

(1990) 07 KL CK 0004
In the High Court Of Kerala
Case No : C.R.P. 1128/90

C. Damodaran

APPELLANT

Vs

C. Vasudevan and Others

RESPONDENT

Date of Decision : 06-07-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Kerala Education Act, 1958 — Section 11, 33, 6, 7
Kerala Land Reforms Act, 1963 — Section 125, 33

Citation : (1990) 2 KLJ 583

Hon'ble Judges : K.P. Balanarayana Marar, J

Bench : Single Bench

Advocate : Govinda Bharathan and Sri Hari Rao, for the Appellant; Pius Kuriakose, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Balanarayana Marar, J.—Can the Manager of an aided school be restrained by means of a temporary injunction from appointing teachers or Headmaster of the school is the precise question that arises for consideration in this revision. The assets of A.V.P. School, Karakunnu inclusive of its management belong to plaintiffs and defendant in O.S. 107/1989 before Sub Court Manjeri. Respondents are the plaintiffs in that suit and revision petitioner is the sole defendant. The suit is for the partition of the assets of the school including its management into five equal shares and for allotment of four shares to plaintiffs. Revision petitioner is the present Manager of the school. Plaintiffs filed a petition under O.39 R. 1 C.P.C. as I.A. 1240/1989 seeking to restrain revision petitioner from appointing teachers in the school. Interim order was passed on 30-9-1989 and time for filing counter granted till 11-10-1989. Another application was filed by plaintiffs as I.A. 1287/1989 praying for continuation of the interim injunction order till disposal of the suit. That petition was allowed with a direction that whenever vacancy arises, defendant shall report the matter to the court. On appeal before District Court, Manjeri as C.M.A. 48/1989 the appellate court concurred with that

order and dismissed the appeal. Hence this revision.

2. It is urged by learned counsel for revision petitioner that the manager of an aided school cannot be restrained by means of a temporary injunction from exercising his functions under the Education Act. The temporary injunction order granted by the court below is therefore illegal according to the counsel. On the other hand it is contended by learned counsel for respondents that the civil court has every power to pass an order under O. 39 R. 1 restraining the manager from making appointments and that such power of the court is not taken away by any of the provisions in the Kerala Education Act or the Rules framed thereunder. To appreciate the contentions raised on both sides it is profitable to refer to some of the provisions of the Kerala Education Act (for short the Act) and the Rules framed thereunder.

3. S. 33 of the Act prohibits the grant of a temporary injunction or any interim order restraining any proceeding which is being or about to be taken under the Act notwithstanding anything contained in the CPC or in any other law for the time being in force. "Proceeding" is not defined in the Act, but according to learned counsel for revision petitioner appointment of ft teacher or the headmaster of an aided school is a proceeding contemplated under the Act and Rules. It is pointed out that manager alone has the power to appoint teachers inclusive of headmaster in an aided school S. 11 of the Act provides that subject to the rules and conditions laid down by the Government, teachers of aided schools shall be appointed by the managers of such schools from among persons who possess the requisite qualifications. Chapter 3 of the Rules deals with management of private schools and duties and powers of managers of aided schools. Two categories of private educational institutions are contemplated under R. 1 of Chapter III. They are (1) those under individual educational agency, and (2) those under corporate educational agency. Rule 3 of may be vested by the educational agency in a person who shall be responsible to the that chapter provides that the management of every aided school department for the management of the institutions. In the case of aided institutions under individual management, the individual proprietor may be the manager. In the case of aided institutions under corporate management the proprietary body may choose the manager in accordance with the rules in that behalf referred to in R.2. S. 7 of the Act provides that any educational agency may appoint any person to be the manager of an aided school under the Act subject to the approval of such officer as may be authorised by the Government in this behalf. On the appointment of a manager by the educational agency, the power of such agency is vested in the manager. He becomes the legally authorised delegate of the educational agency.

4. Appointment of managers has to be approved by educational officers. The provision regarding approval of appointment is contained in R.4 The approval has to be made by the Deputy Director if the educational agency have schools in more than one educational district within a revenue district or by the Director of

Public Instruction if they have schools in more than one revenue district. If the schools are situated in one educational district, the approval has to be made by the educational officer. An appeal is provided against an order of the educational officer or the Deputy Director to the Director and Government may on their own motion or otherwise revise any order passed by the Director of Public Instruction. The duties and powers are conferred on the Director to declare him unfit to hold the office of the manager. Reasonable opportunity has to be given to the manager to show cause against the action proposed to be taken and after due enquiry the Director can declare him unfit to hold the office. The Educational agency can also be required to appoint a suitable person as Manager. Failure on the part of the manager to obey the instructions of the Department entails de-recognition of the institution, withdrawal of the grant and withdrawal of the permission granted for establishment of the school.

5. The appointment of Headmasters is dealt with in R.44 of Ch. XIV(A). That rule provides that the Headmaster will be appointed by the Manager subject to the rules laid down in that matter. Ordinarily the appointment shall be made according to seniority from the seniority list prepared and maintained under clauses (a) and (b) as the case may be of R.34. Any person aggrieved by the order of appointment can appeal to the Educational Officer. A second appeal is also provided for in the Rule. From the order of an Assistant Educational Officer a second appeal lies to the District Educational Officer. In the case of an order passed by the District Educational Officer, second appeal lies to the Deputy Director. There is also a right of revision to the Government under R.92. The explanation to that rule provides that for the purpose of the proviso to Rule 92 (1) and sub-rule (2) of that rule, the person concerned shall include the Manager of a school whose orders are sought to be revised by the Government. R. 92 (1) stipulates that the Government may on their own motion or otherwise after calling for the records of the case revise any order passed by a subordinate authority in respect of matters contained in Ch. XIV(A) which is made or is appealable under Rules, regarding the matters enumerated therein. For the purpose of these rules in relation to Educational Officers, Deputy Director, Director, the Government or the authority empowered by the Government, managers are lower or subordinate authorities as per R. 81 A.

6. On the basis of the above provisions contained in the Act and Rules it is contended by learned counsel for revision petitioner that the Manager has to act in accordance with those provisions and that his actions can be challenged only in accordance with those provisions and not otherwise. It is his contention that S. 33 of the Act specifically prohibits grant of a temporary injunction or any other order of an interim nature in respect of any proceeding being taken or about to be taken under the Act. The contention is that the appointment of teachers and headmaster of an aided school is a proceeding under the Act. The Manager is the person who is competent to appoint teachers of the school as well as the headmaster. The immediate provocation for filing the petition for injunction is the action proposed to be taken by the Manager to appoint one Karuppen as the

Headmaster consequent to the retirement of the previous headmaster. That action cannot be challenged in a civil court according to revision petitioner whereas the remedy is only by way of an appeal to the hierarchy of authorities contemplated in R. 44 and a revision to the Government under R. 92. The court below has therefore exercised jurisdiction not vested in it by law, according to learned counsel for revision petitioner, in granting the temporary injunction.

7. On the other hand it is contended by learned counsel for respondents that the civil courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred. The suit is one for partition and separate possession of the shares of plaintiffs over the school building and the properties including its management. It is pointed out that partibility of the properties cannot be doubted and the suit is of a civil nature. Learned counsel would therefore contend that the court has every power to pass an order of temporary injunction. It is pointed out that 1st defendant is only a representative of the co-sharers and that he is functioning as Manager in that capacity. It is therefore open to the remaining co-sharers to injunct him from functioning as Manager. According to counsel the right to get the dispute resolved is not given to any authority under the Act and that there is no remedy contemplated in the Act for a co-sharer in respect of reliefs against the other co-shares. There is no absolute immunity on account of S. 33 in entertaining a petition for injunction, according to counsel. Reliance is placed on the decision of this Court in *A. Abdhul Rahim v. State of Kerala* (1984 KLT. 773). That is authority for the proposition that the decisions of the educational authorities do not preclude parties from approaching civil court for determination of their civil rights to properties. In that case there was dispute regarding the ownership and the right of management of a school. Exercising power R. 92 of Ch. XIV (A) of the rules an order was ultimately passed by the Government. It was held that the order does not conclude the matter so far as the civil rights of the parties are concerned and it is open to any of the parties to the proceedings to take the matter to the civil court for its adjudication.

8. I am also referred to the decision in *Maroli Balan v. Maroli Damu* (86 KLT 919). The question whether a suit for partition is hit by S. 6 of the Act arose for consideration. The Division Bench answered that question in the negative. The subject matter of that suit was a school and the land appurtenant thereto. Since that could not be partitioned by metes and bounds, it was felt that the proper course is to auction the suit properties among the sharers and then apportion the sale proceeds in proportion to the sharers of the respective shares. That order was challenged before this Court. It was held that the order was justified. While interpreting S. 6 of the Act this Court said that the section restricts only alienation of the property of aided schools either by way of sale, mortgage, pledge, charge or transfer of possession. What was sought is only a partition of the property which cannot be said to be a transfer or alienation as contemplated under S. 6 of the Act. The competency of the civil court to grant temporary injunction was not considered in both these decisions. These decisions are of no

help to respondents to contend that the civil court has power to grant a temporary injunction against the Manager either in appointing teachers or the headmaster of the school. The decisions can be relied upon only to contend that it is for a civil court to decide the civil rights of parties and not the authorities under the Act. But the authorities are competent to decide all matters coming within the purview of the Act and Rules. The order of the Government under R. 92 was held to be one passed for the purpose of the Act and not for determining the civil rights of parties. For the purpose of the Act and the Rules the authorities under the Act have therefore every right to decide as to whether the appointment of a person as Manager can be approved or not.

9. Relying on some of the decisions of this Court under the Kerala Land Reforms Act it is contended by learned counsel for respondents that the bar of jurisdiction of civil courts under S. 125 of the Act is not applicable to orders obtained by fraud and collusion and that the question whether a person is a tenant in lawful possession or trespasser is essentially a question for the civil court to decide in spite of the provisions contained in S. 125. These decisions need not be referred to since the question decided therein is not applicable to the present case since there is no bar of jurisdiction as far as the civil rights of parties in respect of educational institutions are concerned in the Act and Rules whereas the prohibition in S. 33 relates only to grant of temporary injunction orders and orders of an interim nature.

10. Though there is no direct authority on the question as to whether an order of temporary injunction can be granted or not, there is indication in the decision in *Avvu v. Bapputty* (197/KLT 648) to suggest that the relief of injunction will not lie. The appeal arose out of a suit claiming three reliefs, (1) to remove the 1st defendant from management of an aided Mopla Lower Primary School, (2) for an injunction against him from receiving the maintenance grant from the educational authorities: and (3) For rendition of accounts in respect of amount of grant so far received. After referring to the statutory provisions contained in the Act and Rules Gopalan Nambiyar C.J. speaking for the Bench held:

It is unnecessary to notice in detail the provisions of these chapters. We have referred to the statutory provisions only to point out that when the legal title of management is provided for by the statutory provisions as based upon approval by the educational authorities, it appears difficult to envisage how a suit to remove a person duly approved by the educational authorities can lie without due cancellation or vacation of the approval.

The Division Bench doubted as to how the relief of injunction can lie against a duly approved manager. It was further held:

When there was no ground, having regard to the statutory provisions, to de-recognise the 1st defendant as Manager, and no attempt to do so, it appears to us to be inappropriate to formulate provisions to bring about a removal of the appellant, by formation of a Committee to be vested with the power of running

the school or similar measures. This part of the decree of the learned Judge also should therefore be vacated.

With these observations the suit was dismissed. The result is that the injunction claimed by the plaintiff therein to restrain the Manager from receiving the maintenance grant from the educational authorities was refused among other reliefs claimed by him.

11. The position that emerges from the decisions referred above and the provisions contained in the Act and Rules is that a Civil Court is not competent to grant a temporary injunction or make any interim order restraining any proceeding which is being or about to be taken under the Act. Appointment of a teacher or appointment of Headmaster to an aided school is a proceeding under the Act which is controlled by the Act and Rules-Any action taken by the Manager under the Act and Rules has therefore to be challenged before the prescribed authority in accordance with the procedure laid down in the Rules. In the event of mismanagement, maladministration etc. on the part of the Manager any person aggrieved will be competent to request the Director to declare the Manager unfit to hold the office of the Manager. After giving the Manager an opportunity to show cause, it shall be open to the Director to declare him unfit to hold the office of the Manager. The Director can also require the Educational Agency to appoint a suitable person as the Manager. The powers of the Director are seen to have been delegated to the Deputy Directors. It is not therefore difficult for the aggrieved persons to make a representation to the Deputy Director and get the grievance ventilated. So long as the Manager has not been found unfit to hold the office of the Manager he is competent to appoint teachers and the Headmaster of the school. Such action taken or proposed to be taken by the Manager cannot be prevented by an order or temporary injunction or any other order of an interim nature. The non-obstante clause in S. 33 makes it clear that the powers of the civil courts to grant such orders cannot be invoked in respect of any proceeding which is being or about to be taken under the Act That revision petitioner was functioning as Manager of the school for the past several years is not disputed. The school belongs to revision petitioner and respondents jointly. The Corporate Agency viz. the co-sharers jointly had appointed revision petitioner as the Manager of the school. Such appointment had been recognised by the Department. On the basis of such recognition revision petitioner was exercising his functions as Manager. So long as he is not removed in accordance with the provisions of the Act and Rules, he is entitled to function as Manager. Such functions cannot be restrained by means of an injunction by a civil court even though the assets of the school are partible in a civil court. It has not been pointed out that steps were taken to declare revision petitioner unfit to hold the office of the Manager. No steps were also taken till now to remove him from that office. He has therefore every rights to continue in that office and function as the Manager of the school. Such powers cannot be restrained or curtailed by means of a temporary injunction so long as he has not been removed from the office or declared to be unfit by the educational authorities.

12. What was sought to be restrained by means of temporary injunction is appointment of any new teacher in the school till the disposal of the suit. The immediate provocation for filing the application is the action proposed to be taken by the Manager to appoint one Karuppan as Headmaster. The trial court extended the interim injunction granted earlier till the disposal of the suit. At the same time defendant was directed to report to court whenever vacancy arises in the school. This order was found to be legal and proper by the lower appellate court. In view of the reasons mentioned in the foregoing paragraphs, the orders passed by the courts below are unsustainable and it has to be held that the courts below have exercised jurisdiction not vested in them by law in granting the relief of temporary injunction. Those orders are liable to be set aside. In this connection learned counsel for respondents points out that revision petitioner had acquiesced in the order of the trial court by filing I.A. 550/1990 for permission to approve the appointment of Karuppan as Headmaster stating that he is the seniormost teacher. That request was made according to counsel in view of the direction contained in the order to report about the vacancy as and when it arises. According to revision petitioner there was no acquiescence as such whereas approval was sought for at the instance of educational authorities who wanted the Headmaster to be appointed for exercising the functions under the Act and Rules. It is also pointed out that the previous Headmaster had handed over charge to Karuppan, he being the seniormost teacher. One of the respondents has staked his claim to the Headmastership of the school. The appointment of Karuppan and the approval sought for are therefore questioned by the respondents. It has to be noted that the petition was filed at a time when the appeal challenging the order of injunction was pending before the District Court. It cannot therefore be said that revision petitioner had acquiesced in that order. Moreover the approval was sought by him only at the instance of educational authorities to get the appointment approved for the purpose of exercising the functions under the Act and Rules. The filing of the petition will not therefore stand in the way of revision petitioner challenging the order of the trial court before the District Court or before this Court.

In the result the revision is allowed and the impugned orders are set aside. The petition for injunction I.A. 1287/1989 in O.S. 107/1989 before Sub Court, Manjeri, is dismissed. Parties are directed to suffer their costs.