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Thus, it is clear that the equitable principle of justice, equity and good conscience has been consistently applied by Civil Courts in dealing with mortgages in a substantial part of Rajasthan and that lends support to the contention of the respondent that it was recognised even in Alwar that if a mortgage deed contains a stipulation which unreasonably restrains or restricts the mortgagor's equity of redemption, courts were empowered to ignore that stipulation and enforce the mortgagor's right to redeem, subject, of course, to the general law of limitation prescribed in that behalf. We are, therefore, satisfied that no case has been made out by the appellant to justify our interference with the conclusion of the Rajasthan High Court that the relevant stipulation on which the appellant relies ought to be enforced even though it creates a clog on the equity of redemption.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed

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May, 8

SRI JAGADGURU KARI BASAVA RAJENDRASWAMI OF GAVIMUTT

v.

COMMISSIONER OF HINDU RELIGIOUS CHARITABLE ENDOWMENTS, HYDERABAD

(P. B. GAJENDRAGADKAR, C.J., M. HIDAYATULLAH, J. C. SHAH, RAGHUBAR DAYAL AND S. M. SIKRI, JJ.)

Constitution of India, Art. 19(1)(*f*)—*Mutt—Framing of scheme—Repeal of old Act by new Act—Promulgation of Constitution in the meantime—Notice on Matadhipati to hand over possession to Executive Officer—Validity—Scheme, it must be tested by fundamental rights conferred by the Constitution—Madras Hindu Religious and Charitable Endowments Act,* 1951 (*Mad. XIX of* 1951), *ss.* 103(*d*), 62(3)(*a*)—(*Mad. II of* 1923), *s.* 63.

The appellant, who was a Matadhipati, moved the High Court for a writ quashing the notice served on him in 1952 by the Executive Officer to hand over to the latter the administration and the properties

of the Mutt in enforcement of a scheme framed in 1939 under s. 63 of the Madras Act II of 1927. The predecessor of the appellant had filed a suit in the District Judge's Court to set aside that scheme. The suit failed and the scheme was confirmed subject to minor modifications. In 1951 the Madras Hindu Religious and Charitable Endowments Act, 1951, repealed and replaced the Madras Act II of 1927. It was urged on behalf of the appellant in the High Court that the scheme contravened his fundamental rights guaranteed by the Constitution. The single Judge who heard the matter found in his favour and held that the scheme contravened Art. 19(1)(f) of the Constitution. On appeal by the respondent, the Division Bench reversed the decision of the Single Judge. The High Court granted certificate to the appellant to appeal to this Court. It was contended that although the scheme was valid as framed under the earlier Act, it incumbent under s. 103(d) of the Act of 1951 that the validity of the all the provisions of the scheme must be tested in the light of its provisions.

Held: Section 103(d) of the Madras Hindu Religious and Charitable Endowments Act, 1951, properly construed, merely meant that earlier schemes framed under Madras Act II of 1927 would be operative as though they were framed under the Act of 1951. It was not intended by the section that those schemes must be examined and reframed in the light of the relevant provisions of the Act. Section 62(3)(a) of the Act which provided for the modification of such schemes made this amply clear. Unless the schemes could be modified under that section they must be deemed to have been validly made under the Act of 1951 and enforced as such.

East End Dwellings Co. Ltd. v. *Finsbury Borough Council*, [1952] A.C. 109, considered.

Although the scheme in question had not been completely implemented before the Constitution, that was no ground for examining its provision in the light of Art. 19 of the Constitution.

The fundamental rights conferred by the Constitution are not retrospective in operation and the observation made by this Court in *Seth Shanti Sarup* v. *Union of India*, are not applicable to the present case.

Seth Shanti Sarup v. *Union of India*, A.I.R. 1955 S.C. 624, explained and distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 745 of 1963.

Appeal from the judgment and order dated February 6, 1961 of the Andhra Pradesh High Court in Writ Appeal No. 71 of 1957.

A. V. Viswanatha Sastri, K. Rajendra Chaudhuri and *K. R. Chaudhuri*, for the appellant.

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R. Ganapathy Iyer and *B. R. G. K. Achar*, for the respondents.

May 8, 1964. The Judgment of the Court was delivered by

GAJENDRAGADKAR, C. J.—The appellant Shri Jagadguru Kari Basava Rajendraswami of Gavi Mutt is the Matadhipati of Sri Gavi Mutt which is a religious institution dedicated to the propagation and promotion of the tenets of the Veera Saiva cult of Hinduism. This Mutt is situated at Uravakonda in the district of Anantapur. It appears that on the 6th September, 1939, the Board of Hindu Religious Endowments constituted under the Madras Act II of 1927 (hereinafter called 'the earlier Act') framed a scheme under s. 63 of the said Act for the proper administration of the said Mutt and its endowments. The predecessor-in-office of the appellant then filed suit No. 21 of 1939 on the file of the District Judge, Anantapur for getting the said scheme set aside. His suit substantially failed, because the District Court was persuaded to make only a few minor modifications in the scheme subject to which the scheme was confirmed. That decision was taken in appeal by the predecessor of the appellant to the High Court of Madras (A.S. No. 269 of 1945). During the pendency of the said appeal, the appellant's predecessor died, and the appellant then brought himself on the record as the legal representative of his deceased predecessor. Ultimately, the appeal was withdrawn and, therefore, dismissed.

Though a scheme had been formulated by the Board under s. 63 of the said Act, apparently no effective step was taken to take over the actual management of the Mutt and its endowments. The said management continued as before and the fact that an Executive Officer had been appointed under the scheme made no difference to the actual administration of the Mutt. It was on the 5th April, 1952, that the appellant was served with a memorandum asking him to hand over the charge of all the properties of the Mutt to the Executive Officer. A notice issued by the Executive Officer followed on the 16th April, 1952 by which the appellant was informed that the Executive

Officer would take over possession. Meanwhile, what is known as the Sirur Mutt case was decided by the Madras High Court and the appellant felt justified in refusing to hand over possession to the Executive Officer on the ground that the scheme under which possession was sought to be taken over from him was invalid inasmuch as it contravened the appellant's fundamental rights guaranteed by the Constitution which had come into force from the 26th January, 1950.

In 1951, the Madras Hindu Religious and Charitable Endowments Act XIX of 1951 (hereinafter called 'the latter Act') repealed and replaced the earlier Act. The appellant moved the Madras High Court on the 28th April, 1952, by his writ petition and prayed for an appropriate writ quashing the notice served on him by the Executive Officer threatening to take over the administration of the Mutt and its properties under the scheme. This petition was heard by a single Judge of the said High Court and was allowed. The learned Judge took the view that some provisions of the Scheme contravened the appellant's fundamental rights under Art. 19(1)(f), and so, it could not be enforced. It was no doubt urged before the learned Judge that the appellant's writ petition should not be entertained because he had a definite adequate alternative remedy under the latter Act, but this plea was rejected by the learned Judge with the observation that where the fundamental right is clearly infringed, it is the duty of the Court to interfere in favour of the citizen, unless there are reasons of policy which make it inexpedient to do so. Accordingly, the learned Judge directed that the scheme should be quashed. He, however, took the precaution to make the observation that his order did not mean that the Government was not free to make a scheme in consonance with the Constitutional rights of the Matadhipati.

The respondent, the Commissioner of Hindu Religious and Charitable Endowments, who had been impleaded by the appellant to the writ petition along with the Executive Officer, challenged the correctness of the decision rendered by the learned Judge in the writ petition filed by the appel-

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lant. This appeal succeeded and the Division Bench which heard the said appeal, held that the scheme having been framed as early as 1939 under the relevant provisions of the earlier Act which was valid when it was enacted, could not be challenged on the ground that some of its provisions contravened the fundamental right guaranteed to the citizens of this country under Art. 19. Certain other contentions were raised before the appellate Bench by the appellant and they were rejected. It is, however, not necessary to refer to the said contentions, because they have not been argued before us. Having taken the view that the scheme when it was framed was valid, the appellate Bench reversed the decision of the single Judge, alowed the respondent's appeal and directed that the writ petition filed by the appellant should be dismissed. It is against this decision of the Division Bench that the appellant has come to this Court with a certificate granted by the said High Court.

Before dealing with the points which have been raised before us by Mr. Sastri on behalf of the appellant, we may briefly indicate the nature of the scheme which has been framed under the relevant provisions of the earlier Act. This scheme opens with the statement that the Board was satisfied that in the interests of the proper administration of the Mutt and all the endowments, movable and, immovable belonging thereto, a scheme should be settled, and so, the Board, after consulting the Matadhipati of the Mutt and other persons having interest therein, proceeded to frame the scheme. It was intended that the scheme should come into force on the 6th September, 1939, when it was framed. It appears that either because the Executive Officer did not take effective steps to implement the scheme, or because the predecessor of the appellant filed a suit challenging the scheme, the scheme in fact has not been implemented till today. When the notice was served on the appellant in 1952 and it looked as if the Executive Officer would take over the administration of the Mutt and its properties, the present writ proceedings commenced and throughout the protracted period occupied by these proceedings, the *status quo* has continued.

The scheme consists of 15 clauses and, in substance, it entrusts the administration of the Mutt and all its endowments in the hereditary trustee and two non-hereditary trustees appointed by the Board. These latter are liable to be removed by the Board for good and sufficient cause and the Board's order in that behalf has to be final. The Board is authorised to appoint an Executive Officer for the Mutt on a salary of Rs. 60/- per month. Such Executive Officer is required to furnish security in the sum of Rs. 500/- to the satisfaction of the Board. He has to be in charge of the day to day administration of the Mutt and he has to be answerable to the trustees. The trustees are required to meet once a month in the premises of the Mutt for discharging their duties. They are given the power to inspect the accounts maintained by the Executive Officer and generally supervise his work. The Board is also given the power to issue directions from time to time regulating the internal management of the Mutt. It would thus be seen that though the scheme was framed in 1939, in essential features it is similar to the pattern of schemes which have been subsequently introduced either by legislation or by judicial decisions in respect of the management of public charitable institutions like the present Mutt.

Mr. Sastri does not dispute the fact that the relevant provisions of the earlier Act as well as the scheme framed under them were valid at the relevant time. He, however, argues that the earlier Act has been repealed by the latter Act XIX of 1951, and according to him, it is necessary to consider whether the present scheme is consistant with the appropriate and relevant provisions of this latter Act. This argument is based on the provisions contained in s. 103(d) of the latter Act. This section provides that notwithstanding the repeal of the Madras Hindu Religious Endowments Act No. II of 1927, all schemes settled or modified by a Court of law under the said Act or under s. 92 of the Code of Civil Procedure, 1908, shall be deemed to have been settled or modified by the Court under this Act and shall have effect accordingly. The argument is that though the present scheme was framed under the provisions of the earlier Act, it must now be deemed to be a scheme which

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has been settled or modified by the Court under this latter Act, and so, it is necessary to enquire whether all the provisions of the scheme are consistent with the material provisions of the latter Act. If it is found that any of the said provisions are inconsistent with the relevant provisions of the latter Act, they must be modified so as to make them consistent with the said provisions.

In support of this argument, Mr. Sastri has invited our attention to the observations made by Lord Asquith of Bishopstone in *East End Dwellings Co. Ltd.* v. *Finsbury Borough Council*(1) that "if you are bidden to treat an imaginery state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it." Basing himself on these observations, Mr. Sastri has urged that if the deeming provision prescribed by s. 103(d) is given its full effect, there would be no scope for refusing to apply the test for which he contends.

We are not impressed by this argument. It is no doubt true that s. 103(d) provides that a scheme settled or modified by a Court under the earlier Act shall be deemed to have been settled or modified under the latter Act; but the effect of this provision merely is to make the schemes in question operative as though they were framed under the provisions of the latter Act; the intention was not to examine the said schemes once again by reference to the relevant provisions of this latter Act and re-frame them so as to make them consistent with these provisions. This position appears to be clear if we examine other sub-clauses of s. 103. Section 103(a) which deals with rules made, notifications or certificates issued, orders passed, decisions made, proceedings or action taken, schemes settled and things done by the Government, the Board or its President or by an Assistant Commissioner under the earlier Act, provides that the said rules, notifications, etc. in so far as they are not inconsistent with the latter Act, shall be deemed to have been made, issued, passed, taken, settled or done by

(1) [1952] A.C. 109 at p. 132.

the appropriate authority under the corresponding provisions of this latter Act and shall, subject to the provisions of clause (b) have effect accordingly. Having thus provided for the continuance of rules, notifications, orders, etc., in so far as they are not inconsistent with the provisions of the latter Act, s. 103(b) has made provision for the modifications in the said rules, notifications and orders. In other words, the scheme of s. 103(a) & (b) clearly brings out the fact that where the legislature wanted the continuance of the action taken under the provisions of the earlier Act only if the said action was consistent with the relevant provisions of the latter Act, it has so provided. The same type of provision is made by s. 103(f), (g) and (h). If we examine s. 103(d) in the light of these other provisions, it would be clear that the question of the consistency or otherwise of the schemes to which s. 103(d) applies. is treated as irrelevant, because no reference is made to the said aspect of the schemes. In other words, the schemes to which s. 103(d) applies have to be deemed to be settled or modified under the provisions of the latter Act without examining whether all the provisions of the said schemes are necessarily justified by, or consistent with. the provisions of this latter Act; and that is why we do not think Mr. Sastri is right in contending that the deeming clause prescribed by s. 103(d) necessitates an examination of the said schemes before they are allowed to be continued as though they were settled or modified under the latter Act.

This does not, however, mean that there is no provision prescribed by the latter Act for the modification of such schemes. Section 62(3)(a) specifically provides that any scheme for the administration of a religious institution settled or modified by the Court in a suit under sub-section (1) or on an appeal under sub-section (2) or any scheme deemed under s. 103, clause (d), to have been settled or modified by the Court may, at any time, be modified or cancelled by the Court on an application made to it by the Commissioner, the trustee or any person having interest. This provision clearly brings out the fact that if a scheme governed by s. 103(d) is deemed to have been made or sanctioned under the provisions of the latter Act

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and thus continued, modifications in it can be effected by adopting the procedure prescribed by s. 62(3). In other words, a scheme like the present is automatically continued by operation of s. 103(d), but is liable to be modified if appropriate steps are taken in that behalf under s. 62(3). Reading s. 103(d) and s. 62(3) together, it seems to us that Mr. Sastri's argument that the consistency of the scheme with the relevant provisions of the latter Act should be examined in writ proceedings, cannot be entertained. In fact, unless modifications are made in the scheme under s. 62(3), the scheme as a whole, will be deemed to have been made under the latter Act and will be enforced as a valid scheme. That clearly is the purpose of s. 103(d). Therefore, we do not think we are called upon to consider the further contentions raised by Mr. Sastri that some of the clauses in the scheme are inconsistent with the provisions of the latter Act.

There is one more point to which reference must be made before we part with this appeal. Mr. Sastri contended that though the scheme may have been valid when it was framed, since it was not actually enforced before the 26th January, 1950, it is open to the appellant to challenge the validity of the scheme on the ground that it deprives him of his fundamental right under Art. 19(1)(f) and as such, invalid. Mr. Sastri concedes that the fundamental rights guaranteed by the Constitution are not retrospective in operation; but that, he says, is no answer to his plea, because the deprivation of his property rights is taking place for the first time in 1952 and as such, it is open to the challenge that it is invalid on the ground that it contravenes his fundamental right under Art. 19(1)(f).

In support of this argument, Mr. Sastri has relied on certain observations made by Mukherjea J. in the case of *R. S. Seth Shanti Sarup* v. *Union of India and Ors*(1). In that case, a partnership firm known as Lallamal Hardeodas Cotton Spinning Mill Company of which the petitioner was a partner, used to carry on the business of production and supply of cotton yarn. When it was found that the Mill

(1) A.I.R. 1955 S.C. 624.

could be run only at a loss, it was closed on 19th March, 1949. Thereafter, on the 21st July, 1949, the Government of U.P. passed an order purporting to exercise its authority under s. 3(f) of the U.P. Industrial Disputes Act, 1947, by which one of the partners of the firm was appointed as "authorised controller" of the undertaking. The said order directed the said authorised controller to take over possession of the Mill to the exclusion of the other partners, and run it subject to the general supervision of the District Magistrate, Aligarh. In 1952, the Union of India passed an order under s. 3(4) of the Essential Supplies (Temporary Powers) Act, 1946, appointing the same person as an authorised controller under the provisions of that section, and issued a direction to him to run the said undertaking to the exclusion of all the other partners. It was then that the petitioner moved this Court by writ petition under Art. 32 and challenged the validity of both the orders on the ground that they were illegal and that they invaded his fundamental right. His plea was upheld and both the impugned orders were quashed.

In appreciating the effect of this decision, it is necessary to bear in mind one crucial fact on which there was no dispute between the parties in that case, and that fact was that both the impugned orders did not come within the purview of, and were not warranted by, the provisions of the relevant Acts, under which they were purported to have been issued. In other words, it was conceded by the Government that the impugned orders were invalid in law. Even so, it was urged that though the orders may be invalid, they cannot be challenged under Art. 32 inasmuch as the first invasion of the petitioner's right was made in 1949 when the Constitutional guarantee was not available to him. In repelling this contention, Mukherjea, J., observed that the order against which the petition was primarily directed was the order of the Central Government passed in October, 1952, and that was a complete and clear answer to the contention raised by the learned Attorney-General. Even so, the learned Judge proceeded to observe that assuming that the deprivation took place in 1949 and at a time when the Constitution had not come into force, the order effect-

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ing the deprivation which continued from day to day must be held to have come into conflict with the fundamental rights of the petitioner as soon as the Constitution came into force and became void on and from that date under Art. 13(1) of the Constitution. It is on these observations that Mr. Sastri's argument is founded. With respect, we are not prepared to hold that these observations were intended to lay down an unqualified proposition of law that even if a citizen was deprived of his fundamental rights by a valid scheme framed under a valid law at a time when the Constitution was not in force, the mere fact that such a scheme would continue to operate even after the 26th January, 1950, would expose it to the risk of having to face a challenge under Art. 19. If the broad and unqualified proposition for which Mr. Sastri contends is accepted as true, then it would virtually make the material provisions of the Constitution in respect of fundamental rights retrospective in operation. In the present case, the scheme was framed and the Executive Officer was appointed as early as 1939. If the Executive Officer could not take over the actual administration of the Mutt and its properties, it was partly because the appellant has continuously challenged the implementation of the scheme by legal proceedings and partly because he has otherwise obstructed the said implementation. But it is clear that when the scheme was framed and a challenge made by the appellant to its validity failed in courts of law, his property rights had been taken away. The fact that the order was not implemented does not make any difference to this legal position. If Mr. Sastri's argument were right, all such schemes, though implemented and enforced, may still be open to challenge on the ground that they contravened the Matadhipati's fundamental rights under Art. 19. Such a plea does not appear to have ever been raised and, in our opinion, cannot be validly raised for the simple reason that the fundamental rights are not retrospective in their operation. The observations on which Mr. Sastri relies must be read in the light of the relevant fact to which we have just referred. The deprivation of the petitioner's property rights was brought about by invalid orders and it was in respect of such invalid

orders that the Court held that the petitioner was entitled to seek the protection of Art. 19 and invoke the jurisdiction of this Court under Art. 32. In our opinion, therefore, there is no substance in the contention that since in the present case, the scheme has not been completely implemented till 1952, we must examine its validity in the light of the fundamental rights guaranteed to the appellant under Art. 19 of the Constitution.

The result is, the appeal fails and is dismissed with costs.

Appeal dismissed.

COMMISSIONER OF INCOME-TAX, NEW DELHI

v.

ANANT RAO B. KAMAT

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May, 8

(K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.)

Income-tax—Dividend declared and paid in different years—Rate of which year applicable—Meaning of 'rebate'—Is there any distinction between rebate under Finance Act and the rebate under other statutes—Indian Income-tax Act, 1922 (11 *of* 1922), *ss.* 16(5), 60*A—Part B States (Taxation Concession) Order,* 1950.

The assessee had received in the previous years (1950-51 and 1951-52) dividends from two companies. These companies had been allowed rebate under the Part B States (Taxation Concession) Order, 1950. For the assessment years 1951-52 and 1952-53, the assessee claimed before the Income-tax Officer that the dividend received by him should be "grossed up" under s. 16(2) of the Act, without taking into consideration the rebate allowed to the said companies under the said concession order. On a construction of s. 16(2) the assessee pleaded that the rate applicable to the total income of the said companies was the rate prescribed by the relevant Indian Finance Act. The Income-tax Officer grossed up at the State rate and not at the rate prescribed by the relevant Finance Act. Before the Tribunal and the High Court the assessee succeeded.

Held: (i) In interpreting s. 16(2) effect must be given to these words occurring in the said section 'without taking into account any rebate