

(2023) 11 KL CK 0142
In the High Court Of Kerala
Case No : Writ Petition (C) No.14070 Of 2023

Deity, Vana Durga Temple

APPELLANT

Vs

Balaramapuram Grama Panchayath

RESPONDENT

Date of Decision : 27-11-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 6
Land Acquisition (Companies) Rules, 1963 — Rule 3, 4

Citation : (2023) 11 KL CK 0142

Hon'ble Judges : Anil K. Narendran, J;G. Girish, J

Bench : Division Bench

Advocate : M.R. Rajesh, Sandhya E.S., Rashmi K.M, T.K.Ananda Krishnan

Final Decision : Dismissed

Judgement

Anil K. Narendran, J.

1. The petitioners have filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the 1st respondent Balaramapuram Grama Panchayath not to encroach into the temple pond and convert it as a dry land. They have also sought for a writ of mandamus commanding the 2nd respondent District Collector to issue an order directing the 1st respondent not to interfere with the affairs of the property hereafter and to maintain the pond in its original condition.

2. The 1st petitioner is the deity of Vana Durga Temple, represented by the 2nd petitioner. In the writ petition it is stated that the 2nd petitioner is a member of the family, which is managing Vana Durga Temple. The documents placed on record as Exts.P1 to P5 are copies of Complaint No.1597 of 2010 filed before the Lok Ayuktha; copy of order dated 12.12.2012 issued by the Lok Ayuktha on the said complaint; the report of the Advocate Commissioner appointed by the Lok Ayuktha in the said complaint; and the judgment of this Court dated 07.02.2023 in W.P.(C)No.484 of 2014, which was one filed by the 1st respondent

Balaramapuram Gram Panchayat, challenging Ext.P2 order dated 12.12.2012 of the Lok Ayuktha and the photographs pertaining to Vana Durga temple.

3. Heard the learned counsel for the petitioner, the learned counsel for the 1st respondent Grama Panchayat and also the learned Senior Government Pleader for the 2nd respondent.

4. Going by the averments in the writ petition, in respect of the property in question, the father of the 2nd petitioner had approached the Sub Court, Neyyattinkara in O.S.No.26 of 2001, which was dismissed for default. Later, another suit was filed by the 2nd petitioner and others, in respect of the pathway leading to Vana Durga temple, as O.S.No.869 of 2009, before the Munsiff's Court, Neyyattinkara, which also ended in dismissal by the judgment dated 19.10.2011. On a query made by this Court, the learned counsel for the petitioner would submit that the claim made in O.S.No.869 of 2009 was that the pathway leading to Vana Durga temple is a private pathway. However, that claim was not accepted and the Munsiff's Court dismissed O.S.No.869 of 2009.

5. In this writ petition, the petitioner is seeking a writ of mandamus commanding the 1st respondent Balaramapuram Grama Panchayath not to encroach into the temple pond and convert it as a dry land. The other relief sought for is a writ of mandamus commanding the 2nd respondent District Collector to issue an order directing the 1st respondent Grama Panchayat not to interfere with the affairs of the property hereafter and to maintain the pond in its original condition.

6. The pleadings and materials on record would not show that the 2nd petitioner has already approached respondents 1 and 2, pointing out his grievance and the legal right to seek the interference of the said authorities. As already noticed hereinbefore, O.S.No.26 of 2001 filed by the father of the 2nd petitioner before the sub Court, Neyyattinkara seeking relief in respect of the property in question was dismissed for default. Another suit filed by the 2nd petitioner and others in respect of the pathway leading to Vana Durga Temple raising a claim that it is a private pathway was also ended in dismissal by the judgment dated 19.10.2011. Moreover, the writ petition does not even contain proper pleadings and materials in support of the reliefs sought for.

7. In *Bharat Singh v. State of Haryana* [(1988) 4 SCC 534] the Apex Court held that, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit, as the case may be, the Court will not entertain the point. The Apex Court held further that there is a distinction between a pleading under the Code of Civil Procedure Code, 1908 and a writ petition or a counter affidavit. While in a pleading, i.e., a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ

petition or in the counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

8. In *M/s.Larsen and Toubro Ltd. v. State of Gujarat* [(1998) 4 SCC 387] the Apex Court was dealing with a case arising out of the proceedings initiated for the acquisition of land for M/s.Larsen and Toubro Ltd. under the provisions of the Land Acquisition Act, 1894. The Apex Court noticed that, in the absence of any allegation that Rule 3 the Land Acquisition (Companies) Rules, 1963 had not been complied and there being no particulars in respect of non compliance of Rule 4 also, it is difficult to see as to how the High Court could have reached the finding that statutory requirements contained in these Rules were not fulfilled before issuance of notification under Section 4 and declaration under Section 6 of the Land Acquisition Act. High Court did not give any reason as to how it reached the conclusion that Rules 3 and 4 had not been complied in the face of the record of the case. Rather, it returned a finding which is unsustainable that it was "not possible on the basis of the material on record to hold that there was compliance with Rules 3 and 4". The Apex Court held that, it is not enough to allege that a particular Rule or any provision has not been complied. It is a requirement of good pleading to give details, i.e., particulars as to why it is alleged that there is non compliance with a statutory requirement. Ordinarily, no notice can be taken on such an allegation which is devoid of any particulars. No issue can be raised on a plea, the foundation of which is lacking. Even where rule nisi is issued, it is not always for the department to justify its action when the court finds that a plea has been advanced without any substance, though ordinarily department may have to place its full cards before the court. On the facts of the case, the Apex Court found that the State has more than justified its stand that there has been compliance not only with Rule 4 but with Rule 3 as well, though there was no challenge to Rule 3 and the averments regarding non compliance with Rule 4 were sketchy and without any particulars whatsoever. High Court was, therefore, not right in quashing the acquisition proceedings.

9. In *Narmada Bachao Andolan v. State of Madhya Pradesh* [(2011) 7 SCC 639] a Three-Judge Bench of the Apex Court held that, it is a settled proposition of law that a party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition and in case the pleadings are not complete the Court is under no obligation to entertain the pleas. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question(s) in issue, so that the parties may adduce appropriate evidence on the said issue. It is settled legal proposition that as a rule relief not founded on the pleadings should not be granted. Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. If any factual or legal issue, despite having merit, has not been

raised by the parties, the court should not decide the same as the opposite counsel does not have a fair opportunity to answer the line of reasoning adopted in that regard. Such a judgment may be violative of the principles of natural justice.

10. In the above circumstances, the petitioners are not entitled for the reliefs sought for in this writ petition.

In the result, this writ petition fails and the same is accordingly dismissed; however, without prejudice to the legal right, if any, of the petitioners to approach the competent forum for redressal of their grievances.