

APPELLATE CIVIL.

Before Mr. Justice Mockett.

THE DISTRICT BOARD OF WEST TANJORE, REPRESENTED BY ITS PRESIDENT (PLAINTIFF—COUNTER-PETITIONER), PETITIONER,

1939,
July 21.

v.

PONNUSWAMI PALLAVARAYAR (DEFENDANT—PETITIONER), RESPONDENT.*

Madras Agriculturists Relief Act (IV of 1938), sec. 4, cl. (c)—Sum due to local authority—Meaning of—Income from endowments and trusts derived by District Board by reason of operation of ss. 63 or 64 of Madras Local Boards Act (XIV of 1920), if sum due to District Board within meaning of sec. 4, cl. (c), of Madras Act IV of 1938.

A District Board granted to the respondent a lease of properties appertaining to a chatram the administration of which had been made over to it by the Board of Revenue under section 63 of the Madras Local Boards Act, 1920. It obtained a decree against the respondent for arrears due under the lease. The respondent who was an agriculturist within the meaning of the Madras Agriculturists Relief Act, 1938, invoked the protection of the Act. The question was whether, by reason of section 4, clause (c), of the Act, the respondent was outside its protection.

Held: that section 4, clause (c), was wide enough to include any money due to a local authority and that the provisions of that clause placed the respondent outside the protection of the Act.

Income from endowments and trusts under the management of a District Board comprise income from endowments and trusts whether derived by reason of the operation of section 63 or 64 of the Madras Local Boards Act. That income is the district fund; it is recoverable only by

* Civil Revision Petition No. 306 of 1939.

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the local authority and is therefore a sum due to the local authority.

PETITION under section 25 of Act IX of 1887, praying the High Court to revise the order of the Court of the District Munsif of Pattukottai, dated 19th September 1938 and made in Execution Application No. 197 of 1938 in Execution Petition No. 290 of 1938 in Small Cause Suit No. 293 of 1937.

T. R. Venkatarama Sastri and *T. B. Balagopal* for petitioner.

Respondent was not represented.

JUDGMENT.

MOCKETT J.

MOCKETT J.—This Civil Revision Petition raises a nice question under section 4, clause (c), of the Madras Agriculturists Relief Act of 1938 read with certain provisions of the Madras Local Boards Act. The respondent has unfortunately not been represented but I have had the advantage of hearing Mr. T. R. Venkatarama Sastri who has placed before me all the relevant provisions of the Acts relating to the matter under consideration.

The only facts that need be stated are that under section 63 of the Madras Local Boards Act the administration of the Mukthambalpuram chatram at Orathanad was made over by the Board of Revenue to the District Board. The defendant is a lessee of certain properties, part of the trust, and a decree has been obtained against him by the District Board of West Tanjore in respect of arrears due under the lease. The defendant calls in aid the provision of the Madras Agriculturists Relief Act. It is conceded that he is an agriculturist within the meaning of that Act but the petitioners rely upon the provisions of section 4, clause (c), which, they say, places the respondent

outside the protection of the Act. Section 4 reads as follows :

“ Nothing in this Act shall affect debts and liabilities of an agriculturist falling under the following heads :—

* * *

(c) any tax or cess payable to any local authority or any other sum due to them, by way of loan or otherwise.”

It will be seen that clause (c) of section 4 is worded as comprehensively as possible and seems to me to comprehend any money due to a local authority, but the learned District Munsif has taken the view that the respondent is entitled to the protection of the Agriculturists Relief Act because, to put it shortly, the amount due from him is not money due to a local authority but money due to this chatram itself. The learned Munsif has dealt with the matter with the utmost care but I am unable to share the view which he has taken of this question.

The relevant provisions of the Madras Local Boards Act are as follows: Section 63 provides for the Board of Revenue making over to local boards the management and superintendence of any charitable endowment in respect of which powers and duties attach to the Board of Revenue under the provisions of the Madras Endowments and Escheats Regulation, 1817.

“ Thereupon ”,

says the section,

“ all powers and duties which attach to the Board of Revenue in respect thereof shall attach to the local board as if it had been specially named in the said regulation, and the local board shall manage and superintend such endowment.”

Section 64 says :

“ A local board may accept trusts relating exclusively to the furtherance of any purpose to which its funds may be applied.”

So it would seem that under section 63 there is power given to the Board of Revenue to make over

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to the local board the management and superintendence of any charitable endowment. Under section 64 a local board can accept trusts relating exclusively to the furtherance of any purpose to which its funds may be applied. Section 112 sets out the purposes to which local funds may be applied and under clause (iii), sub-section 1, of that section one of those purposes is the construction and maintenance of choultries. Section 114 says:

“There shall be constituted for each district a district fund and for each village a village fund.”

Section 115 states :

“The rules embodied in Schedule V regarding . . . district funds respectively, and regarding the administration of those funds, shall be read as part of this chapter.”

The provisions of the schedule are of the utmost importance in arriving at a decision in this petition. It will be seen at the top of Schedule V that first the words appear—

“It shall be the duty of every local board to provide for the payment of—”

and then a number of matters are set out. Under rule 1-B :

“A district board shall have power to make such provision as it thinks fit for carrying out the requirements of the district in respect of the following matters . . .

(c) the establishment and maintenance of choultries in the district classified as district choultries.”

And it is well to recall that section 112, as I have pointed out, states that the funds received under the Act may be applied for the purpose of choultries among others. Under the heading “District Funds” in rule 5-B of Schedule V is found item (9) “Income from endowments and trusts under the management of the district board”; and Mr. Venkatrama Sastriar has naturally relied very strongly on that provision because obviously if these charitable funds are made

part of the income of the district board, it should necessarily follow that all the provisions for the recovery of that income should be open to the district board itself.

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Now those are the provisions and of course at this stage there has yet been no decision on the matter at all. The only decision that has been referred to is *Nelayathakshi Ammal v. The Taluk Board, Mayavaram*(1), which is of interest because it will be seen that the Bench consisting of BENSON and KRISHNASWAMI AYYAR JJ. took the view that when a charity was handed over to a local authority, the local authority was absolved from the actual provisions of the deed dedicating the charity. That of course is no direct authority but it seems to convey to my mind the notion that when these charities are handed over, they to a large extent lose their identity and become part of the local authority, at least to this extent that it was held it was not necessary that accounts should be made accessible to all persons as would have been the case if it had not been handed over. At page 336 the Bench uses these words :

“The duty to keep and give inspection of accounts is part of the function of management. When it is transferred by a special law to a statutory body, we must look to that law and not to the instrument of trust for the duties of the manager.”

The reason why the lower Court in this case decided against the petitioner can, I think, be shortly stated. The learned Munsif takes the view in paragraph 9 that there is a distinction between funds receivable under section 64 of the Local Boards Act and section 63. The learned Munsif also takes the view that

“under section 64 of the Local Boards Act a local board can accept a trust if its income can be utilized exclusively for

(1) (1910) I.L.R. 34 Mad. 333.

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the purposes laid down in the Act. If the donor wants to endow the local board with an endowment with the object of utilizing its funds for purposes other than the purposes for which the local board's own income can be utilized, then the local board cannot accept such an endowment. There the case laid down under section 63 is different from the one in section 64."

I have endeavoured to indicate that in my view the only difference between section 63 and section 64 is that section 63 provides for the transfer of trusts by the Board of Revenue; section 64 enables the local authority to accept trusts provided that they relate exclusively to the furtherance of any purpose to which its funds may be applied. Of course, a choultry would come under that provision because one of the things which the local board may do is to provide choultries. But the learned Munsif has distinguished between funds derivable under transactions under these two sections although he seems to concede that if the funds, the subject of this case, come under Schedule V, Rule 5-B (9), then the respondent would have been unable to invoke the Agriculturists Relief Act. It seems to me clear that income from endowments and trusts under the management of a district board comprise income from endowments and trusts whether derived by reason of the operation of section 63 or section 64. That income is the district fund. It is recoverable and must be recoverable only by the local authority. I cannot see how it can possibly be said that that is not a sum due to them, viz., the local authority. It seems to me that for all relevant purposes the identity of the chatram is merged in the local authority and I can imagine nothing more inconvenient than that the position should be that for the purpose of recovering this particular item of the board's funds the board should be placed in one

position but in respect of amounts due to them from the public in another. In view of the facts I think that the order of the lower Court should not be allowed to stand. The learned Munsif obviously withheld jurisdiction vested in him and in consequence his order will be set aside.

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This petition is allowed with costs.

V.V.C.

APPELLATE CIVIL.

Before Mr. Justice Burn and Mr. Justice Stodart.

RAMACHANDRA DEO (PLAINTIFF), APPELLANT,

1939,
August 24.

v.

KAMOJU BALAJI AND TWO OTHERS (DEFENDANTS),
RESPONDENTS.*

Madras Estates Land Act (I of 1908)—Non-occupancy ryot—Title to hold land free of rent—Acquisition by non-occupancy ryot of, by adverse possession—Conditions—Non-payment of rent for a number of years—Notice of intention to prescribe for higher right in land, if.

There is nothing in the Madras Estates Land Act (I of 1908) which enables a non-occupancy ryot to prescribe for title to hold land free of rent.

Adverse possession in order to become a basis of title must be brought to the notice of the true owner. In a zamindari the major portion of the land is in the occupation of persons who have the right to occupy it but not the whole proprietary right; who are, in other words, occupancy ryots or persons who hold the land in the hope of being occupancy ryots. If such persons wish to prescribe for a higher right in the land they must give open and unequivocal notice of their intention

* Second Appeal No. 832 of 1935.