

Present: Lyall Grant J. and Maartensz A.J.

GOONERATNE NAYAKE THERO v. PUNCHI
BANDA KORALA.

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359—D. C. Kandy, 32,557.

Buddhist Temporalities Ordinance—Jurisdiction—The extent of the powers of a trustee—The chief priest's control of buildings necessary for the performance of religious services—The appointment and dismissal of ministerial officers—Ordinance No. 8 of 1905, s. 20.

An action by the chief priest of a vihare for a declaration of his right to the custody and possession of the *gabadage* and the *multenge* may be maintained in a Civil Court.

While the trustee is vested with legal title to the *gabadage* and *multenge*, the high priest is entitled to the unhampered use of the same for the purpose of maintaining the religious rites and ceremonies of the vihare.

A trustee is not entitled to appoint or dismiss the ministerial officers attached to the temple.

A PPEAL from a judgment of the District Judge of Kandy.

Hayley, for defendant, appellant.

H. V. Perera (with *Canakeratne*), for plaintiff, respondent.

July 30, 1926. LYALL GRANT J.—

The plaintiff-respondent in this case is the "Nayuke Unnanse" or chief priest of the Dambulla vihare, and the defendant-appellant is the trustee thereof appointed under the Buddhist Temporalities Ordinance of 1905.

As chief priest of the said vihare the plaintiff claimed to be entitled to the custody and possession of the "gabadage" or store-room where the rice and other articles required for the daily offerings are kept, and the "multenge" or kitchen where the food offerings are cooked.

He complained that on December 5, 1924, the defendant took possession of the utensils of the multenge, and thereafter on January 8, 1925, entire and complete possession of the gabadage and multenge.

He further complained that the defendant refused and failed to supply rice and other requirements for the daily offerings, and that he had by his wrongful acts made it impracticable for the plaintiff to perform his duties at the vihare.

The plaintiff asked for an injunction to restrain the defendant from continuing in wrongful possession of the gabadage and multenge and the articles and utensils therein and to grant him the daily offerings.

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The defendant took a preliminary objection that the dispute referred purely to religious ceremonial and therefore could not be the subject of litigation. That objection was dealt with by the District Judge on April 6, 1925.

The learned District Judge decided that the case did not refer purely to matters of religious rites and ceremonials.

In appeal it was argued that the Court had no jurisdiction as the matter was of a purely religious nature, and various cases were cited in support of and against this contention.

In the case of *Kurukel v. Kurukel*¹ there was a dispute between two Hindu priests as to which of them was entitled to the incumbency of a certain temple. The Court there held that it had no power to interfere as it was a purely religious matter.

In *Pitche Tamby v. Cassim Marikar*² there was a dispute between Muhammadans and Hindus with regard to pagoda processions within the precincts of a mosque. Wood Renton C.J. laid down the principle in that case, that while no secular tribunal will take cognizance of or adjudicate on controversies between rival religious sects as to doctrine or ceremonial where nothing else is in issue, no such tribunal will refuse to take cognizance of or to adjudicate on such controversies where civil rights are at stake, even though such decision involves pronouncing an opinion upon what would otherwise be purely an ecclesiastical question.

The Indian cases cited appear to be to the same effect. In *Va'sudev v. Va'Mna'ji*³ and in *Subbaraya Mudaliar v. Vedantachariar*⁴ the disputes were of a purely religious nature.

In *Fazl Karim v. Maula Baksh*⁵ the dispute related to the interpretation of Muhammadan law, and the question whether the introduction of certain ceremonies into a mosque by an "Imam" would justify his exclusion from the mosque.

In the lower Court the objection was taken and upheld that the matter was not one for decision by a secular Court.

This decision was over-ruled in appeal, and finally the Privy Council decided the case on the assumption that the Courts had jurisdiction.

In *Brown v. Les Cure et Marguilliers de L'Oeuvre et Fabrique de Notre Dame de Montreal*⁶ the Privy Council held that where a member of the Roman Catholic Church had been injured as to his rights in a matter of a mixed spiritual and temporal nature. Courts of justice were bound to inquire into the orders and rules of the authority which had inflicted the alleged injury and to ascertain whether the act complained of was in accordance with the laws and rules of the discipline of the Roman Catholic Church.

¹ (1892) 1 S. C. Repor's 354.² (1914) 18 N. L. R. 111.³ (1880) I. L. R. Bom., vol. 5, p. 80.⁴ I. L. R. Mad., vol. 28, p. 23.⁵ (1891) 18 I. L. R. Cal. 448.⁶ (1874) 6 Privy Council Appeal Cases 157.

The present case appears to us much easier and clearer than any of these cases. What we have to decide is, not a religious dispute, but the extent of the powers with which the Legislature has vested its own statutory creature—the trustee under the Ordinance.

We are satisfied that on this point the District Judge was right. The dispute concerns the possession and the management of certain property and is therefore one with which a Civil Court is both entitled and bound to deal. It also involves the interpretation of the statutory powers given to the trustee; apart from the powers given to him by the Ordinance, he possesses no power whatsoever. The intention of the Legislature as expressed by Ordinance must be interpreted by the Courts.

The case went to trial on the following issues:—

- (1) Is the plaintiff entitled to the custody and possession of the gabadage, multenge, and the utensils thereof as alleged?
- (2) Is the appointment of the servient officers attached to the gabadage and multenge vested in the plaintiff?

Counsel for the trustee-appellant objected that the second issue did not arise out of the proceedings, and there is no doubt that this is the case. No objection, however, appears to have been taken before the District Judge to the trial of this issue.

It is one which could be appropriately dealt with in the same action, and we think it is too late for the defendant now to raise the point that it was wrongfully admitted.

The District Judge decided on both issues in favour of the plaintiff, and the defendant appeals.

The defendant relies on the provisions of section 20 of the Buddhist Temporalities Ordinance, 1905, which vests in him "all property, movable and immovable, belonging to or in anywise appertaining to or appropriated to the use of any temple, together with all the issues, rents, and profits of the same, and all offerings made for the use of such temple other than the pudgalika offerings, which are offered for the exclusive personal use of any individual priest,"

He contends that this entrusts to him the gabadage and multenge with all their contents, and that he is responsible for the distribution of rice and the safe custody of the utensils.

In order to understand the position, one has to inquire into the precise functions which the gabadage and the multenge serve in the temple economy. The gabadage is the store-room containing rice set apart for the temple offerings and for the maintenance of the priests. It also contains some utensils used in the handling of the rice. The multenge is the kitchen to which the rice is taken from the gabadage, and where it is prepared for the purpose of "puja" and offerings in the temple.

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It is clear from the evidence that this preparation of rice is part of religious ceremonial.

LYALL,
GRANT J.

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In order to ascertain how far the duties of the trustee extend, one has to consider the scope and intention of the Ordinance. It is clear that the main intention of the Ordinance is to remove from the priesthood the general control and management of the property belonging to a temple. Such property usually consists—apart from the temple buildings and ornaments—of lands which are set aside for the maintenance of temple worship.

No intention is shown in the Ordinance, and it is inconceivable that any such intention could exist, to interfere in any way with the due performance of religious rites.

The general effect of section 20 appears to be that the property is vested in the trustee for the purposes set out in sub-section (a), (b), (c), and (d).

Sub-section (b) relates to the maintenance of the priesthood and ministerial officers attached to such temple, and sub-section (c) relates to the "due performance of religious services and ceremonies as heretofore carried on, in, by, or in connection with, such temple."

Rice brought into the gabadage is rice which has either been grown on temple lands, and is therefore an issue or the profit of immovable property, or it is an offering for the use of the temple, or it is rice bought by the trustee from the rents and profits of the temple. In any case, it is rice vested in the trustee which he has placed in this building.

But the general store of rice of which the trustee is in charge is kept in a building called the "attuwa," and when he removes any of this rice to the gabadage he makes an appropriation for the purposes set out in sub-sections (b) and (c), as contemplated by section 20 of the Ordinance. Once he has made such an appropriation, it appears to us that he has nothing further to do with the disposal of the rice. He has handed it over for the special purposes of religious worship, and the manner in which it is so used is entirely a matter for the Nayake Umanse or high priest.

We think the District Judge has correctly decided that the trustee is vested with the legal title to the gabadage and multenge (which implies a certain responsibility in connection with the maintenance of these buildings), but that the Nayake Umanse or high priest is entitled to the unhampered use of the same for the purposes of maintaining the customary religious rites and ceremonies of the vihare.

The second issue is as to the appointment of ministerial officers attached to the temple. We can find nothing in the Ordinance which entitles a trustee to appoint or dismiss such officers.

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Their duties are religious or quasi-religious, connected with the rites and ceremonies of the temple, and they are officers who most appropriately come under the jurisdiction of the high priest. That this is so appears clearly from the appellant's own evidence. He admits that the account given by the plaintiff of the duties of the Kattiyana Ralas is correct, and that after the Padaviya Vidane has removed rice from the store he (the appellant) has nothing further to do with it. He cannot point to any duties which the officials perform which are of a purely secular nature and which pertain to duties entrusted to the trustee.

We think, however, that the form of the order dealing with this issue ought to be varied. All that the Court needed to decide was whether the defendant was entitled to appoint or dismiss the officers mentioned. The decree will be varied accordingly.

The District Judge has awarded damages to the plaintiff, but we do not think the case is a proper one for the award of damages. There appears to have been some precedent in the history of this vihare for the line taken by the trustee, and the matter is not a personal one, but one relating to the government of the vihare and the interpretation of the Ordinance. Accordingly the appeal against the order of damages is allowed.

With regard to costs, we consider, for the same reasons, that the defendant should not be personally liable for the costs of the plaintiff.

We think a fair order will be that the defendant pay out of the vihare funds in his hands the plaintiff's costs in this Court and in the Court below, and it is so ordered.

As the litigation has arisen from the mistaken view held by the defendant of his rights and duties with regard to the temple, we think he must bear his own costs, and in respect of them there will be no order.

MAARTENSZ A.J.—

This action is the result of a dispute between the plaintiff who is the Nayake Unnanse of the Dambulla vihare, and the defendant, who is the trustee appointed under the Buddhist Temporalities Ordinance, 1905, as to who should possess the multenge and gabadage attached to the vihare and appoint the servient officers of the multenge and gabadage.

The plaint is restricted to the question of the possession and custody of the multenge and gabadage, but an issue was framed and tried with regard to the appointment of the servient officers, and it is in my opinion too late to object to the procedure.

The defendant appeals from a decree against him on both issues and declaring him liable in damages amounting to Rs. 100 and to pay plaintiff's costs personally.

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The defendant *in limine* took the objection that this is a religious dispute, regarding which a secular Court has no jurisdiction to adjudicate. The objection cannot in my opinion be sustained, as the dispute involves a construction of the provisions of the Buddhist Temporalities Ordinance, particularly of section 20, and is therefore not a religious dispute, which has to be determined by a consideration of merely ecclesiastical laws and customs.

Section 20 of the Ordinance enacts as follows:—

“ All property, movable and immovable, belonging or in any-wise appertaining to or appropriated to the use of any temple, together with all the issues, rents, and profits of the same, and all offerings made for the use of such temple, other than the pudgalika offerings, which are offered for the exclusive personal use of any individual priest, shall vest in the trustees of such temple, subject, however, to any leases and other tenancies, charges, and encumbrances affecting any such immovable property; and such issues, rents, profits, and offerings shall be appropriated by such trustees for the following purposes and no other.”

The relevant purposes mentioned in the section are: (1) the maintenance of the priesthood and ministerial officers attached to such temple; (2) the due performance of religious services and ceremonies as heretofore carried on, in, or by, or in connection with, such temple.

The scope of the trustee's powers with regard to a vihare are defined in the case of *Davarakkita v. Dhammaratne et al.*¹

The control of the priesthood must necessarily extend to such buildings attached to the vihare as are necessary for the performance of the religious services and ceremonies subject to the duty of the trustee to keep them in proper repair.

The question arises whether the gabadage and multenge are buildings necessary for the performance of the religious services and ceremonies.

According to the evidence of the trustee himself the produce of the temple lands are stored in a store-house called the *attua*, from which the trustee issues fortnightly a sufficient quantity of paddy for the religious offerings for that period. This paddy, after being converted into rice, is handed to the *Padaviya Vidane*, who keeps it in the *gabadage*.

The *Kattiyana Ralas* cook the rice for the offerings in the *multenge* and take it to the several *vihares*, observing a certain ceremonial in the performance of these duties.

¹ (1919) 21 N. L. R. 255.

The defendant's witness, Gunaratne Unanse, stated that the Padaviya Vidane and Kattiyana Ralas are appointed purely to assist in the religious ceremonies and rites.

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A.J.

The trustee himself said that he has nothing to do with the rice once it is in charge of the Padaviya Vidane. I do not attach any weight to his earlier statement that he is responsible for the rice if it disappears from the gabadage. He also stated that he did not take charge of the articles in the list P1 which were in the multenge, as the committee told him it was not necessary for him to take charge of what was being used for the service.

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The evidence, in my opinion, clearly establishes that the gabadage and multenge are used for the performance of the religious services, and that the officers referred to are the servient officers of the gabadage and multenge.

I would accordingly affirm the finding of the District Judge on the first and second issues.

I agree that the order directing the defendant to pay damages should be set aside.

I agree with the order proposed by my brother Lyall Grant regarding the variation of the decree and as to costs.

Set aside.
