

(2010) 11 KL CK 0112

In the High Court Of Kerala

Case No : Con. Case (C) No. 1154 of 2010 (S)

Dr. Ajith Kumar G.

APPELLANT

Vs

Sri Prabhakaran, Sri K. Ravi, Sri B. Radhakrishnan and Sri
V.K. Balakrishnan

RESPONDENT

Date of Decision : 30-11-2010

Acts Referred:

Government of Kerala Ordinance, 2000 — Section 3

Citation : (2010) 11 KL CK 0112

Hon'ble Judges : P.R. Ramachandra Menon, J;Jasti Chelameswar, J

Bench : Division Bench

Advocate : Kaleeswaram Raj, for the Appellant; Government Pleader, for the Respondent

Judgement

J. Chelameswar, C.J.—This Contempt petition is filed complaining that Respondents 2 and 3 have willfully disobeyed and deliberately flouted the declaration made in a judgment of this Court dated 03.06.1997 in OP No. 14335 of 1995. The applicants herein were the Petitioners in the abovementioned writ petition.

2. The facts deserve an exhaustive narration in order to appreciate the chaotic state of affairs. One C. Samuel Aaron gifted an extent of 300 acres of land on 05.06.1950 to a Society called "Madras Provincial Welfare Fund Society", registered under the Societies Registration Act, 1860. The gift is evidenced by a registered document numbered 812 of 1950. The abovementioned Mr. Aaron was the President of the abovementioned Society. While making the gift, the donor conveyed a desire that the donee should establish a Sanatorium for the treatment of Tuberculosis. In deference to the desire of the donor, the donee did establish the Sanatorium, constructed buildings, it appears, with the assistance of the public who made contributions for the construction of the buildings. In due course of time, the Society found it difficult to run the Sanatorium and some time towards the end of the year 1956, the Society requested the State of Kerala to

"take over" the institution. We are unable to describe what exactly happened thereafter, except that it is stated in the judgment dated 03.06.1997 in OP No. 14335 of 1995 that "the Government of Kerala accepted that request and with effect from 01.09.1957 took over the Institution with all its assets and liabilities". It is not very clear as to how such a "take over" was effected in law. No deed of transfer of the assets of the institution or the management of the institution is brought to our notice, nor is there any statutory take over of either the assets or the management of the society which was running the Sanatorium. Be that as it may, factually the management of the Society was being run by the State of Kerala from 01.09.1957 and also the assets were also under the control of the State of Kerala. We are constrained to say factually for the reason that in the absence of any conveyance known to law by which the assets and management of the society stood transferred to the Government, we are at a loss to understand the transaction but at the same time we cannot ignore the fact situation. It is a doubtful legal proposition (which we do not propose to examine in the present proceedings) whether the State/sovereign could claim adverse possession over property. We may also point out that, at paragraph 3 of the judgment the learned Judge noted the doubtful nature of the "conveyance of title" made in favour of the State.

3. A society known as the "Kerala State Co-operative Hospital Complex and the Academy of Medical Sciences" came to be registered under the Kerala Co-operative Societies Act, on 26.3.1993, with the object of establishing a full fledged hospital with modern facilities of super speciality in the district of Kannur. It appears that, the Government of India was not favourably inclined to accept the proposal of establishment of a Medical College by a Co-operative Society. Therefore, a society registered under the Societies Registration Act, 1860 called the "Academy of Medical Sciences" came to be registered on 17.11.1993. The Chairman of the governing council of the said society is the Chief Minister of Kerala and the President of the Co-operative Society referred to earlier became the Vice Chairman of the new society and various other officers of the State became the members of the governing body.

4. A series of confusing transactions with doubtful legal validity took place; the details of which are contained in the judgment dated 03.06.1997 which we do not propose either to reiterate or to examine in detail, except to take note of the fact that by an order dated 11.03.1994 the State of Kerala purported to assign an extent of 48.1562 hectares of land out of the land originally gifted by Mr. Aaron to the abovementioned Medical College, Kannur. Challenging the said assignment, OP No. 14335 of 1995 came to be filed by the applicants herein. A learned Judge of this Court by judgment dated 03.06.1997 disposed of the writ petition. The operative portion of the judgment reads as follows:

The order dt. 11.3.1994 assigning away 48.1562 hectares of land to the Co-operative Medical College, Kannur will have to stand nullified. There has to be a declaration that document No. 812 of 1950 dt. 5.6.1950 executed by C. Samuel

Aaron, S/o.C. Aaron creates a public trust or charity and the State Government has stepped into the shoes of the trustees of that charity with all attendant rights and obligations as a trustee and that it may be open to the State Government to run a Medical College and a super speciality hospital of its own in the property without in any manner stopping the running of the T.B. Sanatorium either in its original form or in an improved form consistent with the medical advances made in that behalf.

I therefore dispose of these Original Petitions by restraining the State Government from winding up or closing down the T.B. Sanatorium, Pariyaram and directing the Government to continue to run that Sanatorium in the property gifted by Samuel Aaron, either in its original form or in an improved form consistent with the advances made in the medical field for the treatment of chest and lung diseases. I declare that a public trust or charity has been created by Samuel Aaron by execution of the document dt.5.6.1950 and the State which has taken over the administration of the charity from the Madras Provincial Welfare Fund Society stands in the shoes of a trustee regarding that charity. I nullify the assignment of 48.1562 hectares of land made by the State in favour of the Co-operative Medical College, Kannur as per order dt. 11.3.1994. I also declare that it will be open to the State Government to run a medical college and a super speciality hospital on its own in the property without in any manner stopping the running of the T.B. Sanatorium either in its original form or in an improved form consistent with the medical advances made in that behalf. In the circumstances, I make no order as to costs.

5. It can be seen from the above extract that this Court declared that the assignment dated 11.03.1994 is illegal and directed the State not to close down the T.B. Sanatorium established pursuant to the gift made by Mr. Aaron and run it in its original form or an improved form. This Court also declared that it is open to the State Government to run a Medical College and super specialty hospital on its own in the property gifted by Mr. Aaron without in any manner stopping the running of the T.B. Sanatorium.

6. It must be mentioned here that, as a matter of fact, a Medical College came to be established by the Society. However, by the date of the abovementioned judgment the State of Kerala made an enactment known as the "Kerala State Co-operative Hospital Complex and the Academy of Medical Sciences (Taking over the Management) Act 6 of 1997". By Section 3 of Act 6 of 1997 it is provided that the management of the undertaking of the Societies would be taken over by the Government of Kerala. The expression "undertaking" is defined u/s 2(i) as follows:

(i) "undertaking" includes the medical college, hospital, all assets rights, lease holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, stores, equipments, automobiles and other vehicles, cash balances, reserve fund, investments and book debts and all other rights and interests arising out of such property as were immediately

before the date of the notified order under Sub-section (1) of Section 3, in the ownership, possession, power or control of the societies, and all books of account, registers and all other documents of whatever nature relating thereto.

7. Sub-Section 6 of Section 3 declares that a notified order issued under Sub-Section 1 shall remain in force for such period not exceeding two years as may be specified in the order. Sub-Section 6 reads as follows:

(6) Any notified order issued under Sub-section(1) shall remain in force for such period not exceeding two years as may be specified in the order:

Provided that if the Government are of the opinion that in order to secure the proper management of the undertaking it is expedient that any such notified order should continue in force after the expiry of the period specified in that order, they may, from time to time, by notification in the Gazette, extend such period by not more than six months at a time, but no such notified order shall in any case remain in force for more than five years.

8. The proviso to the said Sub-section enables the State to extend the validity of the notified order from time to time subject to an upper limit of 5 years. Section 4 of the said Act specifies the consequence of the issuance of a notified order which reads as follows:

4. Effect of notified order issued u/s 3.- (1) On the issue of a notified, order u/s 3 appointing a Board of Control to take over the management of the undertaking (a) all persons in charge of the management of the Co- operative Hospital complex and the Academy of Medical Sciences including the President, Vice-President and other members of the Governing Council and the Board of Directors of the Co-operative Hospital Complex and the President, Vice President and other members of the governing council and the executive committee of Academy of Medical Sciences shall be deemed to have vacated their offices as such;

(b) the Board of Control alone shall be entitled, notwithstanding anything contained in any law for the time being in force, to exercise all the powers of the governing council and Board of Directors of the co-operative Hospital Complex and the governing council and executive Committee of the Academy of Medical Sciences;

(c) as from the date of the notified order, the undertaking of the societies shall be in the custody of the Board of Control which shall, as soon as may be after such date, take such steps as may be necessary to take into its possession or under its control all properties, assets and effects and all actionable claims comprised in the undertaking.

(2) Subject to the other provisions contained in this Act and to the control of the Government, the Board of Control shall take such steps as may be necessary for the purpose of efficiently managing the affairs of the societies medical college and the hospital and shall exercise such other powers and have such other duties

as may be prescribed.

9. The substance of Section 4 is that by the issuance of the notified order all the members of the managing committee of the Co-operative Hospital Complex and the Academy of Medical Sciences shall vacate their offices and a board of control constituted u/s 3 shall take "custody of the undertaking" and take into its possession all properties, assets, etc.

10. It may be noticed from the scheme of Act 6 of 1997 that it is only the management of the affairs of the various institutions specified above, which is taken over but not the title of the properties of the institutions.

11. Unfortunately the coming into force of Act 6 of 1997 does not appear to have been brought to the notice of this Court at the time of hearing of OP No. 14335 of 1995, though the said Act is relevant and necessary to be noticed in the context of the relief sought in OP No. 14335 of 1995.

12. Subsequently, in the year 2000, an Ordinance came to be promulgated by the Government of Kerala (Ordinance 19 of 2000). Section 3* of the said Ordinance provided for the transfer and vesting of the "establishment" absolutely in the Government. The expression "establishment" is defined under Sub-section (e) of Section 2 which reads as follows:

(e) "establishment" means the Pariyaram Medical College established under the Memorandum of Association and Rules and Regulations of the Academy of Medical Sciences and the Hospital established by the Co-operative Hospital Complex together with the dispensaries attached thereto and used in connection therewith and includes all lecture-rooms, museums, laboratories, libraries, hostels and boarding houses used in connection with or as accessories to or adjuncts of the said Medical College and Hospital, all assets, rights, powers, authorities and privileges, furniture, stores, equipment, automobiles and other vehicles, cash balance, reserve fund, investments and books debts and all other movable rights and interests in the Medical College and Hospital now in the possession, power and control of Board of Control constituted under the Kerala Co-operative Hospital Complex and Academy of Medical Sciences (Taking over the Management) Act, 1997

13. It can be noticed from the definition of the expression "establishment" that the buildings of the Medical College and hospital along with furniture, tools, equipment and other movables and choses in action etc. stood transferred to the Government, but not the land over which the abovementioned buildings stood. The expression "land" which existed in the definition of the expression "undertaking" u/s 2(i) of the Act 6 1997 is conspicuously absent in the definition of the expression "establishment" u/s 2(e) of the Ordinance No. 19 of 2000. Whether such a transfer of buildings (proclaimed to be absolute) u/s 3 is permissible in law without transferring either the title or some interest in the land over which those buildings stand is a question which troubles us, but we need not go into such a question at present for the reason that the Ordinance never

transformed into an enactment.

14. It may also be mentioned that u/s 4* of the said Ordinance it is provided that the Government shall pay to the "Society" defined u/s 2(p)**, an amount in cash in the manner provided u/s 8 of the Act. Section 4 also declares that the amount is to be determined in the manner provided thereafter in the Act. The further details of the said Ordinance may not be necessary as the Ordinance lapsed by efflux of time and never transformed to an enactment.

15. However, the legislature of Kerala made another enactment called Pariyaram Medical College and Hospital (Transfer for Administration) Act, 2001. u/s 3 of the said Act, the "establishment" (defined u/s 2 of the said Act) along with other liabilities and obligations shall stand transferred to and vested absolutely in the "Societies". The expression "establishment" is defined u/s 2(e) of Act 15 of 2001 as follows:

(e) Establishment" means the Pariyaram Medical College established under the Memorandum of Association and Rules and Regulations of the Academy of Medical Sciences and the Hospital established by the Co-operative Hospital Complex together with the dispensaries attached thereto and used in connection therewith and includes all buildings, lecture-rooms, museums, laboratories, libraries, hostels and boarding houses used in connection with or as accessories to or adjuncts of the said Medical College and Hospital, all assets excluding land, rights, powers, authorities and privileges, furniture, stores, equipments, automobiles and other vehicles, cash balance, reserve fund, investments and book debts and all other movable rights and interests in the Medical College and Hospital now in the possession and control of the Government.

16. In substance, by Act 15 of 2001 whatever properties which were sought to be acquired under Ordinance 19 of 2000 for the purpose of vesting in the State of Kerala are purported to be re-transferred and vested in the "Societies" from whom they were initially sought to be acquired by the State of Kerala.

17. We fail to understand the purpose of 2001 Act apart from various other questions which the said enactment throws up, because the acquisition of the establishment sought to be made under Ordinance No. 19 of 2000 specified therein, in our view, simply lapsed with the lapsing of the Ordinance. Therefore, logically the question of transferring the said establishment again to the Societies appears to be an unnecessary exercise. The effect of all these legislative exercises cannot be and need not be examined under the present "Contempt Case" as it is neither within the scope of the proceedings nor is it possible to examine without appropriate pleadings and submissions by all the concerned parties. But the fact remains that, in view of the subsequent legislative intervention in the subject matter of assets and liabilities of the Medical College and in view of the conspicuous absence of any specific declaration therein regarding the title of the land which was the subject matter of dispute in OP No. 14335 of 1995, the Respondents cannot be said to be in guilty of any

contumacious act. The Respondents have not been demonstrated to have done anything either by an act or omission inconsistent with the declaration that the assignment of 48.1562 hectares of land by the order dated 11.03.1994 is void.

18. The assertion of the Petitioners that notwithstanding the declaration in the judgment in the abovementioned Original Petition, the Societies are still continuing to physically occupying the buildings and run the Medical Colleges, in our view, does not make the Respondents herein liable for any act of Contempt in view of the legislative declaration contained u/s 3 of Act 15 of 2001 that, the "establishment" stood transferred and vested absolutely in the "Societies". The Respondents are equally bound by the legislative mandate. Whether such a legislative mandate is in accordance with the constitutional obligations of the State or not is a different question with which the Respondents herein are not concerned and is a matter to be adjudicated as and when raised.

In the above circumstances, this Court finds that no further steps are to be pursued in the contempt matter. Accordingly, the Contempt of Court Case is closed.

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Establishment to vest in Government.-Notwithstanding anything contained in any other law for the time being in force or in any contract or other document on and with effect from the date of commencement of this Ordinance, the establishment as defined in Clause (e) of Section 2 of this Ordinance, together with all borrowings made by, or on behalf of, and all other liabilities and obligations of whatever kind, incurred in relation to the Pariyaram Medical College and Hospital and subsisting on such date shall stand transferred to and shall vest absolutely in the Government.

* 4. Payment of amount.- For the transfer to and vesting in the Government u/s 3 of the establishment the Government shall pay to Societies in cash and in the manner provided in Section 8 an amount determined as hereinafter provided.

** 2(p) "Societies" means the Co-operative Hospital Complex and the Academy of Medical Sciences;