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Case Comment: Bumper Development Corporation Ltd v Commissioner of Police for the Metropolis: When an Indian God won in an English Court

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REPRESENTATION

Mr. D. Calcutt, Q.C., and Mr. J. Stephens (instructed by M/s Stewarts) – Bumper Development Corporation Ltd. Mr. A. Hamilton, Q.C., and Mr. B. Ghorpade (instructed by M/s Zaiwalla & Co.) - Commissioner of the London Metropolitan Police, Union of India & other claimants.

FACTS OF THE CASE

An Indian named Ramamoorthi, who worked as a landless labourer, lived in a hut near the ruins of a Hindu temple at Pathur, Tamil Nadu, where in August or September of 1976, he found a Siva Nataraja or as referred to in this case, "Pathur Nataraja" idol made of bronze while excavating sand or similar material near his hut with a spade. This idol was a part of a series of bronze Hindu idols, referred to as the "Pathur bronzes". Possibly, these idols formed a part of the religious objects of the 13th-century Hindu temple of Arul Thiru Vishwanatha Swamy, referred to as "the temple" as Ramamoorthi's hut was situated close to the ruins of the

same. The parties to the case later agreed that the temple was in ruins and was unworshipped for centuries together. Ramamoorthi realized the value of his findings. He temporarily buried them in the same place and contacted his friend Dorai, who later came to Pathur, inspected the idols, and left, saying he would find a suitable buyer. After a few days, Dorai returned with two other men, Pillai and Meivil, who proposed to take away the idol and sell them. However, Ramamoorthi didn't agree to the same without being paid. The three left and returned after a few days with a fourth person, Chandran, a dealer for whom Meivil was a "runner." In the findings, Chandran was particularly attracted to the Pathur Nataraja idol, which was the first one in the series to be sold. Chandran bought the same and further sold it via Hussain (a local govt. official and a part-time dealer in stolen idols) and Balraj Nadar (a major dealer in stolen idols). They were also called witnesses during the case proceedings. The last identified buyer was a person named Valar Prakash, who was last known to be in Madras. During these sales, the Tamil Nadu State officials learned about them and initiated an investigation into the matter, during which statements were taken from Ramamoorthi and various others regarding the idol, its discovery, its history, etc. However, in 1982 the whereabouts of the Pathur Nataraja was unknown.

Various other artifacts and idols were found in the temple's ruins, such as the Shivalingam, which is a typical Chola-period Hindu temple that would be the focus of religious worship and be positioned in the Sanctum. Later, the same Shivalingam was reinstated as an object of worship at the temple site. In June of 1982, Bumper Development Corporation Ltd. (hereinafter referred to as "Bumper") purchased a Shiva Nataraja idol (referred to as "London Nataraja") in good faith from a dealer called Sherrier, who had started a false origin and history regarding the idol to facilitate the sale. Post-purchase, Bumper sent the idol to the British Museum for its appraisal and sustentation. However, when the idol was in the museum, it was seized by the London Metropolitan police as per the government policy of returning stolen artifacts to concerned owners. Bumper then initiated a suit against the Commissioner of the London Metropolitan Police regarding the return of the seized Nataraja idol. The claimants, in this case, are - the Union of India as the first claimant, the State of Tamil Nadu as the second claimant, Thiru Sadagopan, who claims to be the fit person on behalf of the temple, as the third

claimant, and the temple itself as the fourth claimant. In the later stage of the trial, the Shivalingam found was made as the fifth claimant.

ISSUES

Whether the London Nataraja and the Pathur Nataraja were the same objects?

If so, did any of the claimants have a title superior to that of Bumper Development Corporation Ltd over the Nataraja idol?

CONTENTION OF THE PARTIES

- The claimants' case was based on the evidence and testimonies of Ramamoorthi and others who were involved with the Pathur Nataraja in India in 1976 and appeared to identify the London Nataraja as the same as the Pathur Nataraja. Their claims were further supported by the expert evidence, whose findings propounded a similarity of style between the London Nataraja and the Pathur bronzes, and by specialist metallurgical, geological, and entomological evidence that supported a connection between the Pathur bronzes and the London Nataraja.
- Bumper's case was based entirely on the direct evidence given by Dr. Presencer, who identified the London Nataraja as an object he saw in London on 13th May 1976. This date was about four or five months before the excavation of the Pathur Nataraja and, if established, effectively disposed of the claimants' case. Their evidence was further supported by a soil analysis which advanced that the materials attached to or inside the base of the London Nataraja were geomorphologically incompatible and different from the geology of the Pathur Nataraja's excavation site. The bumper also relied upon metallurgical evidence to show various dissimilarities between the London Nataraja and the other Pathur bronzes.

JUDGMENT

The trial lasted around 34 days, from 17th November 1986 to 26th April 1987 in the trial court, and Kennedy, J reserved his judgment and delivered it on 17th February 1988.

- Regarding the issue of identity, i.e., if the London Nataraja and the Pathur Nataraja were the same objects, Justice Kennedy preferred the evidence presented by the claimants over that of Bumper and rejected the evidence given by Dr. Presencer.
- Regarding the holding of the superior title over the Nataraja idol, the court held that the fourth claimant, i.e., the temple which sued via its fit person, custodian, or next friend, the third claimant, i.e., Thiru Sadagopan held a title superior to that held by Bumper. Further, the court held that the fifth claimant, i.e., the Shivalingam acted as a living personification of the pious intent of the notable who gave the land and built the temple in the 12th century and that the Shivalingam also held a title superior to that of Bumper and lastly, considering the State of Tamil Nadu's rights under local legislation¹, even the second claimant was held to have a superior title than Bumper.
- With the parties' consent, Justice Kennedy assessed the damages due to the alleged conversion and detention of the Pathur Nataraja by Bumper and ordered to pay damages worth £5 to be paid to the fourth plaintiff, i.e., the temple. Unsatisfied with the judge's ruling, Bumper Development Corporation Ltd. decided to appeal the same to the Court of Appeal, which was presided by a bench constituted of Lord Justice Purchas, Lord Justice Nourse, and Lord Justice Leggatt. The Court of Appeal upheld the trial court's decision and dismissed the appeal, and Lord Justice Purchas delivered the judgment here as below,
- As per the State legislation of Tamil Nadu², a temple was also recognized as a 'legal person' and was allowed to be a party to a suit in a court of that State. Similarly, even here, the court accepted and qualified the temple (i.e., the fourth claimant) to be a party to this suit for recovery of the Nataraja.
- With regards to if a foreigner could be a party to a suit in the English courts, the court held that it was to be decided by the English law as the *lex fori*. If such party was an individual, the court stated they could be considered as 'foreign legal persons' recognized under English law, such as a foreign trading company. However, in the instant case, a novel question arose of if a legal person identified by the law of another

¹ Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959

² *Ibid*

country (i.e., the temple which is a legal person as per local legislation in the State of Tamil Nadu) but not under the English law, could be a party to a suit in the English courts. After carefully referring to Salmond's jurisprudence on legal personalities, the court decided that the temple could be allowed to be a party to the suit for the recovery of the Nataraja.

ADDITIONAL INFORMATION

In his autobiography, *Honor Bound*, renowned Solicitor Mr. Sarosh Zaiwalla, whose firm instructed Mr. A Hamilton, QC, on behalf of the Commissioner of the London Metropolitan Police and other claimants, provided additional information related to this case. He spoke of how for the idol to be considered a juristic personality under Indian law, it had to be proved to have been subjected to an extensive religious ceremony before it attained the status of God. He further states that after joining the temple and Nataraja as claimants, Nataraja himself asserted before the court that as a consecrated idol that had attained the status of a God, he wanted to return to his home, to the temple in India. He also remembers Justice Kennedy's words in the trial court judgment - "The plaintiff at its maximum is God Almighty and at its minimum is a mere stone." Mr. Zaiwalla further recalls how this historic judgment brought various other governments, such as that of Egypt and Greece, to contact his firm, asking if the firm could assist them in getting back antique Egyptian artifacts, Elgin Marbles, etc. from the British Museum, for which he answered: "certainly no because these artifacts and marbles do not have the status of God."³

COMMENT: CONCLUDING REMARKS

Bumper Development Corporation Ltd. v Commissioner of Police for the Metropolis is an interesting case and a historical judgment that not many are aware of. In fact, it can be considered a milestone in Heritage management as this case speaks of the event of retrieving stolen idols to their country of origin. To conclude, this is one of those few cases one can think of where an Indian god took over and won in the English courts.

³ Sarosh Zaiwalla, *Honour Bound* (First Published 2019, Harper Collins 2020) 59-61