
(2018) 03 KL CK 0036

In the High Court Of Kerala

Case No : Original Petition (Civil) No. 615 Of 2018

**Kanjiravilakom Devi Temple (Deity) And Ors @APPELLANT@Hash The
Secretary And Ors**

Date of Decision : 01-03-2018

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2018) 03 KL CK 0036

Hon'ble Judges : Alexander Thomas, J

Bench : Single Bench

Advocate : Rajesh P.Nair, P.K.Manojkumar, M.I.Johnson

Final Decision : Disposed Off

Judgement

1. The prayers in this Original Petition (Civil) filed under the enabling provisions contained in Art.227 of the Constitution of India are as follows:

"i) Call for the records leading to the issuance of Exhibit P-5 Order dated 15.2.2018 in I.A.No.1351/2018 in O.S.No.137/2018 passed by the Munsiff's Court-II, Thiruvananthapuram and to set aside the said order.

ii) Direct the Munsiff's Court-II, Thiruvananthapuram to consider Exhibit P-2 I.A.No.708/2018 and pass appropriate orders on the same as expeditiously as possible, within a time frame to be fixed by this Hon'ble Court.

iii) To direct the Munsiff's Court-II, Thiruvananthapuram to forbear the respondents No.1 to 3 from making any constructions in the plaint schedule properties till the disposal of Exhibit P-2 temporary injunction application."

2. Heard Sri.Rajesh P.Nair, learned counsel appearing for the petitioners/plaintiff, Sri.N.Nandakumara Menon, learned Standing Counsel instructed by Sri.P.K.Manojkumar, learned Standing Counsel for the Thiruvananthapuram Municipal Corporation appearing for the 1st respondent, and Sri.M.I.Johnson, learned Senior Govt. Pleader appearing for R-2 and R-3.

3. The petitioners herein are the plaintiffs in O.S.No. 137/2018 on the file of the

Munsiff's Court, Thiruvananthapuram and the respondents herein are defendants 4, 5 and 6 respectively, in the said suit. The suit is one for declaration and mandatory injunction, recovery of possession, permanent prohibitory injunction and other consequential reliefs. The 1st plaintiff is Kanjiravilakom Devi Temple (Deity), represented by its "Karanavar", one Sri.C.Gopinathan and the 2nd plaintiff is the Karanavar himself, the above mentioned Sri.C.Gopinathah. The petitioners would state that the said suit was necessitated following the attempts made by respondents 2 and 3 herein to make illegal constructions in the plaint schedule properties, that too, without obtaining necessary permit and submission of plain to the 1st respondent Corporation. That along with the said suit Ext.P-2 I.A.No.708/2017 in the said O.S. was filed for temporary injunction, to which urgent notices were issued to the respondents and that the case stood posted to 27.1.2018. In the meanwhile, as per an application of the plaintiffs, an Advocate Commissioner was appointed and as per the direction of the court below, Ext.P-3 commission report was also filed on 27.1.2018. That on 27.1.2018, as there was no sitting of the court, the matter stood adjourned to 5.4.2018. That considering the urgency of the matter, Ext.P-4 I.A.No.1351/2018 dated 14.2.2018 was filed for advancing the case. Resultantly Ext.P-5 impugned order dated 15.2.20218 was passed by the court, whereby the said court has dismissed the prayer in Ext.P-4 I.A.1351/2018 in the abovesaid O.S. only on the mere ground that it is practically not possible to allow the prayer in Ext.P-4 petition, as the said court holds additional charge of several courts. It is averred that, in Ext.P-3 commission report it is clearly stated that the respondents are making construction without obtaining necessary permit from the authorities concerned. It is in the light of these aspects that the petitioners have filed instant Original Petition (Civil) with the abovesaid prayers.

4. Without going into the merits of the matter, it is interesting to note the contents of Ext.P-5 order dated 15.2.2018, whereby the prayer in Ext.P-4 I.A.No.1351/2018 has been dismissed. The said Ext.P-5 order reads as follows:

"O R D E R

Since this court is holding additional charge of several courts, it is not practically possible to allow the prayer. So the petition is dismissed."

5. True that the judicial officer concerned is saddled with additional responsibilities and that he is not in a position to consider the merits of Ext.P-2 temporary injunction application and to pass orders thereon. But merely on account of the contingency of the lack of posting of the regular judicial officer to man the post concerned, is no ground to postpone the process which will have effect of prejudicially affecting both sides.

6. The learned counsel appearing for the 1st respondent Thiruvananthapuram Municipal Corporation will ensure that necessary instructions are given to the officials of the Thiruvananthapuram Municipal Corporation so as to file affidavit before the trial court on Ext.P-2 I.A. stating as to whether or not, any permission

or licence is required from the said Municipal Corporation for the construction which is undertaken by the Government Departments concerned.

7. It is averred in para 6 of the petition that earlier the application was posted on 27.1.2018, on which day there was no sitting for the court and that the application was then adjourned to 5.4.2018. In these circumstances, consideration of Ext.P-2 application should not be delayed any further and it is ordered that the trial court concerned will consider Ext.P-2 application on the next posting date itself and pass orders thereon after hearing both sides. If the application has actually been posted to 5.4.2018 as stated herein above, then the said application may be considered on merits and if there is no such posting, the trial court may advance the application to a suitable day and should ensure that orders are passed on Ext.P-2 application without much delay. The process in this regard should be duly completed without much delay, preferably before the court closes for Summer Vacation in the second week of April, 2018. The petitioners will produce a certified copy of this judgment before the court below concerned for necessary information. With these observations and directions, the above Original Petition (Civil) stands finally disposed of.