

(1991) 01 KL CK 0042
In the High Court Of Kerala
Case No : O.P. 6739/90

Manager, Fort High School

APPELLANT

Vs

Government of Kerala and Others

RESPONDENT

Date of Decision : 18-01-1991

Acts Referred:

Citation : (1991) 01 KL CK 0042

Hon'ble Judges : Varghese Kalliath, J

Bench : Single Bench

Advocate : S. Sankarasubban, for the Appellant; Government Pleader, for the Respondent

Judgement

Varghese Kalliath, J.—Petitioner is the Manager of Fort High School, Thiruvananthapuram. This school is in the land leased by the Maharajah of Travancore on behalf of the Government by an agreement, dated 13th August 1904. It seems that large extent of property is included in the agreement. Petitioner wanted to construct a compound wall in respect of the properties, which according to him, formed part of the premises of the school and the land included in Ext. P-1 agreement. Being an open place used by the public for different purposes, good as well as bad, the Manager found it difficult to run the school in a peaceful atmosphere. This fact prompted the Manager to seek permission from the Government to construct a compound wall for the land, which, according to the Petitioner, is appurtenant to the school. Initially, permission was granted. But, the same was withdrawn by Ext. P-7 order.

2. In Ext. P-7 order, it is stated that the inspection of the school premises revealed that the entire compound consisting of the school, a temple, Devaswom Assistant Commissioner's Office and old Sreepadam Office are part of the same campus and forms as a single plot. It is also stated that Government are convinced that if permission is given for construction of compound wall as requested for by the Management, it is likely to create a law and order situation in the locality.

3. If the management has got the legitimate right to construct a compound wall, the construction of the compound wall, cannot be prevented on the ground that there will be law and order situation. If this proposition is accepted, any lawful act can be prevented by the Government by saying that there will be law and order situation.

4. A law and order situation has to be dealt with by the Government using its prerogative powers granted by the Constitution of India. Citizens are entitled to exercise their lawful rights and for that purpose, Government is bound to give adequate protection. Under the threat of a law and order situation, a citizen cannot be denied to exercise his lawful rights. If this is permitted, it will be an indication of the failure of a constitutional Government. I feel that the prime duty of the Government is to see that every citizen is allowed to exercise his lawful rights even if large number of people are against the exercise of his legal rights. In such a situation, Government's obligation is that law and order is maintained so as to enable the citizen to exercise his power. I feel that the defence pleaded in the order Ext. P-7 is sleek, slender and weak and cannot be sustained by a Court of law. But, this is not the end of the matter.

5. In the counter affidavit it is stated that the Petitioner's intention is to take possession of Government property under the cover of enclosing the school premises. That cannot be allowed. Counsel for Petitioner submitted that the Petitioner's motive is only to see that a peaceful atmosphere is created for running the school properly and for that purpose, enclosing the school premises is absolutely necessary. I am of the view that it will be always desirable to enclose the premises of a school, particularly, a mixed school, having a large strength of students.

6. As a defence to withdraw the permission to construct a compound wall, it is stated that the premises is being used for "Murajapam" and Aratu Festival conducted at the behest of Maharajah of Travancore. In the reply affidavit filed by the Petitioner, he has produced a letter Ext. P-8, from the Private Secretary to Maharajah, wherein it is stated that "the Fort High School building and premises are not being used for Murajapam and Arattu Festivals at present".

7. I think the interest of the public and the interest of the school children have to be safeguarded. How it has to be done is a matter for the Government to decide. I feel that this is a fit case where a deeper consideration of the matter is necessary and in that context, it will be just and proper for the Government to consider the matter after obtaining a detailed report by the District Collector, Thiruvananthapuram (3rd Respondent) after a personal inspection of the compound in question by him. After obtaining the report of the District Collector, the Government must give an opportunity to the management and persons who are interested in the matter and pass appropriate orders.

Original Petition is disposed of as above.