board in spite of the protest against its validity.

The petitioner is entitled to his costs which will be paid by the first and second respondents. The third respondent, the trustee, has not opposed the application.

N.S.

APPELLATE CIVIL.

*Before Mr. Justice Mockett and Mr. Justice
 Krishnaswami Ayyangar.*

DUVVADA NANDESAM CHOWDARI
 (SECOND DEFENDANT-PETITIONER), APPELLANT,

1939,
 August 3.

v.

DUVVADA BALAKRISHNAMMA CHOWDARI AND NINE
 OTHERS (PLAINTIFF AND DEFENDANTS 1, 3, 5, 7, 8, 11,
 12, 14 AND 15—RESPONDENTS), RESPONDENTS.*

*Code of Civil Procedure (Act V of 1908), sec. 2 (d)—Decree—
 Definition of—Partition—Suit for—Preliminary decree—
 Subsequent application to allot certain items to certain
 members—Order on—Appeal from—Incompetency of, order
 not being a decree within section 2 (d).*

An order passed on an application, taken out in a partition suit by a party therein after the passing of the preliminary decree, praying the Court to allot certain items to the share of certain members in order that the applicant's possession

* Appeal No. 174 of 1936.