1950 *Present :* **Dias S.P.J. and Swan J.**

ALGAMA, Appellant, *and* BUDDHARAKKITA, Respondent

S.C. 5—D. C. (Inty.) Colombo, 59/Trust

Buddhist Temporalities Ordinance (Cap. 222)—Sections 11 (3) and 32 (1)—Right of provisional trustee to preserve a temple's temporalities—Meaning of " Viharadhipathi "—*Section 2—Effect of the words* " *unless the context otherwise requires* ".

Where a provisional trustee for the Kelaniya Temple was appointed by the Public Trustee under Section 11 (3) of the Buddhist Temporalities Ordinance, pending an action between two rival claimants to the incumbency of the Temple—

Held, that, until the status of the person legally entitled to the incumbency was decided by the Court, the temporalities of the Temple were lawfully vested in the provisional trustee, who was, therefore, entitled, under section 32 (1) of the Buddhist Temporalities Ordinance, read with section 2, to call upon both the rival claimants to surrender to him all the temporalities which were in their possession. Section 32 is wide to include persons who are either functioning as *de facto viharadhipathis* or who claim to be *viharadhipathis*.

APPEAL from an order of the District Court, Colombo.

N. K. Choksy, K.C., with A. H. M. Ismail, for the petitioner appellant.

N. E. Weerasooria, K.C., with *E. B. Wikramanayake, K.C.*, and *L. Gunaratne*, for the first respondent.

Cur. adv. vult.

June 27, 1950. DIAS S.P.J.—

This is an appeal by a provisional trustee appointed by the Public Trustee under section 11 (3) of the Buddhist Temporalities Ordinance (Chapter 222), against an order made by the Additional District Judge of Colombo in a proceeding under section 32 of that Ordinance.

The matter arises in this way: The *viharadhipathi* and trustee of the Kelaniya Temple had two pupils who are the respondents to the petitioner's application. The second respondent admittedly is the senior pupil, and normally, in accordance with the rules of pupillary succession, should have succeeded to the incumbency on the death of his tutor. The first respondent, the junior pupil, however, claimed to be the *viharadhipathi* by virtue of a nomination alleged to have been made in his favour by the tutor before his death. We have been told that an action in the District Court between these priestly litigants is now pending in appeal. In that action the question as to who is the *de jure viharadhipathi* will be finally decided. It is admitted by counsel that when that desirable result is achieved the questions raised in the present appeal would probably be of academic interest only. In such circumstances, the obvious thing to do would be to lay this case by until that case is decided. Counsel, however, are pessimistic as to when that litigation will terminate. They take the gloomy view that it will be some months, at least, before that case may even be listed for hearing in appeal, and there is always the possibility that there may be an appeal to the Privy Council thereafter. Even thereafter the Public Trustee will have to be moved to have the *de jure viharadhipathi* appointed trustee—section 11 (2). We, therefore, decided that this appeal should be heard and disposed of as soon as possible, because, during the interval which must exist before a trustee is appointed by the Public Trustee, the care and custody of the valuable temporalities of this famous Temple would be in jeopardy.

The earlier history of this dispute between these two monks will be found set out in *Buddharakkitha Thero v. The Public Trustee* [1].

Under the Buddhist Temporalities Ordinance, it is the duty of the *viharadhipathi*, i.e., the *de jure viharadhipathi*, to nominate a trustee for the temple, except in certain excepted cases—section 10 (1). It is open to the *viharadhipathi* to nominate himself as the trustee—section 11(1). In either case, the nomination must be first reported to the Public Trustee, whose duty it is to issue a letter of appointment to the person nominated, unless such appointment would contravene some provision of the

[1] *(1948) 49 N. L. R. 325.*

Ordinance. What happened in this case is that each of the rival claimants to the incumbency, claiming to be the *de jure viharadhipathi*, having nominated trustees, the Public Trustee, pending the decision by a competent Court or ecclesiastical tribunal, as to which of them had the preferent claim, appointed the petitioner to be the Provisional Trustee of the temporalities of the temple under section 11 (3). His action has been upheld by this Court. Therefore it follows that until the status of the person legally entitled to make the nomination has been decided, the temporalities are lawfully vested in the Provisional Trustee. The question of status has not yet been decided.

The petitioner having failed to obtain possession of the temporalities, or adequate information regarding them, moved the District Court under section 32 of the Ordinance, naming both monks, i.e., both the claimants, as the respondents to his application. The second respondent (the senior pupil) who does not contest the petitioner's claim has shown no cause. The first respondent has done so, and a kind of state trial has been held in regard to a matter which should have been summarily dealt with.

The relevant passage in section 32 is sub-section (1) and reads as follows:—

> " 32. (1) Whenever the trustee of any temple who has vacated his office as trustee for any cause whatsoever under the provisions of the Ordinance or of any Ordinance hereby repealed, or any *viharadhipathi*, shall hold or occupy, either directly or through any other person on his behalf, any movable or immovable property belonging to any temple, and shall *refuse or neglect* to deliver possession of such property to the trustee for the time being of the said temple, or to any person authorised in that behalf by the Public Trustee, it shall be competent for such trustee, or for the Public Trustee, or the person authorised as aforesaid, as the case may be, to apply by way of summary procedure to the court for a writ requiring such first-named trustee or *viharadhipathi* to deliver possession of the property to such other trustee or person aforesaid."

The learned Judge has dismissed the application of the petitioner who appeals therefrom.

Mr. N. E. Weerasooria who appears for the first respondent admits that there are certain findings of the learned Judge which he cannot support. He, nevertheless, submits that in the result the Judge has reached a correct conclusion.

In order to succeed, the petitioner in this case has to satisfy the Court (*a*) that the two respondents are " *viharadhipathis* ", (*b*) that they hold or occupy, either directly or through any other person on their behalf, (*c*) any movable or immovable property belonging to the Kelaniya Vihare, and (*d*) that they have refused or neglected to deliver possession of such property to the petitioner, who is the duly appointed Provisional Trustee. If the petitioner succeeds in establishing those facts, the Court must issue a writ of possession. As the proceedings have to be in summary procedure, the parties can show cause before the writ issues.

In his petition the petitioner alleged the facts which I have stated above and averred that he had called upon both respondents to furnish him with all information as they may possess regarding the income of the temple from offerings made by the faithful since the date of the death of the incumbent, the nature, extent and value of all lands forming the temporalities of the temple, the amount of the rents and profits derived from the temporalities, and to hand the same over to him. The petitioner stated that the respondents had failed to comply with his request. He therefore moved for relief under section 32.

The second respondent appeared in Court and stated that he had no cause to show. The first respondent filed objections and later he submitted amended objections. I am informed that at this point of time, this Court had delivered its order in *Buddharakkitha Thero v. The Public Trustee* [1]. He pleaded (*a*) that the appointment of the petitioner to be Provisional Trustee was *ultra vires* and bad and that the application had been made " collusively with the object of harassing " him and " *depriving him of his just rights* ". These objections were filed on May 3, 1948. The Supreme Court judgment was given on March 4, 1948. The first respondent was a party to that case. It is not understood, therefore, how either the first respondent or his proctor could, in the light of the judgment of the Supreme Court, canvass the finding of this Court. (*b*) It was contended that relief under section 32 was not available to the petitioner to proceed against the two respondents alternatively, or without specifying the property. With regard to the latter contention, the petitioner does not know what the property is, and in this proceeding he is trying to ascertain what it is. It appears from what the first respondent states about " his just rights " that he is probably in possession of the temporalities, and he is unwilling to disclose them. (*c*) The first respondent further says that the Malwatta *Sanga Sabawa* has declared that he is the *Viharadhipathi*, and that, therefore, the petitioner is *functus officio*. There is no proof of this fact. He failed to disclose that the question as to who is the *de jure viharadhipathi* is the subject of pending litigation between the two respondents in the District Court of Colombo.

A large number of issues were framed. Counsel for the first respondent, however, desired the Court to deal with what he called " a preliminary objection ". His argument is that it was open to the petitioner to proceed either by way of regular action, or by means of the " short cut " provided by section 32. In the latter case it was the duty of the petitioner to bring himself strictly within the provisions of section 32. He further contends that either of the respondents does not come within the definition of " *Viharadhipathi* " in the Ordinance. He further argues that once it was conceded that the first respondent is the *viharadhipathi*, the status of the petitioner as Provisional Trustee vanishes, and the Court would have no jurisdiction to proceed further. He also submitted that in an application under section 32 the property sought to be recovered must be specified, and, finally, that relief in the alternative could not be asked for under section 32.

[1] *(1948) 49 N. L. R. 325.*

The District Judge decided to deal with the preliminary objection in the first instance. Neither side called oral evidence. The Court proceeded on the affidavits and the arguments of counsel.

The first question to decide is as to what meaning should be assigned to the words " Any *Viharadhipathi* " in section 32 (1) ? Section 2 of the Ordinance provides that " *Viharadhipathi* " means the " principal *bhikku* of a temple other than a *dewale* or *kovila*, whether resident or not ". Section 2 defines the words " *Bhikku* " to mean " a *bhikku* whether *upasampada* (i.e., fully ordained) or *samanera* " (i.e., a novice who has not proceeded to the *upasampada* ordination). Canekeratne J. in *Punchirala v. Dharmananda Thero* [1] pointed out that there are several kinds of *bhikkus*. " A *bhikku* may be the presiding officer of a *vihare*, or a resident priest, or a non-resident priest (*agantuge*). The presiding priest is known as the *viharadhipathi*, sometimes he is called the incumbent (the incumbency is called the *adhipathi kama*), in some cases the *adhikari bhikshu*. The *viharadhipathi* has charge of the *vihare* and premises and the rights and ceremonies within it, a resident priest has no such charge. He lives in the *pansala* in the *vihare* premises and assists in the services. He is *generally* subordinate to the *viharadhipathi*. The *agantuge* generally is not permanently resident in a particular *vihare*—he goes to some *vihare* and is there for some time ; sometimes he may assist in the services ".

Obviously, until the civil litigation pending between these two monks reaches a final conclusion, it will not be possible for anybody to say who is the *de jure viharadhipathi* of this temple. Until then we do not know who has the right to nominate the Trustee. If the appointment of the junior monk is held to be bad, the senior pupil (second respondent) would by virtue of pupillary succession be the *de jure viharadhipathi*. On the other hand, if the letter of appointment is held to be valid and effectual, then the claims of the junior first respondent would be preferent. We do not know, and, if we did, we should not be influenced by the decision in the civil action until it reaches finality. Therefore, the position so far as we are concerned is, that it cannot be said at present who is the *de jure viharadhipathi* of this temple. Therefore there is no trustee and the Provisional Trustee is entitled to possess the temporalities.

It is contended that the definition of " *Viharadhipathi* " in section 2 means the *de jure viharadhipathi*. Section 2 does not say anything of the kind. What it says is that " unless the context otherwise requires, ' Viharadhipathi ' means the *principal bhikku* of a temple . . . . " I find it impossible to interpret the word " principal " to mean " *de jure* ". There are several sections in the Ordinance which indicate that, while there may be a " principal *bhikku* " in a temple, there can also be a " controlling *viharadhipathi* "—see sections 18, 28 (1) (2), 29 and 31. Furthermore, having regard to the aim, scope, and purpose of the Buddhist Temporalities Ordinance—namely, the preservation of the property of the temple in the hands of a trustee who is accountable to the Public Trustee, the object of the legislature would be completely frustrated if,

[1] *(1946) 48 N. L. R. at p. 12*

in a case like the present, the Court is powerless to grant relief to the Provisional Trustee whose object is solely to preserve the valuable temporalities of this famous temple, until the question as to who is the person who can lawfully nominate a trustee has been decided once and for all.

The opening words of section 2 of the Ordinance says that the definitions contained in that section are to have effect " unless the context otherwise requires ". The context in which the words " any *viharadhipathi* " is used in section 32 shows that the object of the legislature would be defeated by giving those words the narrow interpretation contended for by the first respondent. *Hameed v. Anamally* [1] is a case in point. Nagalingam J. quoting *Maxwell on the Interpretation of Statutes* said: " Though the term ' landlord ' is, no doubt, given in the definition set out . . . . . in the Ordinance, it is important to bear in mind that the definition is qualified by the words ' unless the context otherwise requires '. In regard to sections 3 and 7 of the Ordinance . . . . I have little doubt that the term ' landlord ' must be given its meaning as in the definition . . . . But, in regard to the construction of *proviso* (*c*), the definition of the term ' landlord ' as given in the Ordinance cannot be invoked, for otherwise, the undoubted result . . . . would be to defeat the very object the Ordinance had in view in enacting this section ". In my view, that is the position here. To construe section 32 in the manner contended by the first respondent would be to cause the risk of the temporalities of the Kelaniya Temple being frittered away or misused. In *Beal's Cardinal Rules of Legal Interpretation* (3rd edition) page 351, are cited cases where the plainest words of a statute may, under certain circumstances, be controlled by a reference to the context in which they are used. The Buddhist Temporalities Ordinance shows that the word " *viharadhipathi* " is not used throughout the Ordinance in a uniform sense. In my opinion section 32 applies to " any *viharadhipathi* " whether *de jure* or *de facto* or who claims that status, whether in office, or whether removed from office, who has in his possession or under his control any of the temporalities of a Buddhist temple, and which he refuses or neglects to hand over to the duly appointed trustee or the provisional trustee. Such a person or persons can be proceeded with under this section. As the singular number includes the plural under section 32, two persons can be proceeded against jointly or alternatively —*Cf. Aitken Spence & Co. v. The Ceylon Wharfage Co.* [2].

Admittedly, the learned Judge has erred in certain of his conclusions. He erred in construing section 32 by reference to the section of a repealed Ordinance. This led him to hold that section 32 only applies to a *viharadhipathi* who has been suspended or removed from office. There is no warrant for such a construction of section 32. The learned Judge further held that because the petitioner did not plead in his petition that the respondents are " *viharadhipathis* ", but that they only claim to be such, therefore, the petitioner's application must be dismissed. In my opinion section 32 is wide enough to include persons who are either functioning as *de facto viharadhipathis* or who claim to be *viharadhipathis*. I cannot agree with the learned Judge that it is the duty of the

[1] *(1946) 47 N.L.R. at p. 559-560*

[2] *(1900) 4 N.L.R. 263*

petitioner to allege in his application that the first respondent is in possession of the property, or to detail the property he desires to be restored to him. To require a man like the petitioner to specify the property is asking him to do what is impossible. The petitioner as provisional trustee is in the dark and is endeavouring to obtain possession of the property. If the first respondent is not in possession of the temporalities the petitioner will fail if he cannot establish that fact.

I set aside the order appealed against and send the case back to be proceeded with. The District Judge will give this case top priority in his cause list, and, having regard to the proviso to section 143 (2) of the Civil Procedure Code, deal with the case with the utmost despatch. The petitioner will have his costs both here and below.

SWAN J.—I agree.

Order set aside.