

1952

Present : Gratiaen J. and Gunasekara J.

K. GUNARATNE THERO, Appellant, and W. S. NAYAKE
THERO, Respondent

S. C. 331—D. C. Kalutara, 27, 182

*Buddhist Temporalities Ordinance (Cap. 222)—Section 2—Meaning of expression
“ Temple ”.*

Where a Buddhist temple, when its premises were under military occupation, suffered damage owing to substantial demolition of the buildings, the interval during which it became temporarily unfit for use as a place of worship cannot be said to have destroyed either its identity as a temple or the status of its incumbent.

APPPEAL from a judgment of the District Court, Kalutara.

N. E. Weerasooria, Q.C., with *W. D. Gunasekera*, for the defendant appellant.

E. B. Wikramanayake, Q.C., with *V. T. de Zoysa* and *D. R. P. Goonetilleke*, for the plaintiff respondent.

Cur. adv. vult.

June 17, 1952. GRATIAEN J.—

The plaintiff sued the defendant on 20th December, 1948, for a declaration that he was the incumbent of a Buddhist temple by right of pupillary succession to the original incumbent who died in December, 1933. The defendant disputed this right and pleaded in the alternative that “ the said temple does not now exist ”, so that an action could not in any event lie for a declaration in respect of an allegedly non-existent temple.

The learned Judge, after a very careful analysis of the evidence in the case, held that the plaintiff had lawfully succeeded to the incumbency upon the death of the original incumbent, and that he had officiated in that office until the entire premises appertaining to the temple were requisitioned by the Crown in 1942 for purposes connected with the prosecution of the war. The premises were de-requisitioned in or about February, 1948, and were returned to the plaintiff.

The only question which was argued before us was whether, having regard to the events which occurred during the period when the premises were under military occupation, the temple had so completely lost its identity and character as a "temple" within the meaning of section 2 of the Buddhist Temporalities Ordinance (Cap. 222) that the plaintiff became divested of his incumbency in consequence; and if so, whether, after the period of de-requisition was terminated, the character of the temple and the status of the plaintiff had not been sufficiently, if not completely, restored so as to justify a declaratory decree in relation thereto.

On this issue the learned Judge has decided in favour of the plaintiff. He took the view that although the substantial demolition of the buildings by the military authorities had rendered the temple temporarily unfit for use as a place of worship at the time when the premises were restored to the plaintiff, the damage was by no means irreparable. The plaintiff had in fact commenced the work of restoration in May, 1948, but was prevented from bringing it to completion by an interim injunction issued against him at the defendant's instance. The learned Judge was also satisfied that neither the plaintiff nor the other priests had ever formed an intention to abandon the temple permanently. In these circumstances, he decided that the plaintiff was entitled to his declaratory decree. I have not been able to discover any legal principle which compels me to reject this view which has the merit of being entirely reasonable.

It is certainly correct to say that, at the time when the military authorities restored the premises to the plaintiff, most of the buildings appertaining to the temple had either been effectively demolished or at least rendered uninhabitable for the time being. It is very clear, however, that the plaintiff, as its incumbent, took upon himself most energetically to undertake the work of restoration. A small temporary *avasa* was hastily improvised, and an image was kept there. Nevertheless, it was conceded that persons professing the Buddhist faith had not yet resumed the habit of resorting to the premises as a place of worship.

The definition of a "temple" in section 2 of the Ordinance includes objects of Buddhist worship and "places of Buddhist worship". As Basnayake J. pointed out in *Romanis Fernando v. Wimalasiri Thero*¹ no particular type of buildings is necessary to constitute a temple. That decision was concerned with a place where a temple had been established by gradual stages on a site acquired for that special purpose. We are here concerned with the converse case, in which a long-established

¹ (1951) 53 N. L. R. 245; 45 C. L. W. 47.

temple, controlled and administered by its lawful incumbent, had through necessity ceased for a period to function effectively as such. I cannot conceive that the law requires us to regard this comparatively brief interlude as having destroyed either the identity of the temple or the status of its incumbent who clearly intended to restore the *status quo* as soon as it was practicable to do so.

This action is concerned only with the plaintiff's right to his ecclesiastical office and not with the temporal affairs of the temple. But it is important to bear in mind that, appertaining to that office, are certain important *rights* and, indeed, *duties* of administration and control. *Terunnanse v. Terunnanse*¹. If it be the duty of an incumbent to keep the vihare and the other appurtenances of his temple in good order and repair, and presumably to take the necessary steps to procure the restoration of any buildings that have been destroyed by some outside agency, I cannot see why even the complete demolition of a " temple " must necessarily operate to divest the incumbent of his office.

I would dismiss the appeal with costs, but I desire to say this in conclusion. The judgment which should in my opinion be affirmed does not proceed from any adjudication as to whether or not the property belonging or appertaining to the temple is vested in the plaintiff. Nor does it decide that the plaintiff is the person entitled to receive the compensation payable by the Crown for any damage sustained when the temple premises were under requisition. Should any dispute arise hereafter in regard to any of those matters, I assume that the rights and duties of the Public Trustee, who is entrusted with special supervisory powers under the Ordinance, would prominently arise for consideration by the appropriate Court.

GUNASEKARA J.—I agree.

Appeal dismissed.
