

(2023) 11 KL CK 0094

In the High Court Of Kerala

Case No : Writ Petition (C) No. 37283 Of 2023

Gopakumar.P.

APPELLANT

Vs

Travancore Devaswom Board, Represented By Its Secretary

RESPONDENT

Date of Decision : 10-11-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 6
Rules of High Court of Kerala, 1971 — Rule 148
Land Acquisition (Companies) Rules, 1963 — Rule 3, 4

Citation : (2023) 11 KL CK 0094

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

Bench : Division Bench

Advocate : D. Ajithkumar, G.Santhosh Kumar

Final Decision : Dismissed

Judgement

Anil K. Narendran, J.

1. The petitioner, who is a devotee of Thrippapoor Major Sree Mahadevar Temple, which is under the management of the 1st respondent Travancore Devaswom Board, has filed this writ petition under Article 226 of the Constitution of India seeking a writ of mandamus commanding respondents 1 to 4 to conduct audit of accounts of the Temple Advisory Committee of that temple and a writ of mandamus commanding the 1st respondent to consider and take action on Ext.P6 report dated 15.08.2023 of the Sub Inspector of Police in the Vigilance Wing of the Travancore Devaswom Board, submitted before the 6th respondent Chief Vigilance and Security Officer (Superintendent of Police).

2. The petitioner along with three others had approached this Court in W.P. (C)No.20753 of 2023 raising various allegations against the Temple Advisory Committee of Thrippapoor Major Sree Mahadevar Temple. That writ petition was disposed of by Ext.P5 judgment dated 26.07.2023, in which the Temple Advisory Committee and its President and Secretary were arrayed as respondents 6 to 8.

It is pursuant to the direction contained in Ext.P5 judgment that the 6th respondent Chief Vigilance and Security Officer (Superintendent of Police) conducted an enquiry, which is resulted in submission of Ext.P6 report dated 15.08.2023 before the said respondent. The grievance of the petitioner is that despite serious irregularities being noticed in Ext.P6 report, the 1st respondent Travancore Devaswom Board is yet to take any decision on that aspect.

3. Rule 148 of the Rules of High Court of Kerala, 1971 deals with addition of parties. As per Rule 148, all persons directly affected shall be made parties to the petition. Where such persons are numerous, one or more of them may with the permission of the court on application made of the purpose be impleaded on behalf of or for the benefit of all persons so affected; but notice of the Original Petition shall, on admission, be given to all such persons either by personal service or by public advertisement as the Court in each case may direct. As per the first proviso to Rule 148, where the State Government is a party the Secretary to the Government Department concerned shall be arrayed as party representing the Government. As per the second proviso to Rule 148, if the subject matter of the petition relates to two or more Government Departments or, if the petition is of such a nature, the disposal of which warrants information from two or more Government Departments, the Chief Secretary to Government and the Secretaries to those Government and the Secretaries to those Government Departments shall be made as party representing the Government.

4. 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.

5. 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.

6. 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.

7. The first relief sought in this writ petition is a writ of mandamus commanding respondents 1 to 4 to conduct audit of accounts of the Temple Advisory Committee of Thrippapoor Major Sree Mahadevar Temple. The further relief is to take action on Ext.P6 report. Having considered the averments in the writ petition, the grounds raised therein and also the nature of reliefs sought for, we find that, the Temple Advisory Committee of Thrippapoor Major Sree Mahadevar Temple and its officer bearers against whom there are allegations in Ext.P6

enquiry report, are necessary parties to this writ petition. A mere application for impleadment, after the filing of this writ petition, will not serve the purpose, since the writ petition for seeking such a relief should contain specific allegations against the Temple Advisory Committee and its members. In the absence of necessary averments in the writ petition in support of the reliefs sought for and necessary parties in the party array, we find no reason to entertain this writ petition.

In the result, this writ petition fails on the aforesaid grounds and the same is accordingly dismissed; however, without prejudice to the right of the petitioner to file a fresh writ petition with appropriate pleadings and proper parties in the party array.