

(2021) 01 KL CK 0446

In the High Court Of Kerala

Case No : Writ Petition (C) No. 34011 Of 2019

M. Madhava Warriar

APPELLANT

Vs

Commissioner, Malabar Devaswom Board And Ors

RESPONDENT

Date of Decision : 20-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0446

Hon'ble Judges : Devan Ramachandran, J

Bench : Single Bench

Advocate : M. Ramesh Chander, K.A. Sanjeetha, Balu Tom, R. Lakshmi Narayan, Mahesh V Ramakrishnan

Judgement

1. The petitioner asserts that he is working as a 'Kazhakam' from 15.07.1989 in the services of the 3rd respondent temple, which is under the

administrative control of the Malabar Devaswom Board. He claims that he is entitled to emoluments from the temple and that since there were not

honoured by the 3rd respondent, he had approached the 2nd respondent Deputy Commissioner, who, however, rejected it through Ext. P1 order. He

says that, he, therefore, preferred an appeal before the 1st respondent - Commissioner Malabar Devaswom Board, who, thereupon, issued Ext. P2

order allowing his claim.

2. The petitioner's grievance, as voiced in this writ petition by his learned Counsel Smt. K.A. Sanjeetha, is that in spite of Ext. P2 order having been

issued as early as on 17th July, 2014, no amounts have been disbursed to him by the 3rd respondent till now. The petitioner, therefore, prays that the

3rd respondent be directed to comply with Ext. P2 order and that he be granted all the pecuniary benefits specified thereunder.

3. In response, Shri. Mahesh Ramakrishnan, the learned counsel appearing for the 3rd respondent, submitted that as evidenced from Ext. P2, it was

issued without hearing his client and recording that they were absent on the day when it was issued, namely on 17.7.2014. The learned counsel

submitted that since the record in Ext. P2 regarding the absence of his client is unjustified, he had preferred Ext.P5 application, under Order IX Rule

13 of the Code of Civil Procedure (C.P.C.), to have the said exparte order vacated.

4. Shri. Mahesh Ramakrishnan further added that even though the Commissioner had posted the above application of his client for consideration on

13.1.2021, neither the petitioner nor his counsel was present, constraining the said Authority to adjourn it to 3.2.2021. He thus contented that since Ext.

P5 is still pending, Ext. P2 order cannot be said to have become final and therefore, prayed that this Court may not direct implementation of the said

order at this point of time.

5. Shri. R. Lakshmi Narayan, learned Standing Counsel appearing for the Malabar Devaswam Board, representing respondents 1 and 2, submitted

that Ext. P5 application is next posted before the 1st respondent on 3.2.2021, and that of both side co-operate, the matter can be disposed of without

any further delay.

6. In reply, Smt. K. A. Sanjeetha, learned counsel for the petitioner, submitted that Ext. P5, is not maintainable, since the provisions of the C.P.C. are

not applicable to the proceedings from which Ext. P2 order has arisen. She prayed, therefore, that this Court may not direct Ext. P5 to be disposed of

by the 1st respondent and that the 3rd respondent be directed to implement Exts. P2 to P4 orders.

7. Even when I hear Smt. K. A. Sanjeetha on the afore lines, the fact remains that the petitioner had approached the Commissioner with Ext. P5

application on 25.9.2014, which is less than about two and half months from the date on which Ext. P2 order had been issued. Obviously, therefore,

the questions whether the said application is maintainable and whether the 3rd respondent is entitled to any relief, are matters that are within the

competence of the 1st respondent to consider. Hence, it will not be justified this for Court to jump into any conclusion at this time; and am of the firm

opinion that Ext. P5 should be disposed of by the 1st respondent at the earliest, particularly because, the matter has been pending from the year 2014

onwards. In the afore circumstances, I order this writ petition and direct the 1st respondent to dispose of Ext. P5, after affording an opportunity of

being heard to both sides on 3-2-2021 or on any other date that may be fixed for such purpose, and issue appropriate orders there on as expeditiously

as possible, but not later than by the end of April, 2021.

I make it clear that the question of maintainability of Ext. P5 will also be specifically adverted to by the Commissioner and answered by him in his

resultant order.