

Present : Bertram C.J. and De Sampayo J.

1920.

JAYAWARDENE *et al.* v. TERUNNANSE.

5—D. C. (Inty.) Matara, 1

Buddhist Temporalities Ordinance, ss. 28 and 30 A.—Application by trustee to call upon incumbent to make a return of property in his possession—Claim of certain property by incumbent—Application by trustee for inquiry into claim—Separate action.

The trustee of a temple applied to the District Judge, under section 30 A (c) of the Buddhist Temporalities Ordinance, No. 8 of 1905, for an order directing the incumbent to make a return of the property in the temple, and a return was accordingly made. The priest claimed certain property as his own, and the trustee asked the Court to hold an inquiry into the matter.

Held, that in the circumstances that this was a matter for a separate action.

THE facts appear from the judgment.

H. V. Perera, for the appellants.—Under section 28 of the Ordinance it is the duty of the incumbent to furnish to the trustees information regarding the lands belonging to the temple. This duty is not discharged unless a correct return is made. In dealing with an application under section 30 A (c), which empowers the District Judge to order any person to discharge any duty imposed on him by the Ordinance, the Judge has the power to inquire into the correctness of a return made by the incumbent. Where the incumbent refuses to give information regarding a land on the ground that it is his “*pudgalika*” property, the Judge has the power to inquire into the validity of such claim in the same proceedings. He should at least ascertain whether the claim is made *bona fide*.

The incumbent has also failed to hand over to the trustees the temple property in his possession. The property vests in the trustees under section 20, and they are entitled to possession. It is

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therefore the duty of the incumbent to hand over such property to the trustees. Section 29 recognizes such a duty and provides a criminal remedy for its breach. The District Judge should have acted under section 30 A (c) and ordered the incumbent to discharge this duty within a definite time.

Batuwantudawe, for the respondent, was not called upon.

May 21, 1920. BERTRAM C.J.—

This is an appeal against an order of the District Judge refusing to hold an inquiry into the correctness of a return made by the incumbent of a temple under section 28 of the Buddhist Temporalities Ordinance, No. 8 of 1905. It appears that the trustee of the temple, for whom Mr. Perera appears, applied to the District Judge under section 30 A (c) for an order directing the incumbent to make a return of the property of the temple in pursuance of his duty under section 28. A return was made. The trustee disputed the correctness of the return, and made a further application consequential upon his original petition. It appears that the priest, rightly or wrongly, claims certain property as his own. The petitioner wishes the District Judge to go into the question of the rightness of that claim. The learned District Judge has refused, and has referred the petitioner to a separate action. I think that the District Judge acted with perfect correctness.

Mr. Perera maintains that, inasmuch as all property belonging to the temple vests in the trustees under section 20, there is a consequential duty upon the incumbent to hand over to the trustees any such property as may be in his possession, and he pointed to the fact that that duty is emphasized by the criminal remedy afforded by section 29. There may well be such a duty. But I do not think that is the class of duty referred to in section 30 A (c). What is intended by that section is, in my opinion, a specific duty imposed in terms by the statute. The Ordinance is full of provisions requiring a number of persons, sometimes a trustee, sometimes a district committee, sometimes a member of the district committee, sometimes a person who is neither one nor the other, but a headman or other official, to do various things for the purpose of the administration of the Ordinance. I think that the section is intended to assist the persons interested in obtaining compliance with the duties imposed by the Ordinance. I do not think that it was intended to allow a person to come into Court and by a simple application obtain from the Judge an order upon any person to discharge a duty which arises out of his position or out of any contract into which he may have entered. I think that the learned District Judge was perfectly right in referring the applicant to a special action. So far as the incumbent is concerned, he has complied with the order of the District Judge.

I find nowhere in the Ordinance any provision authorizing or requiring the District Judge on application to hold an investigation into the correctness of any return made in answer to his order. Of course, if an incumbent by way of return to the order sent a statement which was obviously not a substantial compliance with the order and was intended to evade the order, the District Judge would no doubt require a further return. That is a very different thing from calling upon him to hold an inquiry into the legal rights of the parties in informal proceedings. In my opinion, therefore, the appeal should be dismissed, with costs.

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DE SAMPAYO J.—I agree.

Appeal dismissed.
