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(1954) 03 KL CK 0006

In the High Court Of Kerala

Case No : O.P. No. 138 of 1953

Kelampi Narayanan — APPELLANT

Vs

The Devaswom Board — RESPONDENT

Date of Decision : 29-03-1954

Acts Referred:
Constitution of India, 1950 — Article 226
Travancore-Cochin Hindu Religious Institutions Act, 1950 — Section 28(3)

Citation : AIR 1954 Ker 470

Hon'ble Judges : V.S. Subramanya Iyer, J;M.S. Menon, J;K. Sankaran, J

Bench : Full Bench

Advocate : K.P. Abraliam and K.T. Ninan, for the Appellant; N.K. Narayana Pillai, for the Respondent

Final Decision : Allowed

Judgement

Subramania Iyer, J.—This is an application under Article 226 of the Constitution of India wherein it is prayed that for the reasons stated in the accompanying affidavit that the Court be pleased to issue a writ of certiorari or such other appropriate writ as may be called for and quash the order R. Dis. No. 905/53 dated 20-6-1953 and order Dis. No. 1509/53 Land dated 5-10-1953 and the consequential orders, if any, passed by the Respondent. The impugned order served upon the Petitioner is produced in Court and is marked Ex. A. It contains a decision of the Respondent Devaswom Board that the property in the possession of the Petitioner was given for future services the performance of which was defaulted and that, therefore, u/s 28(3), Hindu Religious Institutions Act, 15 of 1950, the lands were ordered to be resumed.

The Petitioner has produced in this Court a judgment of the erstwhile Travancore High Court in C.R.P. 750 of 1123 which is marked Ex. B. In that case which related to the identical property the question arose whether the lands were being held by the Petitioner for past or future Services and the High Court found in favour of the Petitioner and held that the lands were given as inam for past

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services and, therefore, the grantee became the owner of the lands. On the strength of that finding the kudivila for which competing claims were made by the Petitioner and the Sirkar representing the Devaswom was given to the Petitioner as owner of the land.

The decision of the High Court having been given in a civil revision petition against a small cause decree may not operate as res judicata in a subsequent litigation regarding title to the property. But prima facie the decision is in favour of the Petitioner. But apart from the question of the correctness of the adjudication about which We are not called upon to come to a final decision, we consider that the impugned order is ultra vires the Board because Clause 3 of Section 28 of Act 15 of 1950 only provides that:

All alienations of Service Inam lands attached to specific services which have been or which may hereafter be made contrary to past usage shall be treated as null and void. The Board shall have power to resume Service Inam lands attached to specific services if such lands are alienated or if the holders of such lands make default in the performance of the services.

The jurisdiction conferred upon the Board is only in respect of lands attached to specific services regarding which if the lands are alienated or the performance of service is defaulted the Board is entitled to decide. That jurisdiction is confined to lands given for future services and does not extend to lands given in lieu of past services which become the lands of the grantee, that is to say, in respect of which the grantee is not bound to continue to perform any services. No question of any default of any service can, therefore, arise in such a case.

The question that was raised by the Petitioner before the Board in this case was that the lands sought to be resumed were granted to his family for past services. That was the plea that was successfully raised by him before the Travancore High Court. This plea was adjudicated upon by the Board whose decision was adverse to the Petitioner. In our judgment, the question whether the lands were or were not given for past services is beyond the competence of the Board to decide. It is one to be decided by a civil Court.

In this view, the impugned order should be and is hereby quashed as ultra vires of the powers of the Board. The larger question raised on behalf of the Petitioner regarding the constitutionality of the Act itself does not therefore fall to be decided in this case.

2. The petition is allowed with costs, advocate''s fee Rs. 150/-.

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