

(2023) 08 KL CK 0191

In the High Court Of Kerala

Case No : Writ Petition (C) No. 13645 Of 2021

Kshetra Upadeshaka Samithi Kunnathusserry/Kootholikavu
Sree Bhagavathy Kshetram

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 21-08-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Land Conservancy Act, 1957 — Section 3, 3(1), 11, 16(2), 20A
Travancore Cochin Hindu Religious Institutions Act, 1950 — Section 3, 27

Citation : (2023) 08 KL CK 0191

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

Bench : Division Bench

**Advocate : R.Lakshmi Narayan, R.Ranjanie, S.Rajmohan, G.Santhosh Kumar,
S.Ananthakrishnan**

Final Decision : Disposed Of

Judgement

P.G. Ajithkumar, J.

1. The Temple Advisory Committee and two devotees of Kootholikavu Sree Bhagavathy Temple, also known as Kuthullisserry Bhagavathy Devaswom, have filed this Writ Petition invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking decree of certiorari quashing Ext.P6, P7 and P8. The petitioners seek a further relief of a writ of mandamus directing the 9th respondent-Special Tahsildar, Kerala Land Conservancy Unit of the Travancore Devaswom Board to take steps under the Land Conservancy Act, 1957 for removing encroachments from the properties of the Temple, which are described in Ext.P6. In the alternative, a direction to respondent Nos.5 and 6 to institute civil suits for the recovery of the said properties is sought.

2. There were litigations initiated by the Temple Advisory Committee. As a sequel to such litigations, the 9th respondent was approached for the removal of encroachments upon the properties of the Temple. The 9th respondent took the

stand that the properties in question do not come within the purview of Section 3 of the Land Conservancy Act and, therefore, no action for summary eviction under Section 11 of the Act could be initiated. Ext.P6 is the order of the 9th respondent. An appeal was preferred before the Sub Collector, Fort Kochi, but the same was dismissed as per Ext.P7 order dated 19.08.2019. The matter was taken up before the District Collector. The District Collector also took the same view and dismissed the revision. Challenging the said orders, the Temple Advisory Committee approached the Commissioner of Land Revenue. The Commissioner refused to intervene stating that the District Collector in exercise of the revisional jurisdiction under Section 16(2) of the Land Conservancy Act had taken the decision and therefore no further revision could be entertained.

3. When this matter came up for consideration on 06.08.2021, the learned Standing Counsel for the Travancore Devaswom Board and the learned Senior Government pleader sought time to file counter affidavits.

4. Pursuant to notice, the party respondents, i.e., respondent Nos.12 and 13 entered appearance.

5. Respondent Nos.5 to 9 filed a counter affidavit through the Secretary of the Travancore Devaswom Board. Respondent Nos.12 and 13 filed a counter affidavit producing therewith Exts.R12(a) to R12(c). The petitioner filed a reply affidavit on 15.11.2021 in answer to the averments in the counter affidavit filed by respondents 5 to 9 and respondent Nos.12 and 13. A counter affidavit was filed by the 3rd respondent for and on behalf of other official respondents also. An additional counter affidavit was filed by respondents No.12 and 13. These respondents filed I.A.No.1 of 2022 producing therewith Exts.R12(d) to R12(h).

6. Heard the learned counsel appearing for the petitioners, the learned Senior Government Pleader, the learned Standing Counsel for the Travancore Devaswom Board and the learned counsel appearing for respondent Nos.12 and 13.

7. The petitioners filed WP.(C) No.161 of 2016 before this Court with the allegation that the 9th respondent-Special Tahsildar was not taking effective steps for resuming the properties of Kootholikavu Sree Bhagavathy Temple, which are in the possession of third parties. As per Ext.P2 judgment in that Writ Petition, this Court insisted on the parties to sort out the matter in an amicable way and further observed, if required, that the hierarchy of authorities under the Kerala Land Conservancy Act could judicially determine the plea for resumption of the Temple property. Initiative towards a solution in the dispute in an amicable way did not fructify. A report was submitted before the learned Ombudsman for the Travancore Devaswom Board by the 9th respondent furnishing the details regarding properties of the Temple said to have been encroached upon. In D.B.P.No.82 of 2017, initiated based on the report of learned Ombudsman, this Court issued the following directions:-

"8. In the above view of the matter, without affirming or concluding in any manner on the merits of the stand taken by the Special Tahsildar that he does

not have the jurisdiction under the Kerala Land Conservancy Act, we direct the Special Tahsildar or such other competent authority of the Devaswom Board to initiate action either under the Kerala Land Conservancy Act or through a civil suit to be instituted under the provisions of the Code of Civil Procedure before a court of competent civil jurisdiction. This option is left available to the Travancore Devaswom Board and any such action, of course, will be without prejudice to the rights of the persons now claiming possession and ownership to raise their contentions regarding maintainability of such proceedings appropriately.

With these observations this DBP is closed and the competent authorities are directed to act in terms of our views above, advertent to the applicable statute, Rules and Regulations. The competent authorities will be obligated by the terms of this order to initiate action, as they are advised, as expeditiously as possible, but not later than two months from the date of receipt of a copy of this order."

8. It was thereafter the 9th respondent was approached for initiating action under the Kerala Land Conservancy Act in order for repossessing the properties claimed belonging to the Temple. The petitioner would contend that orders of the Tahsildar, Revenue Divisional Officer and the District Collector by Exts.P6, P7 and P8 are totally against the provisions of the Kerala Land Reforms Act and in the wrong exercise of their jurisdiction wherefore those orders are liable to be quashed.

9. The Travancore Devaswom Board assumed Kootholikavu Sree Bhagavathy Temple, which was a private Temple in 1991 as per the order dated ROC 4886/90/L dated 30.10.1990. A mahazar was prepared at the time of assumption. It is stated that only 16 cents of land where the Temple and the Temple pond are situated and 21 cents of land along which the pathway to the Temple exists, were alone taken over by the Board. The details of the property allegedly trespassed upon by respondents No.12 and 13 are stated in paragraph No.4 of the counter affidavit filed by respondents No. 5 to 9, which are extracted below:-

Sl.

No.

Survey No.

Extent

As per settlement register

As per Revision Survey BTR

1.

927/11

77 cents

Anthappalliveettil Krishnan Parameswaran (TP.140) (Pandaravaka Pattom)

Priyor General Joseph Souriyor (TP.4690)

2.

927/1

65 cents

Karukutty Karayil Koothathuseri Bhagavathy karam ozhivu Devaswom (TP.7)

Eliyasinte Karmalagiri Karukutti Kumbayantha (TP.5571)

3.

927/15A

44 cents

Kapraserikarayil Choli Elayathu Narayanan Parameswaran (TP.91)

Eliyasinte Karmalagiri Karukutti Kumbayantha (TP.5571)

4.

950/11

29 cents

Pailo Vareethu Ouseph (TP.3302)

Eliyasinte Karmalagiri Karukutti Kumbayantha (TP.5571)

10. It is averred in the counter affidavit that following Ext. P4 order, the Devaswom Board had taken steps for instituting civil suit as well as to initiate action under the provisions of the Kerala Land Conservancy Act. The details of such steps are contained in paragraphs No.12 to 15 of the affidavit, which are extracted below:

"12. In the aforesaid facts and circumstances stated above, it is respectfully submitted that the 9th respondent i.e., the Special Tahsildar, LC Unit, Travancore Devaswom Board in this writ petition passed the order vide A2.304/2015 dated 10.08.2018 as referred as Ext.P6 order in compliance with the judgment of this Hon'ble Court in DBP No.82/2017 dated 12.03.2018 as well as the directions in this regard furnished from Travancore Devaswom.

13. It is submitted that, in the above 10 cents of Kshetramiruppu Sthalam in Sy.No.927/14 and 6 cents of Kshetrakulam in Sy.No 927/13 and a pathway leading to the temple from the road were assumed by Travancore Devaswom Board in the year 1991. The 65 cents of property comprised in the Sy.No.927/12 described as Koothilassery Bhagavathy Vaka Thanathu. The name of the Pattadar in the Settlement Register is Karukutty Karayil Koothalissery Bhagavathy. It means that the property is once dedicated to the Deity.

14. It is submitted that the Karam Ozhivu Property entered in the name of the Deity cannot be transferred. It may be noted that since the land belongs to the Deity, it cannot be transferred by effecting a sale deed. The property entered into the revenue records was illegally transferred and the executants of these documents did not have any transferable interest over the property. The Kristuraja Ashramam is having no title over the land in Sy.No 927/11 and hence Land Conservancy Proceedings can be initiated.

15. It is submitted that the Special Tahasildar desisted from invoking Section 3(1) of Land Conservancy Act, and the land belongs to Devaswom and the Land Conservancy Act is applicable to the same. It is not possible for the Devaswom Board to approach the Civil Court because of the specific bar enumerated in Section 20A of the Land Conservancy Act. In the said circumstance, it is highly necessary that this Hon'ble Court may be pleased to direct the 9th respondent to invoke proceedings as per Section 3(1) of the Land Conservancy Act against the encroachers."

11. In the counter affidavit of the 3rd respondent, the reason for which respondents No.3, 4 and 9 did not take action under Section 11 of the Land Conservancy Act are explained. Thereby the 3rd respondent justified the impugned orders.

12. The definite contention of respondents No.12 and 13 is that the properties in question were purchased by the 12th respondent under valid title deeds and the claim on behalf of the Temple over the said properties is totally untenable. It is contended that those properties were purchased by sale deeds No.1572 of 1094 ME (1919 AD) and 3183 of 1117 ME (1942 AD). Subsequently, the properties so purchased in the name of the Karukutty Kovendha were transferred in favour of the 13th respondent as per release deed No.2172 of 1973. Mutation was effected and land tax for the said property is being paid. Now, these properties are included in re-survey No.117/5 and settled as per the revenue records in the name of the 13th respondent. Accordingly, these respondents maintain that without any reason or basis, the petitioners are staking claim over the said properties. Ext.P12(e) is a copy of document No.3183 of 1117 ME (1942). Ext.P12(f) is a copy of document No.2172 of 1973, based on which the right in the said properties was relinquished in favour of the 13th respondent. From the above, it is evident that respondents No.12 and 13 claim the right and title to the said four items of properties.

13. The 9th respondent submitted a report regarding the tenure of the said properties before the learned Ombudsman. Such details are given in the counter affidavit filed by respondent Nos.5 to 9 as well as 3rd respondent-District Collector. Out of the four items, the tenure of 65 cents comprised in Sy.No.927/14 is denoted in the settlement register as Karukuttikarayil Kothattussery Bhagavathy Karam Ozhivu Devaswom with Thandaper No.7. After re-survey, this property was seen settled in the basic tax register in the name of the Eliyasinte Karmalagiri Karukutty Kumbayantha. The other three items were

settled in the settlement register as private holdings. In respect of the said three items of the properties, the petitioners also would concede that the question of title is involved. The learned Standing Counsel for the Travancore Devaswom Board could not substantiate a plea that respondents No. 12 and 13 are encroachers coming within the ambit of Section 3 of the Land Conservancy Act insofar as those three items of properties are concerned. Therefore, the Board has to establish its right to recover possession of those properties in a civil suit, if it is to recover possession of those properties. In the said circumstances, we are of the view that giving such a direction and leaving open the contentions of both parties regarding the right and title to the said three items of the properties, the relief claimed in that regard shall be decided.

14. The learned counsel appearing for respondents No.12 and 13 would submit that the provisions of the Kerala Land Conservancy Act cannot have any application even regarding 65 cents of property comprised in Sy.No.927/12 of Karukutty Village for more than one reason. It is an admitted fact that at the time of assumption of Kootholikavu Temple by the Travancore Devaswom Board, only property taken over by the Board as per the mahazar was 16 cents where the Temple and Temple Pond are situated and 21 cents along which the pathway to the Temple exists. The learned counsel for respondents No. 12 and 13 would submit that Section 27 of the Travancore Cochin Hindu Religious Institutions Act, 1950 (for short "TCHRI Act") shall not apply to a property that did not vest in the Devaswom Board. By virtue of Section 27 of the TCHRI Act only provisions of the Kerala Land Conservancy Act get applied to the Devaswom properties. It is pointed out that as though the tenure of 65 cents of the property in question was denoted as Puthottussery Bhagavathy Devaswom property, neither Section 3 nor Section 27 of the TCHRI Act would apply to the said property for, the said property never has become the property of the Travancore Devaswom Board.

15. Section 3 of the TCHRI Act is a deeming provision. All properties of incorporated and unincorporated Devaswoms and Hindu Religious Institutions, which were under the management of the Ruler of Travancore prior to the first day of July 1949 are vested with the Travancore Devaswom Board. The properties of such Temples and management of all institutions which were under the Devaswom Department were also vested with the Travancore Devaswom Board. Kootholikavu Temple having been assumed by the Travancore Devaswom Board only in 1991, there cannot be vesting as per Section 3 of the TCHRI Act. That does not mean that no other property can be the Devaswom property so as to attract the provisions of Section 27 of the TCHRI Act.

16. There are two clauses in Section 27 of the TCHRI Act. The first clause says that immovable properties entered or classed in the revenue records as Devaswom Vaga or Devaswom Poramboke and such other Pandaravaka lands as are in the possession or enjoyment of the Devaswoms mentioned in schedule I after the 30th Meenam 1097 corresponding to the 12th April 1922 shall be dealt with as Devaswom properties. Indisputably, Puthottussery Bhagavathy

Devaswom was assumed by the Travancore Devaswom Board in 1991. Therefore, although this Temple does not figure in Schedule I, by virtue of the said clause all properties of the Temple on such assumption become the Devaswom land for the purpose of Section 27 of the TCHRI Act. The second clause makes the provisions of the Land Conservancy Act applicable to Devaswom lands as in the case of Government lands. If a property is vested in or acquired by the Devaswom Board by any other means also it becomes the Devaswom land, and the provisions of the Land Conservancy Act certainly would get attracted.

17. The further question is whether a property, possession of which has not been obtained by the Devaswom Board, but is only a chose in action, can be treated as Devaswom land for the purpose of Section 27 of the TCHRI Act. The plank of petitioners' contention is that 65 cents of land in Sy.No.927/2012 of Karukutty Village has been the property of Kootholikavu Bhagavathy and therefore the assumption of the Temple invested sufficient power in the Devaswom Board to recover possession of all the properties the Deity is entitled.

18. A Temple and its affairs can be administered only by a human agency, be it private or public; incorporated or unincorporated. Such agency is the trustee of the Deity. When the Travancore Devaswom Board assumed the Kootholikavu Temple, its legal effect is that in place of the earlier trustee of the Deity the Travancore Devaswom Board came in as the new trustee. In law, what all properties, both tangible and intangible, the Deity had would continue to be with the Deity. The Travancore Devaswom Board as the new trustee of the Deity becomes the authority in the management of all such properties of the Deity.

19. The dispute is that the 65 cents of land in Sy.No.927/2012 of Karukutty Village belongs to Deity of Kootholikavu Temple and it is in the illegal possession of respondents No.12 and 13. In view of what is stated above, we are of the view that the said 65 cents of land although possession was not handed over to the Board, since no transfer of property is involved; but there occurred only a change of trustee, there is absolutely no bar for the Board to take action for repossession of the property.

20. Treating the right to recover possession of the said 65 cents of property as a chose in action even, it becomes the Devaswom land within the meaning of Section 27 of the TCHRI Act. Therefore, the provisions of the Kerala Land Conservancy Act get attracted. Hence Exts.P6, P7 and P8 orders by which the hierarchical officials under the Kerala Land Conservancy Act declined to take action in respect of the said 65 cents of land only for the reason that the said property was not included in the mahazar is untenable. Those orders are liable to be quashed.

21. The learned counsel appearing for respondents No.12 and 13 would submit that the said respondents have been in possession of the property since 1942 and therefore the provisions of the Land Conservancy Act cannot be invoked. The learned counsel placed reliance in this regard on Harrisons Malayalam Ltd.

Cochin v. State of Kerala and others [2014 (4) KHC 245], *Harrisons Malayalam Ltd. v. State of Kerala* [2018 (2) KHC 719] and *Deviprasad M.N. and others v. District Collector, Wayanad* [2019 (4) KHC 28]. In the said decisions, this Court took the view that the summary procedure for eviction of illegal or unauthorised occupation of Government lands cannot be invoked in a case where the alleged trespasser is in legal possession and the dispute concerning the question of title is not appropriately decided. If the person in possession is holding the property under a claim having semblance of title in the property, summary procedure under the Kerala Land Conservancy Act cannot be invoked.

22. In *Harrisons Malayalam Ltd.* [2014 (4) KHC 245], the property involved was leasehold land over which fixity of tenure was claimed by the person in possession. In *Deviprasad* [2019 (4) KHC 28] the property came into possession of the alleged trespasser based on the policy of the Government for bringing waste land under cultivation. In *Harrisons Malayalam Limited* [2018 (2) KHC 719] the person in possession got possession on valid permission. In this case the petitioner would contend that respondents No.12 and 13 although produced Exts.R12(d), R12(e) and R12(f), none of those documents would help them to show that the title to the said 65 cents of property was ever divested from the Deity.

23. In *Nandakumar v. District Collector, Ernakulam* [2018 (2) KHC 58], a Division Bench of this Court observed that land conservancy proceedings cannot be carried out merely based on re-survey records. Entries in re-survey records are predominantly on the basis of possession as of now. They would be totally worthless, when the question is as to whether lands vested in deities have been encroached upon and controlled by the Devaswom Boards and trustees, reduced to occupation by private persons or other agencies. Obviously, the prior revenue records have to be looked into to ascertain whether there is any parcel which stands vested, in a particular deity. If that be so, collateral materials will also have to be looked into to ascertain the genesis of the property. Even if there is no revenue record in that regard, the vesting, if any, in any deity has to be ascertained.

24. Since Exts.P6, P7 and P8 orders are held to be quashed, the matter has to be remitted to the 9th respondent to decide the claim of the petitioners that the said 65 cents of property comprised in survey No.921/12 of Karukutty Village is Devaswom land and possession of the same is liable to be restored to the Deity of Kootholikavu Temple. The 9th respondent has to consider the matter afresh in the light of the law laid down in the aforementioned decisions.

25. Accordingly, this Writ Petition is disposed of in the following terms,-

- i) Exts.P6, P7 and P8 are quashed;
- ii) Respondent No.9 is directed to take a fresh decision regarding 65 cents of property comprised in Sy.No.927/12 of Karukutty Village under Section 11 of the Kerala Land Conservancy Act in the light of the observations made hereinbefore;

and

iii) The Travancore Devaswom Board is directed to take appropriate action for resumption of possession of 77 cents in Sy.No.927/11, 44 cents in Sy.No.927/15A and 29 cents in Sy.No.950/11 in Karukutty Village to the Deity of Kootholikavu Temple.