

(2014) 06 KL CK 0221
In the High Court Of Kerala
Case No : WP(C). No. 11072 of 2014 (H)

Madathumpara Maha Sivakshetra Paripalana Samithi	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 12-06-2014

Acts Referred:

Citation : (2014) 06 KL CK 0221

Hon'ble Judges : A.M. Shaffique, J

Bench : Single Bench

Advocate : Shahna Karthikeyan and Smt. C.K. Lekhamma, Advocate for the Appellant; S. Muhammed Shafi, Government Pleader for R1 and R2 and Sri George Mathew, S.C. for R3 and R4, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.M. Shaffique, J.—Petitioner has approached this Court inter alia seeking the following reliefs:

- i) Issue a writ of mandamus or any other appropriate writ, direction or order directing respondents 3 and 4 not to construct any permanent structure so as to block the pathway shown in the sketch attached to Exhibit P-3 report;
- ii) to direct the 1st respondent to take a decision on Exhibit P-5 report of the District Collector;
- iii) to hold that the devotees, owner and the members of petitioner samithi have right of pathway to the temple through the land acquired by the 4th respondent;

2. The facts involved in the above case would disclose that the petitioner, a Samithi claimed to have ownership in respect of a property which originally belonged to the 5th respondent. The contention of the petitioner is that though the property of the 5th respondent was acquired for constructing a water treatment plant under the Calicut Water Supply Augmentation Scheme during 1968, an extent of 10 cents of land in Re-survey No. 43/1 wherein the temple is

situated has been left out of acquisition. It is their case that though the temple property is surrounded by the property belonging to respondents 3 and 4 (Kerala Water Authority), there is no pathway to the said temple. The petitioner had approached various authorities and Ext.P3 report of the Village Officer indicates that the petitioner has a right in respect of 10 cents of land which is used as a temple. Report of the Village Officer is seen to have forwarded to the higher authorities and the District Collector in terms of Ext.P5 has recommended to the Government to consider whether a pathway can be provided to the temple authorities through the property of KWA to enable them to have access to the temple. It is on this basis that the writ petition is filed.

3. Learned counsel appearing for respondents 3 and 4 brings to the notice of this Court an earlier writ petition filed by the very same petitioner as W.P.C. No. 4822 of 2008. A Division Bench of this Court by judgment dated 11/02/2008, having considered the said writ petition held as under:

Petitioner is a samithi, which is registered under the Societies Registration Act, by name Madathumpara Sree Ayyappa Sivakshethra Paripalana Samithi. The relief sought for in this writ petition is for a writ of mandamus directing respondents 3 to 5 not to interfere with the daily poojas and other rituals in Madathupara Sree Ayyappa Sivakshethram and for a declaration that the said temple is not included in the acquisition proceeding pursuant to Ext.P4 notice. The contention of the petitioner is that for and on behalf of the Water Authority certain lands were acquired as per Ext.P4 notice. But the properties in Sy. No. 43/1 of Pazhoor amsom, which were specifically included in the acquisition proceedings, do not take in the temple and its properties. It is further contended that the poojas are conducted in the temple and three days before filing of this writ petition the officials of the 5th respondent obstructed the said poojas being conducted.

2. Learned Standing Counsel for respondents 3 to 5 was heard in the matter.

3. Admittedly, the owner of the properties is the 6th respondent from whom the properties were acquired. Whether there exists any temple or whether the temple properties were also part of the acquisition proceedings is a matter which could be decided only after taking evidence, both oral and documentary and after measurement if required. The 6th respondent being the owner of the property has also not come up by filing any writ petition. Admittedly, the petitioner's contention is based on Ext.P9, the agreement said to have been executed by the 6th respondent in favour of the Samithi enabling them to conduct the management of the temple.

In such circumstances, the proper remedy available to the petitioner for adjudication of the dispute is to file a civil suit and not by way of writ petition. This Court cannot in this summary proceedings take evidence both oral and documentary, and decide the matter and hence we decline jurisdiction. It is open to the petitioner to approach the civil court for appropriate relief. Status quo as

on today shall be maintained for a period of three weeks and thereafter the matter will be governed based on the orders that may be passed by the civil court.

Writ petition is disposed of as above.

4. That was a case in which the petitioner Samithi claimed right in respect of the temple property itself. This Court found that if the petitioner's contention is based on Ext.P9, the agreement said to have been executed with the owner of the property, it is a matter to be considered after taking evidence. The Division Bench observed that the proper remedy available to the petitioner was an adjudication of the said dispute before a Civil Court and not by way of a writ petition. Hence, leaving open the right of the petitioner to approach the Civil Court, the Court had directed status quo to be maintained for three weeks and thereafter it has to be governed by a decision of the Civil Court.

5. Apparently, the petitioner has not approached the Civil Court to establish their rights as far as temple property is concerned. If they have not established their rights in respect of temple property, the question of giving right to use a pathway does not arise at all. Ext.P3 or P5 will not be a substitute for a decree passed by the Civil Court establishing the right of the petitioner to use either the temple property or the pathway in question. It is apparent that Exts.P3 and P5 were prepared or issued by the revenue authorities without reference to the judgment in W.P.C. No. 4822/2008. Nothing has been mentioned in the writ petition with reference to the Division Bench judgment which is inter parties and therefore it is clear that the petitioner has concealed material particulars before this Court while seeking for reliefs couched in a different manner. This clearly amounts to abuse of process of court and therefore the petitioner is liable to pay cost.

In the result, this writ petition is dismissed. There will be a direction to the petitioner to pay respondents 3 and 4, cost of Rs. 25,000/- (Rupees twenty five thousand only) which they shall deposit before this Court within a period of two weeks from today.