1955 *Present :* **Gratiaen J. and Sansoni J.**

H. PEMANANDA THERO, Appellant, *and* M. THOMAS PERERA, Respondent

S. C. 387—D. C. Kurunegala, 6,133

Buddhist Temporalities Ordinance (Cap. 222)—" Controlling Viharadhipati "—Meaning of expression—Sections 2, 4 (1) and (2), 20, 22, 29 (1).

In the case of a temple which was exempted from the operation of section 4 (1) of the Buddhist Temporalities Ordinance (Cap. 222) the management and the title to the property of the temple are vested in the priest who is the principal bhikkhu in the line of pupillary succession from the first incumbent of that temple. The " controlling viharadhipati " need not be resident in the temple.

" At no time in the history of Buddhist temples in this Island has a priest who had no right to the incumbency of the temple been invested with the title to, or the power to manage, the temporalities of the temple. "

" In enacting Cap. 222 there was no intention on the part of the legislature to draw a distinction between a Viharadhipati and an incumbent. "

Sumana Therunnanse v. Somaratne Therunnanse (1936) 5 C. L. W. 37 and *Chandrawimala Therunnanse v. Siyadoris* (1946) 47 N. L. R. 304, not followed.

[1] *(1934) 2 K. B. 408.* [2] *(1940) 42 N. L. R. 73.*

APPEAL from a judgment of the District Court, Kurunegala.

H. V. Perera, Q.C., with *S. W. Jayasuriya*, for the defendant appellant.

H. W. Jayewardene, Q.C., with *D. R. P. Goonetilleke*, for the plaintiff respondent.

Cur. adv. vult.

March 5, 1955. SANSONI J.—

The plaintiff in this action claimed a declaration that he was entitled to a leasehold interest in a certain land belonging to the Tekawa Vihare under a deed of lease executed in 1946. He complained that while he was in possession as lessee he was ousted by the defendant in 1948. He asked to be restored to possession and for damages. The lease was executed by Gorakadeniya Pemananda Thero who described himself as " Controlling Viharadhipati " of the Vihare, with the written sanction and approval of the Public Trustee, for a term of 15 years. That Vihare has admittedly been exempted from the operation of section 4 (1) of the Buddhist Temporalities Ordinance, Cap. 222. The defendant Helamade Pemananda Thero claimed that he was the Adhikari Bhikkhu or Viharadhipati of that Vihare since his tutor Tekawa Ratnajothi Thero died in 1927, the latter having succeeded Tekawa Sumangala Thero in that office ; he claimed that he was the Controlling Viharadhipati and the proper authority to possess and lease the property belonging to the Vihare. He said that the plaintiff's lessor had been merely residing in the temple and looking after it with his permission. It was common ground that Gorakadeniya Pemananda gave up his robes in 1948 and the defendant thereupon took possession of the leased land.

The learned District Judge held that the defendant was the successor in title of Tekawa Sumangala the former Viharadhipati. Although the plaintiff's lessor was not in that line of succession, the learned Judge decided that he functioned as the *de facto* Viharadhipati from 1935 to 1948, while being in control of the temple and its temporalities during that period, and was therefore the Viharadhipati. He gave the plaintiff judgment as prayed for in the plaint save for a reduction of the quantum of damages. The question that arises in this appeal is whether Gorakadeniya Pemananda who was not the lawful incumbent of this Vihare could rightly have claimed to be the Controlling Viharadhipati as the term is defined in section 4 (2) of the Ordinance. Nothing, of course, turns on the fact that the Public Trustee sanctioned the lease in question, since under section 29 (1) of the Ordinance it is only the trustee or Controlling Viharadhipati who is empowered to lease lands belonging to a temple, and if the lessor did not hold that office the lease would be void.

The term " Viharadhipati " is defined in section 2 as meaning " the principal bhikkhu of a temple other than a dewale or kovila whether resident or not", and section 4 (2) reads, "The management of the property belonging to every temple exempted from the operation of the

last preceding sub-section but not exempted from the operation of the entire Ordinance shall be vested in the viharadhipati of such temple hereinafter referred to as the 'controlling viharadhipati' ". It becomes clear that the first qualification required of a " Controlling Viharadhipati " is that he should be the Viharadhipati of the temple; he receives the statutory label " Controlling Viharadhipati " only because the temple is exempted from the operation of section 4 (1) and the management of its property vests in him as Viharadhipati instead of in a duly appointed trustee. Section 20 similarly provides that all the movable and immovable property of the temple shall vest in the controlling Viharadhipati in such a case; by section 18 he is empowered to sue for the recovery of such property and to be sued; by section 22 he is empowered to enforce all contracts and all rights of action in favour of the temple, all these being extensive powers which only a duly appointed trustee can exercise in the case of temples which have not been exempted from the operation of section 4 (1). It seems to have been assumed in the case of *Sumana Therunnanse v. Somaratana Therunnanse* [1] that the term " Controlling Viharadhipati " would include any bhikkhu—be he the principal bhikkhu or not—so long as he exercised control over the affairs of the temple. The *ratio decidendi* of that case is that an Incumbent or Adhikari Bhikkhu who lived away from a temple and did not control its affairs could not be the controlling Viharadhipati. The judgment of Soertsz A.J. in that case was cited with approval by de Silva J. (Howard C.J. agreeing) in *Chandrawimala Therunnanse v. Siyadoris* [2]. In the latter case, the plaintiff priest who was not and did not claim to be the lawful incumbent of a temple claimed to be its controlling Viharadhipati and to have the right to possess the properties belonging to the temple. He sued for declaration of title to a land as Sanghika property of the temple. De Silva J. said :—" The next question which requires consideration is whether the plaintiff could maintain his action as he was not the lawful incumbent of the temple . . . . . The plaintiff's tutor Sarananda had been Viharadhipati from 1928 and the plaintiff has succeeded him as such Viharadhipati. In the circumstances I agree with the learned Judge that this case falls within the principle laid down in the case of *Sumana Therunnanse v. Somaratana Therunnanse* (5 C. L. W. 37) and that the plaintiff is entitled to maintain this action ". That case therefore raised the question whether one who is not the incumbent of a temple can be its Viharadhipati or controlling Viharadhipati. Now one should not lose sight of two essential matters in the statutory definition of " Viharadhipati ", viz., (1) he must be the *principal bhikkhu* of the temple; (2) he *need not be resident* in the temple. No emphasis can properly be placed on the epithet " controlling "; it was chosen by the draftsman as a convenient word to describe the principal bhikkhu who fills the role of a trustee. With respect, I think these judgments have overlooked these matters and must be regarded as having been pronounced *per incuriam*.

It is useful also to consider the question in the light of the earlier Ordinances and a few cases which seem to have a bearing on it. The Ordinance

[1] *(1936) 6 C. L. W. 37.* [2] *(1946) 47 N. L. R. 304.*

in force just prior to the enactment of Cap. 222, which was enacted in 1931, was the Buddhist Temporalities Ordinance, No. 8 of 1905. Section 2 of that Ordinance defined " Incumbent " as " the chief resident priest of a temple ". Ordinance No. 8 of 1905 repealed and replaced No. 3 of 1889, which had also been passed to provide for the better regulation and management of the Buddhist Temporalities in this Island. Section 2 of Ordinance No. 3 of 1889 defined "Incumbent" as "the chief resident priest of a Vihare ". There was therefore only one meaning to be attached to the word " Incumbent " between the years 1889 and 1931 ; it stood for the chief resident priest of a temple. What is more, the definitions in the Ordinances of 1889 and 1905 expressed what has always been understood by the word " Incumbent " whenever that word was considered in judgments of this Court. A priest claiming to be the incumbent (or Adikari Bhikkhu) of a temple had to establish that he had " *a right to the presidency* ", as do Sampayo J. has termed it, as against all other priests *in the line of pupillary succession from the first incumbent.* The right to succeed to an incumbency is generally determined by seniority or by valid nomination by the previous incumbent, but as was held in *Saranankara Unnanse v. Indajoti Unnanse* [1] " the office of Adhikari is single and indivisible. He is, indeed, *primus inter pares*, but his rule is monarchical . . . . An Adhikari may, it is true, nominate all the pupils to succeed him, but they can only succeed one at a time ".

Prior to the enactment of the Buddhist Temporalities Ordinance the endowments of a temple were vested in the incumbent and, to quote from the judgment of the Privy Council in *Dhammananda v. Ranasinghe* [2] " property dedicated to the Vihare (was) the property of the incumbent for the time being for the purposes of his office, including his own support and the maintenance of the temple and its services ", words which are quoted almost verbatim from the judgment in the old case of *Rathanapala Unnanse v. Kerritiagala Unnanse* [3]. After 1889, however, they were vested in trustees appointed under the Ordinances though the presiding priest or incumbent has the control and administration of the Vihare itself (per Ennis J. in *Davarakkitta v. Dhammaratne* [4]). At no time in the history of Buddhist temples in this Island has a priest who had no right to the incumbency of a temple been invested with the title to, or the power to manage, the temporalities of the temple. I am unable to accept the suggestion that the Ordinance of 1931, Cap. 222, had the far-reaching effect of conferring an important legal status on one who may not even claim to be, and who is not in law, the chief priest of a temple. Instead of the words " the chief " in the earlier definitions of " incumbent" the definition of " Viharadhipati " contains the words " the principal " and the only other change effected is that a Bhikkhu could be a Viharadhipati whether he was resident in the temple or not—a change which was probably made because a priest can be an incumbent of more than one temple. In effect, therefore, a Viharadhipati after 1931 is the presiding priest who was known as an incumbent before 1931, with the difference that he need not be resident in the temple of which he claims to be the

[1] *(1919) 20 N. L. R. 385.*
[2] *(1939) 39 N. L. R. 367.*
[3] *(1890) 2 S. C. C. 26.*
[4] *(1921) 21 N. L. R. 255.*

Viharadhipati. Bearing in mind that the expression " chief priest (or bhikkhu) of a temple " has always been the definition of the word " incumbent " and substantially the same expression has been used to define the word " Viharadhipati ", it seems only reasonable to assume that the legislature meant the new expression to be the equivalent of the old expression " incumbent ". Another consideration which leads me to the same conclusion is the presumption referred to in Maxwell's " Interpretation of Statutes " (10th Edition, page 81),

> " Presumption against Implicit Alteration of Law.
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> One of these presumptions is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness ".

To attach any importance to the circumstances that a priest who is not the chief priest in the line of pupillary succession is actually living in a particular temple and managing its affairs while the chief priest is living elsewhere would be to lose sight of the most important elements of the definition of a Viharadhipati. It seems clear, therefore, that in enacting Cap. 222 there was no intention on the part of the legislature to draw a distinction between a Viharadhipati and an incumbent. I suggest that this is the fallacy underlying the reasoning in *Chandrawimala Therunnanse v. Siyadoris* (*supra*). I find support for this conclusion in the judgment of Canekeratne J. in *Punchibanda v. Dharmananda Thero* [1]. The learned Judge said " The bhikkhu 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 Viharadhipati; sometimes he is called the incumbent (the incumbency is called the *adhipatikama*) in some cases the *adhikhari bhikkhu* ". Later in the judgment he says :— " A Viharadhipati is one who can lawfully claim to be the head of the Vihare; one, generally, who can show that he is the pupil of the last incumbent or that he is in the line of pupillary succession ". I do not consider the judgment of Dias S.P.J. in *Algama v. Buddharakkita* [2] to be against this view. On the contrary the learned Judge cited with approval the judgment of Canekeratne J. in *Punchibanda v. Dharmananda Thero* already referred to. But in dealing with the words " any Viharadhipati " in section 32 he considered that the context required that both those who claim to be and those who are functioning as Viharadhipatis were covered by those words, having regard to the purpose of the section.

These considerations lead me to the conclusion that the correct construction to be placed on the provisions of the Ordinance is that it was intended, in the case of a temple which was exempted from the operation

[1] (*1948*) *48 N. L. R. 11.* [2] (*1951*) *52 N. L. R. 150.*

of section 4 (1), to vest the management and the title to the property of such a temple in the priest who is the principal bhikkhu in the line of pupillary succession from the first incumbent of that temple.

For these reasons I hold that the lease in favour of the plaintiff conveyed no right to him. I would therefore set aside the judgment under appeal and dismiss the plaintiff's action with costs in both Courts.

GRATIAEN J.—I agree.

Appeal allowed.