
(1990) 02 KL CK 0005
In the High Court Of Kerala
Case No : C.R.P. No.2075 of 1989

Dy. Commn. H. R. and C. E.

APPELLANT

Vs

K Gopalakrishna Bhat and another

RESPONDENT

Date of Decision : 05-02-1990

Acts Referred:

Citation : (1990) 1 KLJ 719

Hon'ble Judges : K. P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : Thomas Varkey Govt. Pleader, for the Appellant; S. K. Brahmanandan, for the Respondent

Final Decision : Dismissed

Judgement

K. P. Radhakrishna Menon J.

1. The Deputy Commissioner, H. R. & C. E., Calicut is the revision petitioner. The order under challenge is one by which the court below has set aside the order of the Deputy Commissioner passed under Sub-section 3 of Section 74 of Hindu Religious and Charitable Endowments Act (Madras) as applicable to Kerala (for short "the Act") surcharging the respondents who are the trustees of the temple. The 2 issues considered by the court below are:

- 1) Whether the petitioners are liable for misappropriation, wilful waste of funds and gross negligence
- 2) Whether there are sufficient grounds to set aside the order in M.P. 15/87 dated 4-4-87

In proof of their case the respondents had produced Ext. A1 to A 35. These documents were proved by their witness PW1 on the other hand, the only piece of evidence produced by the petitioner was Ext. B1, the file relating to the case M. P. No. 15,87. After evaluating the evidence the court below has found as follows:

So I find that Ext. A35 order is liable to be set aside. So these points are considered in favour of the petitioners (respondents herein).

In passing the order the court below cannot be said to have committed any error of jurisdiction warranting interference with the same.

The learned Govt. Pleader however submits that the order must be held to be one passed without jurisdiction and therefore capable of being interfered with u/s 115. In support of this argument he made particular reference to sub-Section (5) of Section 74. It reads:

(5) The trustees or other person aggrieved by such order may, within thirty days of the receipt by him of the order, either -

(a) apply to the Court to modify or set aside the order and the Court, after taking such evidence as is necessary, may confirm.

modify or remit the surcharge with such orders as to costs as it may think appropriate in the circumstances.

According to the learned counsel the court has no power to set aside the order even assuming that the order of the Commissioner is void ab initio because the power conferred on the court is only to confirm, modify or remit the surcharge to the Commissioner. I am not impressed by this argument. That an aggrieved party has the right to approach the court to have the order set aside is clear from the sub-section. If the power to set aside the order therefore is not found in the court, the above right conferred on the party will become, illusory. If any other construction is put on the above sub-section that would, to my mind, lead to absurdity. It is well established that if a statute leads to absurdity presumably not intended, a construction can be put upon it which modifies the meaning of the words, or even the structure of the sentence. (See State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another,). If that be so, the court, in my view, has the jurisdiction to set aside the order. The above argument therefore is rejected.