
(2010) 09 KL CK 0225

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26758 of 2010 (T)

Bhageerathy

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 09 KL CK 0225

Hon'ble Judges : Thottathil B. Radhakrishnan, J;P. Bhavadasan, J

Bench : Division Bench

Advocate : Renjith B. Marar, for the Appellant; Leji Abraham, CGC, for the Respondent

Judgement

1. After arguing the matter for quite some time, learned Counsel for the petitioner may be justified in saying that the earlier litigation leading to Ext.P8 judgment in R.S.A.384/09 may not have any bearing on the claim now put forward by the petitioner. Whatever be the acceptability of that submission, we are clear in our mind that what is now attempted to be projected is also merely a right, the claim to which could be decided only by adjudicating disputed questions of fact. We notice that in the aforesaid R.S.A., this Court had impleaded the Travancore Devaswom Board which had then taken a stand that it has title to the property on behalf of the deity. Obviously therefore, it would not be within the realm of the writ court to exercise jurisdiction under Article 226 of the Constitution of India for resolving the dispute now attempted to be raised. We are clear in our mind that reliefs (ii) and (iii) by themselves would not sustain this writ petition because they have really no nexus to the fundamental issue raised, forming the subject matter of relief No. (i). We say this because the effect of the 40th amendment to the Constitution and the Thiruppuvaram Payment (Abolition) Act, 1969 would not have any bearing on the claim which is otherwise sought to be founded with reference to the rights of the petitioner and the so called other relatives. We also clarify that we do not express anything even on the cohesiveness of the tharwad or family since we are clear in our mind that the

Hindu Joint Family System (Abolition) Act, 1976, in so far as it impacts certain hereditary rights in relation to temples, still remain unanswered, including by the Apex Court, and we are advised that all such questions are left open as of now. However, we do not state anything finally on this because the court below, if at all moved with a proper suit, is to decide the matter untrammelled by anything stated in this judgment. The writ petition is ordered accordingly.