(2007) 10 KL CK 0039

In the High Court Of Kerala

Case No : Writ Petition (C) No. 31459 of 2003 (T)

Mullakkal Bhagavathy Kshethra Kshema Samithi APPELLANT

Vs

The Principal Secretary RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:

Kerala Treasure Trove Act, 1968 — Section 15, 2, 21, 22, 23
Kerala Treasure Trove Rules, 1971 — Rule 16, 6(2)

Citation : (2008) 1 KLJ 132

Hon'ble Judges : K.S. Radhakrishnan, J;A.K. Basheer, J

Bench : Division Bench

Advocate : D. Sreekumar, for the Appellant; Gopalakrishna Kurup, SC and K. Sandesh Raj, GP, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Sree Mullakkal Bhagavathy temple is an ancient temple managed and administered by the Cochin Devaswom Board. While excavations were being done by the Sree Mullakkal Bhagavathy Kshethra Kshema Samithi for the construction of a "Nadapura" in the temple, 1040 gold coins weighing 406 grams and 7 gold coins were found out and they were found to be of much archaeological importance. Upon getting information of the same Devaswom Officer informed the same to the District Collector and the District Collector directed the Devaswom authorities to hand over the coins to the Circle Inspector of Police, Wadakkancherry to keep them in safe custody in the Wadakkancherry Sub Treasury noticing that it was a "treasure trove" and therefore would belong to Government as per Section 3 of the Kerala Treasure Trove Act, 1968. Direction of the District Collector was complied with and the coins were handed over to the Circle Inspector after obtaining receipt and they are now kept in the Sub Treasury, Wadakkancherry.

2. District Collector also informed the Department of Archaeology about the unearthing of gold and silver coins. On receiving information curator of the Archaeology Museum at Thrissur was directed to visit the spot and report the

details of the coins. Subsequently expert officials were deputed to inspect the coins and report was called for and after verifying the coins they submitted a report on 27-1-2002. As per the report the hoard contained 1040 gold coins and 7 silver coins and they are of 14th to 17th century and are known as "Veerarayan coins" which were in circulation within the province of Kozhikode and Kochi. It was noticed that each gold coin weighed 0.400 grams and the coins are of very ancient and historical and cultural value and therefore it has to be preserved for the study of research scholars. Archaeological Department has approached the Mining and Geology Department for assessing the metal value of the coins and as per the report of the Mining and Geology Department metal value was assessed and compensation was calculated as Rs. 61,280/- for the gold and silver coins and the same was approved by the Government.

3. The Kshethra Seva Samithy and the Cochin Devaswom Board had staked their claim for the return of gold and silver coins and in the alternative they have also claimed compensation. Since the temple is being managed by the Cochin Devaswom Board they claimed the amount stating that they would utilise the amount for the development works of the temple. Seva Samithi has maintained the stand that the gold and silver coins belong to the temple and it should be handed over to the temple. State took up the stand that the compensation can be granted only to the owner of the property from where the treasure was obtained and the compensation amount has been deposited in the Collector''s account and it can be given to the owner as soon as the dispute of ownership between the Kshethra Seva Samithi and the Cochin Devaswom Board is settled.

4. Chinese Traveller Ma.Hueom who visited Kerala in 1408 referred to these types of coins of Kozhikode as "Vellitharan" and gold coins of Kochi and Kozhikode as "Swarnapanam". Enquiry conducted by the officials of the Archaeological Department revealed that the gold and silver coins unearthed from the temple premises are of 14th to 17th century and are known as "Veerarayan coins" which were in circulation within the province of Kozhikode and Kochi. Those coins are of very ancient origin and have historical, archaeological, artistic and cultural interest. The question to be decided is whether those coins unearthed from the temple premises should be returned to the Cochin Devaswom Board or be retained with the Archaeological Department. Statement filed by the Cochin Devaswom Board described it as treasure trove and since it is a treasure trove the matter was reported to the District Collector who directed the Devaswom Board officials to hand over the coins to the Circle Inspector of Police, Wadakkancherry to keep them in safe custody in the Wadakkancherry Sub Treasure since the treasure trove found out on -excavation belongs to the Government as per Section 3 of the Kerala Treasure Trove Act, 1968.

5. The Kerala Treasure Trove Act, 1968 was enacted to unify the laws relating to treasure trove in the State of Kerala. The expression "treasure trove" has been defined in Section 2(b) of the Act to mean money, bullion or other valuables found hidden in the earth, the owner of which is unknown. Section 3 of the Act

says that whenever any treasure trove exceeding in amount or value, twenty five rupees; or of historical, archaeological or artistic or interest, whatever be its value, is found the finder shall, as soon as practicable, give to the collector notice in writing of the nature and amount or approximate value of such treasure trove, of the place in which it was found and of the date of the finding.

6. The literary meaning of the word as such may not fit into the facts of this case because the gold and silver coins unearthed belong to the temple. The Patna High Court in Shyam Bahadur Koeri and Others Vs. The State, has taken the view that concealment in soil and non availability of particulars of ownership are the requisites for "Treasure". As per Section 2(b) of the Act "treasure trove" means bullion, other valuables found hidden in the earth, the owner of which is unknown. When any money, gold, silver, plate or bullion is found in any place and no man knoweth to whom the property is, then the property thereof belongeth to the King. A.G. v. Trustees of British Museum (1903) 2 Ch. 598 says Terms da la ley "it is the hiding and not the abandonment of the property that entiles the King to it". Concealing a treasure trove is punishable by fine or imprisonment.

7. Section 8 of the Act deals with declaration of treasure trove as ownerless. It says that if, upon such enquiry, the Collector sees no reason to believe; that the treasure trove was hidden within one hundred years before the date of the finding; or if where a period is fixed u/s 7, not suit is instituted as aforesaid within such period to the knowledge of the Collector, or if such suit is instituted within such period and the plaintiff''s claim is finally rejected, the Collector may declare the treasure trove to be ownerless. Sub-section (2) of Section 8 states that any person aggrieved by a declaration made under Sub-section (1) may appeal against the same within two months from the date thereof to the Board of Revenue. Subject to such appeal, every such declaration shall be final and conclusive.

8. Section 15 of the Act deals with power to acquire treasure trove on behalf of the Government. The said provision is extracted below for easy reference.

15. Power to acquire treasure trove on behalf of the Government: The Collector may, at any time after making a decision under Sub-section (1) of Section 8, and before delivering or dividing the treasure trove as herein before provided, declare, by writing under his hand, his intention to acquire, on behalf of the Government, the treasure trove or any specified portion thereof, by payment to the persons entitled thereto, of a sum equal to the value of the materials of such treasure trove or portion, together with one-fifth of such value, and may place such sum in deposit in a Government treasure to the credit of such persons, and thereupon such treasure trove or portion shall be dealt with, as far as may be, as if it were such treasure trove or portion;

Provided that the person entitled to payment under this section if he questions the value of the materials or portion thereof fixed by the Collector, may, within two months from the date of the order of the Collector to acquire, institute a suit in the civil court to have the value of such materials fixed.

The State Government in exercise of the powers conferred by Section 21 of the Kerala Treasure Trove Act, 1968 and in supersession of the then existing rules on the subject, have framed the Kerala Treasure Trove Rules 1971. Rule 6(2) states that if the treasure trove is found to have any historical or archaeological or artistic interest, the Collector shall consult the Director of Archaeology also as to whether the treasure is of any historical, archaeological or artistic interest and whether it requires to be preserved. Rule 16 states that if the Collector after consulting the Director of Archeology considers that a treasure trove or portion thereof, which is of historical, archaeological or artistic interest, should be preserved, he may make a declaration in writing for the acquisition of the treasure trove or portion thereof, as the case may be, and deposits its value together with one fifth of such value in a Government treasury in the credit of the person entitled thereto as provided in Section 15.

9. Ancient Monuments and Archaeological Sites and Remains Act, 1958 is an Act enacted to provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaelogical excavation and for the protection of sculptures, carvings and other like objects. Section 2(b) of the Act defines "antiquity" which includes any coin, sculpture, manuscript, epigraph or other work of art or craftsmanship. Section 23 of the Act deals with compulsory purchase of antiquities etc. discovered during excavation operations. It says that where as a result of any excavations made in any area u/s 21 or Section 22 any antiquities are discovered,'' the archaeological officer or the licensee, as the case may be, shall as soon as practicable, examine such antiquities and submit a report to the Central Government in such manner and containing such particulars as may be prescribed at the conclusion of the excavation operations, give notice in writing to the owner of the land from which antiquities have been discovered of the nature of such antiquities and on receipt of a report under Sub-section (1), the Central Government may make an order for the compulsory acquisition of any such antiquities.

10. The Cochin Devaswom Board which is administering and managing the temple. has no objection in the procedure followed by the District Collector. Director of Archaeology has not filed any statement or counter in this case. Devaswom Board has not raised any plea that the gold and silver coins unearthed from the premises of the temple be kept in the custody of the temple or the Board in question. State has taken up the stand that coins unearthed are of archaeological importance and therefore State would pay compensation to the Devaswom Board. If the Devaswom Board is of the opinion that those coins unearthed are to be kept by them it is for them to take up the matter with the Government or if they are satisfied with the compensation fixed by the Government they may receive the same and utilise the same for the betterment of the temple from which it was unearthed. All the same Kshethra Seva Samithi

cannot have any claim over the gold and silver coins unearthed; or on the amount of compensation fixed by the Government. In such circumstances, we leave it to the Cochin Devaswom Board as well as respondents 1 to 4 to take up further follow up action with regard to the gold and silver coins unearthed in accordance with law. The writ petition is disposed of as above.