(2004) 03 KL CK 0053

In the High Court Of Kerala

Case No : D.B.A. No. 42 of 2003

Cochin Devaswom Board APPELLANT

Vs

Ramachandra Kurup and Others RESPONDENT

Date of Decision : 09-03-2004

Acts Referred:

Constitution of India, 1950 — Article 25, 25(1), 300A
Government of Cochin Act, 1113 — Section 50G, 74

Citation : (2004) 03 KL CK 0053

Hon'ble Judges : Pius C. Kuriakose, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : M. Ramesh Chander, for the Appellant; P. Ashok Kumar and P. Vijaya Bhanu and Tony Mathew, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Valiyalukkal Group Devaswom (for short V.G. Devaswom) is not an incorporated or unincorporated Devaswom, but it is stated to be an institution coming within the definition of Section 61(6) of the Travancore-Cochin Hindu Religious Institutions Act, 1950 (hereinafter referred to as T.C.H.R.I. Act). V.G. Devaswom belongs to and under the sole management of a single family by name Maliyekkal family of erstwhile Cochin State. This is an application filed by the Secretary, Cochin Devaswom Board to grant permission to replace the Respondent-Trustee from the trusteeship of V.G. Devaswom by an officer of the Board to enable the Board to conduct an* enquiry into the affairs of the institution.

2. Application is purported to have been filed u/s 102(4) of the T.C.H.R.I. Act stating that V.G. Devaswom is a "Control Institution" under the Cochin Devaswom Board and hence the Board has got the right to replace the hereditary Trustee with an officer of the Board. In the application it is stated that the Cochin Devaswom Board has the statutory power to audit accounts and supervise the financial activities of the Control Institution. Further it is also stated that under Sections 84(1) and 107(3) of the T.C.H.R.I. Act, the Trustee of Control Institution

is bound to submit to the Devaswom Board the annual accounts of the Institution and the budget for audit and approval by the Board. It is stated that the Trustee of the Devaswom has not submitted annual accounts or budget to the Board except for a period from 1st August 1997 to 11th March 1998 and from 20th March 1998 to 15th May 1998. There was a deficit of Rs. 19,924 in the conduct of the annual festival and the amount was advanced from the funds of the Devaswom to close the accounts. Respondent-Trustee was directed by the Board to reimburse the amount the same was not done. Further proper accounts have also not been submitted by the Respondent. It is stated only by a thorough audit the actual financial position of the Devaswom could be ascertained so as to determine whether there is any misappropriation of the Devaswom funds. Trustee is not prepared to produce the accounts and registers for scrutiny and audit by the Devaswom Board. Reference was also made to certain complaints received from the devotees against the Trustee. In such circumstances the Board prayed that it is highly necessary to replace the Trustee so as to conduct a statutory enquiry into the affairs of the institution by an officer of the Board.

3. Counter-affidavit has been filed by the Respondent-Trustee. It is stated that Valiyalukkal Temple is a private temple owned by Maliyekkal family. As per the T.C.H.R.I. Act only incorporated and unincorporated Devaswom and only those temples which were under the control and administration of the former Ruler of Cochin prior to 1950 alone were vested in the Board. The temple concerned in this case was not under the control or administration of the Ruler or even Melcoima of the Ruler of the Cochin State. The Cochin Devaswom Board has published a list of temples under their control, supervision and administration, but this temple is not coming under the Cochin Devaswom Board. Further it was also stated that an application can be filed by the Board before this Court only in respect of a temple in which this Court has got direct control for audit under Sections 105 and 106 of the T.C.H.R.I. Act. u/s 102 of the T.C.H.R.I. Act the audit shall be made by the auditors appointed by this Court in case of the accounts of the Board and of incorporated and unincorporated Devaswom and institutions under the Management of the Board. It is also stated that the Board has failed to point out the provisions under which the application has been made before this Court and hence the application itself is not maintainable.

4. With regard to the complaint that the Respondent is not submitting annual budget it is stated that the Respondent has already submitted the annual audited statement for the years 1998-99, 1999-2000, 2000-01 and 2001-02. Further it was also stated that annual festival is being conducted under the leadership of the Respondent. Every year the Board used to give token amount for the conduct of pooram festival. During the years 2001 and 2002 no amount was paid to the Respondent and the amount sanctioned by the Board to the Respondent for participating the pooram festival during the year 2003 was Rs. 11,000 and the same was adjusted towards Rs. 19,924 to be remitted to the Board and even according to the Board, vide Annexure A10, the deficit is Rs. 8,924. Further it was also stated that the application is actuated by mala fides. President of the

Devaswom Board is residing close to Valiyalukkal Temple and is enmical towards the family and misusing his office trying to take over the administration of the temple. Reference was also made to Annexure A2. Further it was also stated that Annexure A7 complaint from the so-called devotees was also tutored complaint to wreck vengeance on the Trustee and to take over the temple after conducting farce of an enquiry. Complaints, according to the Respondent, are made by the close associates of the President, complaining that the Trustee of the Devaswom is preventing the use of the temple compound and Samithi was constituted with the President of the Board as the convener, of which the first signatory of the complaint is none other than the committee member of the Samithi. Some of the complainants have also tried to intimidate the Trustee and his sister for which a police complaint was filed and F.I.R. was registered.

5. The Secretary of the Board has specifically stated in paragraph 1 of the affidavit that the trusteeship of the Devaswom is hereditarily vested on Maliyekkal family. According to the custom and practice, only male member of Maliyekkal family can become the Trustee of the Devaswom. The fact that the temple is owned by a family by name Maliyekkal family is conceded by the Board in the application as well as in the reply affidavit. However, in the reply affidavit it is stated that the Trustee of the institution takes collection from the public to conduct festivals and consequently it is stated that Valiyalukkal Temple is a public temple. It is stated that worshippers visiting temple offer vazhipadu. Consequently it is a place of public worship. Further it is stated that former Trustee of the institution used to submit accounts to the Board for auditing and also annual budgets for the approval of the Board. Consequently it has become a Control Institution under the Board.

6. We heard Counsel on either side at length. The Valiyalukkal Group Devaswom which owns the Valiyalukkal Temple is a Hindu Religious Institution belonging to and under the sole management of a single family called Maliyekkal family. This factual position is admitted in the application submitted by the Board itself. T.C.H.R.I. Act, 1950 was enacted to make provision for the administration, supervision and control of incorporated and unincorporated Devaswoms and of other Hindu Religious Endowments and Funds. Part I of the Act applies to erstwhile Travancore. The preamble of the Act says that the Act is enacted to make provision for the administration, supervision and control of incorporated and unincorporated Devaswoms and of other Hindu Religious Endowments and funds. Section 2(c) defines what is incorporated and unincorporated Devaswoms means Section 2(b) defines what is Hindu Religious Endowment, which excludes Hindu Religious Trusts belonging to and under the sole management of a single family. Therefore so far as erstwhile Travancore for which Part I of the Act applies, Hindu Religious Trusts owned and under the management of a single family is excluded. Part II of the Act applies to erstwhile Cochin State. Sub-section (5) of Section 61 of Part II applies to erstwhile Cochin. Incorporated and unincorporated Devaswom means Devaswom specifically in Schedule I and II respectively of the Cochin Devaswom Verumpattom Settlement Proclamation

XXIII of 1118. The expression "Hindu Religious Endowment" has been defined in Sub-section(b) of Section 2 which falls in Part I of the Act, which is applicable to Travancore area, erstwhile Cochin State. The word "Institution" is defined only in Part II and not in Part I, so also Hindu Religious Endowment is defined in Part I and not in Part II.

7. Valiyalukkal Group Devaswom admittedly is not an incorporated or unincorporated Devaswom. At best it may fall under Sub-section (6) of Section 61 under the expression "institution". There is also controversy as to whether V.G. Devaswom would fall within the expression "institution". We need not express any final opinion on that issue since facts would indicate that the Trustee of the Devaswom used to follow the procedure contemplated in Part II of the T.C.H.R.I. Act in the matter of submission of records and budget and accounts and therefore we will proceed as if V.G. Devaswom is an institution which will fall u/s 61(6) of the Act.

8. We are in this case primarily concerned with the question as to whether the Board has the power to replace the Trustee and its management by an officer of the Board.

9. We have indicated that Part II of the T.C.H.R.I. Act deals with Cochin Devaswom Board. Section 61(1) defines "Board" to mean the Cochin Devaswom Board constituted under Chapter VIII of the Act in accordance with the covenant. Section 62 states that the administration of incorporated and unincorporated Devaswoms and Hindu Religious Institutions which were under the management of the Ruler of Cochin immediately prior to the first day of July 1949 either u/s 50G of the Government of Cochin Act XX of 1113, or under the provisions of the Cochin Hindu Religious Institutions Act 1 of 1081 and all their properties and funds and of the estate and all institutions under the management of the Devaswom Department of the Cochin shall vest in the Cochin Devaswom Board. Section 74 states that subject to the provisions of Sub-section (2) of Section 62 all rights, authority and jurisdiction belonging to or exercised by the Ruler of Cochin prior to 1st day of July 1949 in respect of incorporated and unincorporated Devaswoms and institution shall vest in and be exercised by the Board in accordance with the provisions of the Act. Further we may also point out the provisions in Sections 62 to 78 of Chapter VIII would apply only to those institutions which were under the management of the erstwhile Ruler of Cochin and incorporated and unincorporated Devaswoms.

10. Admittedly Valiyalukkal Group Devaswom was not an institution which was under the management of the erstwhile Ruler of Cochin and therefore has not vested in the Cochin Devaswom Board u/s 62 of the Act and consequently the Board cannot exercise jurisdiction u/s 74 of the Act. At best it is an institution which falls under Chapter IX i.e., "Institution in general".

11. Chapter IX deals with Institution in general. Section 79 stipulates that the Trustee shall maintain prescribed registers. Section 81 stipulates that the Trustee

of an institution shall maintain regular and proper books of account disclosing correctly the head of income and expenditure of the Institution from day to day. Section 82 authorises the Trustee of every institution to administer its religious affairs in accordance with the established usage and custom of the institution and to apply the funds and property of such institution in accordance with the terms of the Trust. Section 83 stipulates that the Trustee of every institution shall furnish such accounts, returns, reports or other information relating to the administration or management of the institution in his charge to the Board within such times as it may prescribe or require. Section 84 of the Act stipulates that the Trustee shall prepare or cause to be prepared an annual balance sheet giving such particulars as Will disclose the nature and extent of the income, expenditure, outstanding and savings of the institution and send a signed copy of the same to the Board not later than the last day of the month of the succeeding financial year. Section 85 states that all office-holders and servants attached to an institution or receipt of any emolument or perquisite from an institution shall be under the orders and control of the Trustee. Section 86 states that any exchange, sale, mortgage, pledge, lease or other alienation of the property of an institution executed or made or any debt contracted on its behalf shall be void unless it is executed or made or contracted with the previous sanction of the Board. Section 87 which is relevant for the purpose of this case is extracted hereunder.

87. Enquiry into affairs of institution by an officer deputed by the Board.--(1) The Board may depute any officer not lower in grade than a Devaswom Assistant Commissioner to enquire into the affairs of any institution and to examine the properties, movable and immovable, and the accounts, registers and other records of any institution and to submit a full report on the result of such enquiry and inspection. The Trustees, office-holders and servants of such institution shall furnish the officer so deputed with all the information he may call for and shall also assist him in the examination of the properties, accounts, registers and records. On the report of the officer deputed to conduct the enquiry the Board shall pass such orders as it may think proper.

(2) Where the officer deputed under Sub-section (1) finds, that any movables are likely to be removed or misappropriated, he shall take such immediate steps for their temporary safe custody as may be necessary and make a report to the Board, and on receipt of such report and after hearing the parties concerned, the Board shall pass such orders as it may think proper.

(3) Pending final orders on the report of the officer deputed to conduct the enquiry under Sub-section (1) or pending the enquiry, the Board may suspend the Trustee officeholder or servant.

The above-mentioned provision would indicate that the Board can enquire into the affairs of the Institution and examine the properties, movable and immovable, and the accounts, registers and other records and to submit a full report on the result of such enquiry and inspection. It specifically says that on the report of the officer deputed to conduct the enquiry the Board shall pass such orders as it may think proper. Sub-section (3) says that pending final orders on the report of the officer deputed to conduct the enquiry, the Board may suspend the Trustee office-holder or servant. Section 88 of the Act empowers the Board to pass an order removing any trustee, office-holder or servant. Section 89 deals with removal of trustee by the Board. Section 90 deals with disqualifications for being a trustee. The other relevant provision is Section 91, which we extract below for easy reference.

91. Appointment of trustee in place of trustee removed.--Where a trustee is suspended under Sub-section (3) of Section 87 or removed u/s 88 or Section 89, or where a trustee has ceased to hold office u/s 90, the Board shall, where trusteeship is hereditary appoint as trustee a competent adult male member of the family in which such trusteeship is hereditarily vested and in other cases the Board shall appoint a competent person as trustee in accordance with the scheme of administration, if any, existing in such institution or the usage of such institution:

Provided that:

(1) Where no competent adult male member of the family is available or where the Board is satisfied that in the interests of the institution some other person has to be appointed, the Board may appoint any other person to be a Trustee;

(2) Where according to the scheme of administration or the usage of any institution the trusteeship is to be vested in a certain specified number of persons and a suitable person cannot be found to replace a Trustee who has been suspended under Sub-section (3) of Section 87 or removed u/s 88 or Section 89 or who has ceased to hold office u/s 90, the Board may by order direct that the number of trustees be reduced for the time being until a suitable person becomes available and is appointed to fill up the vacancy.

The grounds raised in the application, in our view, are not sufficient to remove the trustee by an officer of the Board and to assume management by a department official. There is no grave allegation of misappropriation of funds or defalcation of accounts. The attempt of the Board is to make fishing enquiry and to unearth materials. The only allegation is with regard to delay in the submission of accounts and registers. The present trustee took charge in the year 1998. Delay or default in the submission of accounts as well as the budget cannot be the reason for removing the trustee. If there is discrepancies or defects in the accounts produced,

the Board may allow the trustee to rectify the defect. The Board also could direct production of accounts. We are not prepared to say that a situation which exists in this case to replace the trustee. Counsel for the trustee submits that the trustee is always willing to co-operate with the enquiry to be conducted by the Board officials.

12. We may point out that the Board had earlier passed an order u/s 89 of the Act removing the present Trustee of the Devaswom and appointed another member of the family as Trustee. That order was challenged by the Respondent and is now pending consideration before the District Judge as directed by this Court in O.P. No. 281 of 1998 Judgment of which is reported in 2004 (1) K.A.J. 31. (Radhakrishna Kurup v. Cochin Devaswom Board).

13. We have already stated that V.G. Devaswom is a private Devaswom and its Trusteeship is vested by hereditary right to the family members. Hereditary Trustee is defined in Sub-section (4) of Section 61 which says that hereditary trustee shall mean the Trustee of an institution, succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founders so long as such mode of succession is in force. Sub-section (9) of Section 61 defines the word ''Trustee" as a person by whatever designation known in whom the administration of an institution is vested or having control over any institution or holding any property in trust therefor and includes any person who is liable as if he were a Trustee. We have already indicated management in administration of the erstwhile Ruler has only the incorporated and unincorporated and only those institutions which were under the administration have only been vested with the Cochin Devaswom Board. Hindu Religious Institution owned by private family is vested in hereditary Trustees and not in the Cochin Devaswom Board. It is for the hereditary trustees to manage and administer the temple and not by the Board. V.G. Devaswom is owned by Maliyekkal family and trusteeship is hereditary. The hereditary character of the Respondent has been highlighted by a Division Bench of this Court in O.R No. 2363 of 1994, wherein the Board had filed a statement admitting that V.G. Devaswom was not in the administration of the Devaswom Department of the Government of the erstwhile Cochin State.

14. Article 25(1) of the Constitution of India guarantees that every person in India shall have the freedom of conscience and have the right freely to profess, practice and propagate religion subject to restrictions imposed by the State in public order, morality and health. Right to perform a religious practice may be acquired also by custom and when so acquired, it would have the protection of Article 25 with respect to all the religious rites, practices, observances, ceremonies and functions which have been customarily performed by the members of the family. Article 300A of the Constitution says that no person shall be deprived of his properties save by authority of law. The right of V.G. Devaswom is a hereditary right and is a property and without the authority of law such family cannot be deprived of their property. Board has no legal right to assume management of the institution keeping away the Trustee of the Devaswom. u/s 98 of the Act the Board can assume management of an institution only on certain circumstances. One of the circumstances is that whether majority of the Trustees or whether one of them and in cases where the founders have reserved to themselves the power of appointing and dismissing Trustees of a majority of such founders or where there are only two founders or

any one of them make an application to the Board. Such contingencies have also been provided in Section 98. None of the aforementioned contingencies have occurred in this case so as to keep away the Trustee and to assume management by the officer of the Board. Oblique motive is writ large on the complaint received by the Board and the proposed initiation of proceedings on it.

15. We are however inclined to give direction to the Respondent to make available all the records and other relevant details called for by the Board for scrutiny. Counsel for the Respondent submitted that the Respondent would make available all the records to the Inspecting Officer concerned and the budget for the coming year as well. The application is disposed of accordingly.

