

(1960) 07 KL CK 0009
In the High Court Of Kerala
Case No : A.S. No. 207 of 1956-E

Raghava Worrier

APPELLANT

Vs

Raman and Others

RESPONDENT

Date of Decision : 12-07-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 39
Constitution of India, 1950 — Article 226, 366

Citation : (1960) KLJ 1158

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : T. S. Krishnamoorthi Iyer, for the Appellant; V.G. Sankaranarayana Pillai . For Respondents 1, 3 to 29, 31 to 71, 73 to 75, 84 and 85, for the Respondent

Judgement

Vaidialingam, J.—On behalf of the appellant, Mr.T.S. Krishnamoorthi Iyer, his learned counsel, challenges the decree of the learned Additional District Judge of Parur dismissing the suit instituted by the plaintiff, on a preliminary finding that the suit is not now maintainable without the plaintiff approaching the Government u/s 6 of the Travancore-Cochin Temple Entry (Removal of Disabilities) Act, XXVII of 1950. The various other contentions raised by the parties, and which are the subject matter of the several issues, have not been adjudicated upon by the learned Additional District Judge.

2. The suit itself was for a declaration that the plaintiff schedule temples are the private temples belonging to the plaintiff's family and that right of worship in those temples is exclusively confined to the members of the family of the plaintiff and of the Adaat Illom and for a permanent injunction restraining the defendants, members of the Hindu Community whom they represent, from forcibly entering into the plaintiff schedule temples and the premises on which they stand and offering worship therein. There are certain other incidental reliefs asked for which I will advert to when I discuss the contentions of the learned counsel on both sides. The main allegations in the plaintiff are that the suit

temples were the private temples of the Adaat Illom and that the plaintiff's tarwad has acquired full rights in the said temples by virtue of an udampadi executed by the members of the Adaat Illom on 19--12--1113 in favour of one Sankara Warriar, the then karnavan of the plaintiff's tarwad. It is also stated that during the long period that has elapsed, these temples have remained as exclusive places of worship only of the members of the family of the plaintiff and those of the Adaat Illom.

3. In particular it is alleged in the plaint that no member of the Hindu community has a right of worship in any of the plaint temples nor has such a right been claimed or exercised by anybody and that these temples have remained as private temples and not as places of public worship. There are certain other allegations to the effect that neither the Government of the State nor the Hindu community had at any time anything to do with these institutions or their management. It is also alleged that recently the defendants and a large number of the members of the Hindu community contend that the plaint temples are not the private temples belonging to the tarwad of the plaintiff, but are public temples where every member of the Hindu community has a right to enter and worship. It is further mentioned in paragraph 15 of the plaint that the plaintiff has moved the State Government u/s 6 of the Travancore-Cochin Temple Entry (Removal of Disabilities) Act, XXVII of 1950. It is also alleged by the plaintiff that the defendants and some members of the Hindu community have trespassed in the Valampur temple and have offered worship on 28--4--1952 and according to the plaintiff such entry on the part of these defendants is unauthorised because neither the defendants nor any other member of the Hindu Community have got such a right and that the case of the defendants and other Hindus is stated to be an invasion into the plaintiff's private right to the institution. The substantial reliefs that are asked for by the plaintiff have been referred to at the beginning of this judgment.

4. The number of defendants which originally was seven now has swelled to as many as 87 and there is no controversy that the suit now proceeds on the basis that the defendants represent the Hindu community and it is a representative action that they are fighting. From the written statements filed by the parties, it is clear that they are challenging the rights of the plaintiff to private ownership or for asking for any relief regarding their exclusive rights in the properties. The general allegations in the written statement are to the effect that the temples are public temples, and that the members of the Hindu community have been as of right worshipping in these institutions.

5. In particular, a plea is raised by the defendants that the plaintiff is not entitled to get any relief because he has not complied with the provisions of the Travancore-Cochin Act, 27 of 1950. It is not necessary for me to go into the various details mentioned in the plaint or written statements because those are matters which have to be adjudicated upon by the court after a consideration of the entire evidence that may be placed before it by the parties.

6. So far as this particular aspect, namely, the preliminary issue, is concerned, that is contained in issue No. 1 to the effect: "Is the suit not maintainable ?" There are other issues as to whether the plaintiff temples are the private temples or whether they are public places of religious worship and whether the defendants are entitled to enter those temples and worship as of right. The objection that has been taken on the basis of the provisions of the Travancore-Cochin Act, XXVII of 1950, appears to be that u/s 6, a question as to whether a place is or is not a temple as defined u/s 2, clause (1) of the Act, has to be referred to the Government whose decision is final subject to any decree that may be passed by a competent civil court in a suit filed within six months from the date of the decision of the Government. The learned Additional Judge appears to be of the view that section 6 operates as a bar to the maintainability of the present suit. The reasoning of the learned Judge, as I could gather on this point is to the effect that section 6 takes away the jurisdiction of the civil court to try suits of this nature. It is the further reasoning of the learned Judge that all reliefs claimed in the plaint depend upon the answer to the question whether the temples described in the plaint are private or public temples. Therefore, the real question for consideration is whether the temples described in the plaint are private or public temples and this question, according to the learned Judge, could be decided only by the Government in the first instance. It is also the view of the learned Judge that the civil court gets jurisdiction to try such suits only after the Government gives its decision on this point.

7. An objection appears to have been taken before the learned Judge that the suit is of a nature coming within the ambit of section 5 of T.C. Act XXVII of 1950 and so far as this aspect is concerned, the learned Judge has held in favour of the plaintiff and has come to the conclusion that there is no force in the contention that section 5 of the Act prohibits the court from proceeding with this suit. To that extent the decision of the learned Judge is favourable to the plaintiff.

8. In view of his finding that the present suit is not now maintainable without a decision by the Government u/s 6, the learned Judge has dismissed it as not maintainable, with costs of the defendants.

9. It is this decree of the learned Additional District Judge that is challenged by Mr.T.S. Krishnamoorthi Iyer before me on behalf of the appellant.

10. Before I proceed to consider the contentions of the learned counsel raised before me, I must frankly state that the plaintiff himself is responsible for bringing trouble on him by virtue of a statement that he has made in paragraph 15 of the plaint. In paragraph 15 the plaintiff states :

The plaintiff moved the State Government u/s 6 of Act XXVII of 1950 for a declaration that the plaintiff temples are the private temples belonging to the plaintiff's family. The plaintiff also prayed for the necessary interim reliefs for the protection of plaintiff's private rights. But so far, the Government has not passed any orders on plaintiff's application.

11. It will be seen that this statement of the plaintiff in paragraph 15 of the plaint has, in my opinion, to a very large extent, influenced the learned Judge in coming to the conclusion that the suit is not maintainable without a decision by the Government u/s 6. The plaintiff, no doubt, categorically states in paragraph 15 of the plaint that he has filed an application u/s 6 to the State Government for a declaration that the plaint temples are the private temples belonging to the plaintiff's family and in fact the grievance that he makes in the plaint dated 15th May 1952 is to the effect that the Government has not passed any order on the plaintiff's application. This aspect has been considered also by the learned Judge and the plaintiff seems to have explained that he had to come to the court, without a final decision by the Government on his application, because there is inordinate delay on the part of the Government in passing orders. If the plaintiff has moved and if the plaintiff was bound to move the Government u/s 6 of the Act, the learned Judge was correct in proceeding on the basis that the plaintiff was not entitled to come to the court without waiting for a final decision by the Government and the fact that the Government has not passed orders will not justify the plaintiff in coming to the court. As I said, this statement has unfortunately created some trouble for the plaintiff.

12. In this court, it is seen that the plaintiff filed an independent Original Petition No. 396 of 1959 for a mandamus under Article 226 of the Constitution to direct the State Government to take up the application filed by the plaintiff and dispose it of at a very early date. That application itself was filed on 3-4-1959 and notice also was served on the State Government more or less immediately thereafter.

13. This Original Petition was posted along with this appeal on 4-7-1960. No counter-affidavit as such had been filed on behalf of the Government but it was represented to me by the learned Government Pleader appearing for the State that the application, referred to by the plaintiff in the said O.P., could not be traced by the State Government. In view of this representation I considered it unnecessary to keep the O.P. on file and dismissed the same by my order of the same date.

14. Therefore, this court has now to proceed on the basis that there is no application before the State Government u/s 6 of the Travancore-Cochin Act, XXVII of 1950, filed by the plaintiff on which the Government could take any action. But, in my opinion, in the view that I take about the matters in controversy in this proceeding, this aspect need not detain me any further.

15. In this appeal on behalf of the plaintiff-appellant Mr.T.S. Krishnamoorthi Iyer has raised two broad contentions, namely, (1) that the provisions of Section 6 have no application to the subject-matter of the dispute in the present litigation. The relief that is claimed in the suit by the plaintiff is that the suit institutions are what are called private temples of the plaintiff's family in which no member of the Hindu community either individually or as a whole, excepting the members of the plaintiff's family and the members of the Adaat Illom, are entitled to offer

worship therein. Such a relief cannot be granted by the State Government by virtue of any of the provisions contained in the Travancore-Cochin Act, XXVII of 1950. Therefore, the present suit is not hit by the provisions of section 6 of the Travancore-Cochin Temple Entry (Removal of Disabilities) Act, XXVII of 1950. Alternatively Mr.T.S. Krishnamoorthi Iyer contended that neither any provision of the Act nor the particular section, namely, section 6 of the Act gives any indication as to who is the party who is bound to move the State Government in respect of a dispute, admitting that there is a dispute. Before throwing out a suit instituted by the plaintiff on the ground that he should approach the Government under the provisions of section 6, Mr.T.S. Krishnamoorthi Iyer contended that there must be some provision either in the Act or in the rules framed under the Act which makes it compulsory on his part to approach the State Government u/s 6 of the Act before he can come to the court asking for any reliefs.

16. The second contention of Mr. Krishnamoorthi Iyer is that the subsequent Central enactment which has come into force, namely, the Untouchability (Offences) Act, 1955, Central Act, XXII of 1955, deals substantially with the matters covered by the Travancore-Cochin enactment referred to above. Mr.T.S. Krishnamoorthi Iyer contended that section 17 of Central Act XXII of 1955 repeals the various enactments specified in the schedule and item No. 19 is the Travancore-Cochin Temple Entry (Removal of Disabilities) Act, Act XXVII of 1950. Mr.T.S. Krishnamoorthi Iyer, after a reference to the various provisions contained in the Central enactment, contended that there is no obligation on the part of anybody laid under the Central Act, to go to the Government for having a decision regarding the nature of the institution and therefore it is the contention of Mr.T.S. Krishnamoorthi Iyer that the subsequent Central enactment has practically superseded the State enactment and therefore the necessity for approaching the Government ceased to exist and in consequence the dismissal of the suit by the lower court on this ground is also illegal and improper.

17. Mr.T.S. Krishnamoorthi Iyer elaborated these two contentions by referring me to the various sections of the Travancore-Cochin Act as well as the Central enactment and also to the various provisions of the said enactment in particular to show that the State Government has absolutely no power or jurisdiction to grant the reliefs now asked for by the plaintiff in this litigation. These provisions were also relied upon by Mr.T.S. Krishnamoorthi Iyer in support of his contention that there was absolutely no necessity to approach the State Government u/s 6 of the Act and as such the dismissal of the suit by the lower court is absolutely unjustified and illegal.

18. On the other hand, Mr.V.G. Sankaranarayana Pillai, learned counsel appearing for the defendants, has contended that the question as to who is to approach the Government u/s 6 of the Travancore-Cochin Act is purely academic, so far as this litigation is concerned, because the plaintiff himself, in paragraph 15 of the plaint, has categorically stated that he has moved the State Government u/s 6 of the Travancore-Cochin Act, XXVII of 1950, for a declaration that the plaint

temples are the private temples belonging to the plaintiff's family. Therefore, once the plaintiff having moved the State Government, the lower court was perfectly justified in holding that the plaintiff should not have rushed up to the court without waiting for the final decision of the State Government u/s 6 of the T-C Act.

19. Mr. Sankaranarayana Pillai also referred me to certain allegations contained in paragraphs 14, 16 and 17 of the plaint to the effect that the real object of the plaintiff in filing this suit is to shut out the particular community or communities to whom the privilege of having an equal right of worship, along with the other members of the community, has been granted or vouchsafed by the T-C Act. In order to circumvent the provisions of the said enactment, the plaintiff has so framed the relief as to make it appear that the real object is to establish his sole and absolute rights in the suit institutions.

20. In particular, Mr.V.G. Sankaranarayana Pillai laid particular emphasis on the statements contained in paragraph 17 of the plaint that the plaintiff is very much upset by the entry of the defendants in the suit institutions and as such he himself is prepared to admit that by such an entry he has sustained injury mentally and that his religious faith and belief has been shocked by the act of the defendants.

21. Along with this, Mr. Sankaranarayana Pillai referred me also to the relief sought in paragraph 22 of the plaint whereby the plaintiff seeks to recover a sum of Rs. 1800 as compensation for damages caused to the plaintiff by the defendants and the members of the Hindu community whom the defendants represent. This, according to Mr.V.G. Sankaranarayana Pillai, gives a real indication about the attitude of the plaintiff regarding this matter which is only to circumvent the provisions of T-C Act XXVII of 1950 referred to earlier.

22. Mr. Sankaranarayana Pillai also contended that the provisions of section 6 are mandatory and that the plaintiff in the circumstances of this case and in view of the reliefs that he is asking for in this litigation is bound to approach the State Government before coming to the court. Mr.V.G. Sankaranarayana Pillai, in my opinion, quite rightly did not go to the extent of contending that there is an absolute bar of jurisdiction of the civil courts by virtue of section 6 of the Act. In fact he cannot do so, because I find section 6 itself keeps in tact the jurisdiction of the court in such matters. The only thing is, it postpones the exercise of a jurisdiction by a court till after a decision is given by the State Government u/s 6, because what we see in the section is that the decision by the State Government on a reference made to u/s 6 becomes final, subject to any decree passed by a competent civil court in a suit filed before it within six months from the date of the decision of the Government.

23. After hearing Mr. Krishnamoorthi Iyer, learned counsel for the plaintiff and Mr.V.G. Sankaranarayana Pillai, learned counsel for the defendants, I am satisfied that the decree of the learned Judge dismissing the suit on the ground that that

court has no right to grant the reliefs asked for before a previous decision by the Government u/s 36 of the Travancore-Cochin Act, XXVII of 1950 is not sound and that that decree must be set aside.

24. Before I deal with the main contention of Mr.T.S. Krishnamoorthi Iyer, based upon the provisions of the Travancore-Cochin Act, I can dispose of the second contention straightaway. The second contention, as I mentioned earlier, is that the Travancore-Cochin Act should be considered to have been superceded by the passing of the Central enactment, namely, Central Act XXII of 1955. In my opinion, this contention of Mr. Krishnamoorthi Iyer cannot be accepted. The Travancore-Cochin enactment, as the preamble itself shows, is in order to remove the disabilities imposed on certain classes of Hindus against entry into and worship in Hindu Temples. Section 3, sub-clause (1) is to the effect that:

Notwithstanding any law, custom or usage to the contrary, every Hindu, irrespective of the caste or sect to which he belongs, shall be entitled to enter any temple and offer worship therein in the same manner and to the same extent as Hindus in general or any section thereof.

25. It will be seen that the Travancore-Cochin enactment is of a wider amplitude and scope and gives equality of the right of worship to all the members of the Hindu community irrespective of caste or sect.

26. But so far as the Untouchability (Offences) Act, 1955, namely, the Central enactment, is concerned, it is only an enactment to prescribe punishment for the practice of "untouchability" and for the enforcement of any disability arising therefrom and for matters connected therewith.

27. So far as these disabilities relating to are concerned, section 3 provides that:

Whoever on the ground of "untouchability" prevents any person from doing any of these things mentioned in either clause A or B of Section 3 are liable to be punished by imprisonment which may extend to 6 months or with fine which may extend to five hundred rupees or with both.

Again, section 12 which deals with presumption by courts in certain cases, is to the effect that

Where any act constituting an offence under this Act is committed in relation to a member of a Scheduled Caste as defined in clause (24) of Article 366 of the Constitution, the court shall presume, unless the contrary is proved, that such act was committed on the ground of "untouchability."

Section 13 which places a limitation on the jurisdiction of civil courts again is to the effect that

No civil court shall entertain or continue any suit or proceeding or shall pass any decree or order if the claim involved in such suit or proceeding or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.

28. Again, sub-clause (2) of section 13 provides:

No court shall, in adjudicating any matter or executing any decree or order, recognise any custom or usage imposing any disability on any person on the ground of "untouchability".

29. Therefore, the various provisions of the Act and especially the provisions referred to above clearly give an indication as to the nature and scope of Central Act XXII of 1955. That Act has reference only to the practice of untouchability and punishment for enforcing any disability arising therefrom and matters connected with that.

30. Section 16 of the Central Act provides that

Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom or usage or any instrument having effect by virtue of any such law, or any decree or order of any court or other authority.

In my opinion, the T-C Act referred to above cannot be stated to be in any way inconsistent with the provisions of the Central Act referred to earlier. Further, the repealing section, namely, section 17 of the Central Act says that the enactments falling under the schedule thereto are repealed to the extent to which they or any of the provisions contained therein correspond or are repugnant to the Central Act or to any of the provisions contained therein. No doubt, item No. 19 in the said schedule is T-C Act XXVII of 1950. In my opinion, by virtue of section 17 of the Central Act, it cannot be stated that there has been a wholesale repeal of the Travancore-Cochin Temple Entry (Removal of Disabilities) Act in all respects. Therefore this contention of Mr.T.S. Krishnamoorthi Iyer that the subsequent Central enactment has substantially given the go-by to the provisions of T-C Act XXVII of 1950 cannot be accepted.

31. Now, coming to the main question, namely, the scope and effect of T-C. Act, XXVII of 1950, as I mentioned earlier, it is the contention of Mr.T.S. Krishnamoorthi Iyer that in view of the nature of the reliefs claimed in this suit, the plaintiff is not bound to approach the State Government u/s 6 of the Act. Mr.T.S. Krishnamoorthi Iyer also contended that section 6 does not give any indication as to the person who has to approach the State Government, if such an approach is necessary u/s 6 of the Act. Again, Mr.T.S. Krishnamoorthi Iyer's point is that the nature of the reliefs claimed in this litigation could not be granted by the State Government u/s 6 and therefore the plaintiff was perfectly justified in instituting this suit without resort to section 6 of the Act.

32. As I mentioned at the beginning of this judgment the plaintiff himself is responsible for the trouble that he has brought over his head by making the statement in the plaint that he has approached the State Government u/s 6 of the Act.

33. But ultimately in view of the proceedings connected with the Original Petitions the position now is that this court has to proceed on the basis that the plaintiff has not made any approach to the State Government u/s 6.

34. The contentions of Mr.T.S. Krishnamoorthi Iyer on this aspect can be considered under two broad heads.

(a) On the basis that section 6 of the Act applies and

(b) on the basis that there is no scope for the application of section 6 at all to the proceedings like this.

35. I will now proceed to consider the question on the basis and the assumption that section 6 of the T.C. Act applies.

36. As I mentioned earlier, the learned Judge has dismissed the suit on the ground that the plaintiff was not in order in coming to the court before there was an adjudication by the Government on the application stated to have been filed by him u/s 6 of the Act. Though there was an explanation given by the plaintiff that this application which was stated to be pending with the Government has not been disposed of a long time and that is why he had come to the court, the learned Judge was not satisfied with this explanation because it seems to be the view of the learned Judge that the plaintiff is bound to approach the Government u/s 6 before he can ask for relief in court.

37. Before a suit or other proceeding could be dismissed on the ground that the plaintiff should have moved the State Government u/s 6 of the T.C. Act, in my opinion, Mr. Krishnamoorthi Iyer is well-founded in his contention that there must be some clear and positive indication either in the statute itself or in any rules that have been framed under the enactment which makes it obligatory on the part of the plaintiff to approach the Government u/s 6. I am informed by learned counsel on both sides that no rules have been framed by the Government prescribing any procedure to be followed regarding the matters covered by section 6 of the T-C. Act XXVII of 1950. No doubt, section 9 of the Act gives power to the Travancore or Cochin Devaswom Board for making rules for purposes of carrying into effect the provisions of the Act.

38. Again section 10 which repeals certain enactments provides that until rules are made under this Act the rules enacted in the Travancore Proclamation dated 9th Vrichikam 1112 and the rules made under the enactments hereby repealed and in force at the commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act continue in force.

I am again informed by learned counsel on both sides, that there are no rules enacted under the Travancore Proclamation dated 9th Vrischikam 1112 in respect of the matters covered by section 6 of the present enactment. Therefore, there are no rules regarding the matters covered by section 6 of the Act. Then the provisions of the Act have to be looked into to consider whether there is any obligation placed upon a person situated like the present plaintiff, to approach

the State Government before coming to court.

39. Section 6 of the Act is to the following effect:

If any question arises as to whether a place is not a temple as defined in this Act, the question shall be referred to the Government and their decision shall be final subject, however, to any decree passed by a competent civil court in a suit filed before it within six months of the date of the decision of the Government.

In my opinion, Mr. Krishnamoorthi Iyer is perfectly justified in his contention that there is absolutely nothing in this section which makes it obligatory on the part of the plaintiff to approach the State Government. Mr. Krishnamoorthi Iyer was frank enough to confess that his client had made some statement which has resulted in some trouble. But his request is that in view of the proceedings connected with the O.P. this statement may be ignored and it may be considered whether he was bound to approach the State Government u/s 6. In my opinion, the attitude adopted by the learned counsel is perfectly justified in the circumstances.

40. There is absolutely nothing in any of the sections of the Act which have been brought to my notice by Mr.V.G. Sankaranarayana Pillai to show that any obligation has been cast upon the plaintiff to approach the Government before coming to the court. Mr. Justice Mack of the Madras High Court, who in the decision reported in Parameswaran v Narayanan (A.I.R. 1950 Madras 221), had to consider an analogous provision contained in the Madras Temple Entry Authorisation Act, V of 1947, section 6, observes:

Section 6 does not cast on the court in which a suit is filed to enforce rights created by Madras Act, V of 1947, any obligation to stay such a suit and make a reference to the Provincial Government to decide whether the place in dispute is or is not a temple.

41. I am in respectful agreement with the observations of Mr. Justice Mack on the analogous provisions of section 6 of the Madras Act to the following effect :

In the present case, it is extremely difficult to say who ought to have performed the obligation under S. 6, in the first instance, whether plaintiffs on their rights to use the temple being obstructed by the putting up of the fence or the defendant who obviously knew of the intention of the plaintiffs to use the temple as places of worship in spite of his protests and obstruction.

That was a case where the members of the public, figuring as plaintiffs, filed a suit for enforcing their right to worship in the suit temple therein on the basis of the Madras Temple Entry Authorisation Act, V/1947. Admittedly the plaintiffs therein had not approached the State Government u/s 6 of the Madras Act. The defendant who contended that the temples were private temples and as such the plaintiffs therein were not entitled to the declaration asked for, did not himself approach the Government u/s 6. But he applied to the court to make a reference u/s 6 of the Madras Act corresponding to Section 6 of the T.C. Act. The learned

Judge considered the position and has come to the conclusion that Section 6 is not an easy one to interpret. I will have to advert to this decision in connection with the other argument of Mr.T.S. Krishnamoorthi Iyer that his client is not at all bound to approach the State Government and that in any event the fact that no approach has been made to the State Government u/s 6 should not result in the dismissal of the suit. The lower court itself has not quoted any particular provision of this enactment to show that the plaintiff is bound to approach the Government before coming to the court asking for any relief. As I mentioned earlier, this is not a case of an exclusion of jurisdiction of the court, but only of postponement till a decision by the State Government, even on the basis that the Government has to decide this question in the first instance u/s 6. In the absence of any provisions either in the enactment itself or in any of the rules framed under this Act, in my opinion, it cannot be stated that there is any absolute obligation or duty cast on the present plaintiff to approach the State Government u/s 6 before coming to the civil court for relief.

42. On the other hand, if the various provisions are read closely, in my opinion, the inference is irresistible that if at all anybody is to make any approach to the State Government it is really the persons in the position of the defendants in this litigation. The Act itself, as I mentioned earlier, is for the purpose of removing the disabilities imposed on certain classes of Hindus against an entry into and worship in a Hindu temple. Section 3 vouchsafes the right to every Hindu irrespective of caste or sect to which he belongs to enter any temple and offer worship therein in the same manner and to the same extent as Hindus in general or any section thereof.

43. Admittedly, in this case it is the persons like the defendants in this litigation who are attempting to exercise a right on the basis of the privilege or as I may call it, a right conferred on them by this enactment. Therefore, in my opinion, the obligation, if there is any obligation, to make a reference u/s 6 is primarily and foremost only on those persons who seek the protection of the Act and want to enforce a right conferred on them on the basis of this enactment. Admittedly they are claiming rights by virtue of this enactment and they ought to take the necessary preliminary steps for enforcing that right and adopt the method provided by the said enactment itself. Therefore, the decision of the lower court that the plaintiff is bound to have made the reference to the State Government u/s 6 of the Act before their coming to the court cannot be sustained.

44. Then I will consider the question from the point of view that the enactment itself has no application at all in view of the nature of reliefs prayed for by the plaintiff.

45. As T mentioned earlier, the plaintiff claims relief of a declaration that the plaintiff's temples are the private temples belonging to the plaintiff's family and that the right of worship in those temples are exclusively confined to the members of the family of the plaintiff and Adaat Illom. As to whether the plaintiff will be granted that relief is a matter which remains to be seen because that

question can be decided by the court where the suit is now pending only after a consideration of the entire materials that may be placed before it by both the parties to this litigation. But the question is whether the institution of a suit of this nature can in any way be a bar at least for a particular time till a decision by the Government u/s 6; in other words, whether the provisions of section 6 apply to this case. As observed by their Lordships of the Supreme Court in the decision reported in *Shiromani Gurdwara Parbandhak Committee and Others Vs. Raja Shiv Rattan Dev Singh and Others*, :

The exclusion of jurisdiction of the Civil Court in respect of a suit or an issue which is normally within its competence can be brought about only by clear and unambiguous language or by the necessary implication thereof.

As I mentioned earlier, Mr.V.G. Sankaranarayana Pillai, in my opinion, quite rightly did not take up the position that there has been a total exclusion of the jurisdiction of the civil court even assuming that the provisions of section 7 apply. Even on the basis that section 6 applies, it is only, in my opinion, to use the words of their Lordships of the Supreme Court in the decision cited earlier:

not to exclude jurisdiction but to operate only as a limited stay until the specific issue is determined by the tribunal.

46. In this connection, Mr. Krishnamoorthi Iyer referred me again to the decision of Mr. Justice Mack referred to earlier as also the decision of my learned brother Mr. Justice Raman Nayar reported in *Karunakaran Nair v N. Bhattathiripad* (1959 K.L.R. 494). The decision of Mr. Justice Mack was relied upon by Mr. Krishnamoorthi Iyer to show that even in a case where neither the plaintiff nor the defendant therein made any approach to the Government u/s 6 of Madras Act V of 1947, nevertheless the learned Judge allowed the suit to proceed because to use the language of the learned Judge:

It is note-worthy that ultimately u/s 6, the authority to decide whether a place is or is not a temple is the civil court itself.

Therefore, Mr. Krishnamoorthi Iyer contended that the fact that no approach has been made to the State Government u/s 6, in this case should not have resulted in the dismissal of the suit of the plaintiff.

47. Notwithstanding the fact that the parties did not make any approach in the case reported in *Naranamangalath Manakkal Parameswaran Nambudiripad Vs. Kuttah Narayanan and Others*, to the Government u/s 6 of the Madras Act, the learned Judge while negating the request of one of the parties to make a reference u/s 6, allowed the suit itself to proceed because in the opinion of the learned Judge the ultimate authority to decide the dispute is the civil court itself. The same, in my opinion, is the position in this litigation also.

48. I am also in respectful agreement with the views expressed by Mr. Justice Raman Nayar in the decision reported in *Karunakaran Nair v N. Bhattathiripad* (1959 KLR 494). In more or less identical circumstances, where a suit had been

filed by plaintiff for a declaration of the exclusive right of entry and worship in the plaint temple in favour of the plaintiff's Illom therein and notwithstanding the fact that the defendants therein raised objection to the maintainability of the suit both on the basis of sections 5 and 6 of the Act under consideration before me, the learned Judge negated the objections raised on behalf of the defendants, based both on section 5 and section 6. In this case, the lower court itself has given a finding in favour of the plaintiff and has over-ruled the objections raised by the defendant regarding the prohibition contained in section 5 of Act 27 of 1950. The learned Additional District Judge after a consideration of the various reliefs asked for in this suit has recorded a finding:

I hold there is no force in the contention that section 5 of Act XXVII of 1950 prohibits the court from proceeding with the suit.

49. It is after holding in favour of the plaintiff regarding the non-applicability of section 5 of the Act that he held, when considering the question u/s 6 that the question as to whether a temple is private or public has first to be decided by the Government u/s 6. I am not able to appreciate this reasoning of the learned Judge.

50. As observed by Mr. Justice Raman Nayar in the decision referred to above at page 496 :

The wording of S. 6 (like S. 6 of Madras Act V of 1947 which it copies) leave much to be desired, but assuming what is by no means clear, that by implication it ousts the jurisdiction of the civil court unless there has first been an adjudication by the Government, I do not think that it has any application to the present suit, for two reasons; firstly because it is not to every dispute of the kind mentioned in the section, irrespective of the nature of the proceedings in which it arises, that the section applies. The dispute must have some bearing on the rights vouchsafed by the Act. In other words, it is only if the question whether a place is or is not a temple as defined in the Act has to be decided for the purpose of the Act, that the section comes into play. The section has nothing to do with a dispute like the present with which the Act has no concern.

The second reason given by the learned Judge need not be considered in the appeal before me because the learned Judge in that case had to consider whether section 6 is prospective and not retrospective. No such consideration arises in the case before me. Therefore, as pointed out by the learned Judge in the extract quoted above, section 6 has no application to a dispute like the present one where the plaintiff asks for a declaration of his absolute sole rights in the suit temples. The scheme of the Act also fully justifies the reasoning adopted, if I may say so with great respect, by my learned brother Mr. Justice Raman Nayar. If section 6 is to be made applicable to all disputes in respect of temples, in my opinion, whatever may be the nature of the dispute and whoever may be the parties to the dispute, the question will have to be first considered by the State Government u/s 6. I do not think that the scheme of the Travancore-

Cochin Act XXVII of 1950 warrants that interpretation sought to be placed on it by Mr. Sankaranarayana Pillai, learned counsel appearing for the defendants. In this connection I may refer to a decision of Mr. Justice Govinda Menon and Mr. Justice Ramaswami reported in *Thayoth Puthiyapurayil Ayisomma Vs. Choolat Puthiyapurayil Kunhali and Others*, . The learned Judges had to deal with the interpretation to be placed on section 84(1) of the Madras Hindu Religious Endowments Act, 1927 as it stood originally. The provision u/s 84(1) was to the effect that if a dispute arises as to whether a temple is a temple within the definition of the Act the dispute is to be decided by the Hindu Religious Endowments Board. In a suit instituted by a plaintiff asking for relief of declaration of his absolute and sole rights in the suit temple to the exclusion of everybody else, it was contended in the written statement filed by one of the parties that it is a temple within the meaning of that expression as contained in the Hindu Religious Endowments Act, 1927 and therefore a further objection was raised that the dispute will have to be referred in the first instance to the Hindu Religious Endowments Board u/s 84 (1) of the Act of 1927. The learned Chief Justice before whom the appeal came up in the first instance over-ruled the objection and held that section 84(1) has no application whatsoever excepting to those cases where a dispute arises between a party on the one hand and the Endowments Board on the other. There was an appeal against the judgment of the learned Chief Justice and Mr. Justice Govinda Menon and Mr. Justice Ramaswami agreed with the decision of the learned Chief Justice in the Letters Patent Appeal. The learned Judges observe at page 675:

I am clearly of opinion that on a reasonable construction of S. 84 the contention of the respondent is untenable. I think that the dispute referred to in S. 84 is a dispute between the trustee of an institution on the one hand and the Board on the other. In such a case the Act specifically provides that the dispute shall be decided by the Board in the first instance, and it is only thereafter that the District Judge is given the right to set aside or modify or confirm such decision.

Later on the learned Judges again observe :

There is nothing in this decision to countenance the view that even when the dispute is not with the Board, but there is a dispute between two private parties, the ordinary civil court has no jurisdiction to decide the dispute, but it is only the Board which is competent to decide it. There is no such express or implied bar of the jurisdiction of the civil court in S. 84 of the Act.

Section 6 of the Travancore-Cochin Act does not at all give any indication as to when a question can be said to arise and as between whom and when exactly is that question to be referred to the Government. The parties to such a dispute are not in any way "indicated in section 6 and section 6 does not in my opinion, enable me to accept the contentions of Mr.V.G. Sankaranarayana Pillai that even if private, sole and exclusive rights are claimed by a party as against an individual, a group of individuals or even a body of individuals, then it becomes a question to be decided by the Government u/s 6 in the first instance. Mr.

Sankaranarayana Pillai no doubt referred me to certain statements made by the plaintiff about the mental injury that he is stated to have suffered by the entry of certain persons in the temple. This aspect need not detain me any longer because even in the plaint filed by a warrier as it originally stood there were at least two defendants who belonged to the Nair community, namely, defendants 5 and 6 on the party array and therefore I cannot accept Mr. Sankaranarayana Pillai's contention that the mental suffering and anguish and shock that the plaintiff states he suffered by the entry of the people must be restricted to mental suffering or anguish because of the entry of the other five defendants who belonged to other communities. I do not wish to go into this matter because in the plaint as it now stands there is no dispute that apart from the two members of the Nayar community who were originally on record, there are a number of defendants who belong to that community who are claiming a right of worship in this temple on the ground that it is a public temple available to everyone. These are all matters to be considered by the court when disposing of the rights of parties in this litigation. In my opinion, whether the plaintiff is entitled to get damages is itself a matter to be considered by the lower court. Therefore, I am not accepting Mr. Sankaranarayana Pillai's contention that this allegation will clearly show that. the object of the plaintiff is not to establish his private rights pure and simple but it has been only so worded so as to circumvent the provisions of T.C. Act, 27 of 1950. I am not concerned in this litigation with the motive, if any, of the plaintiff. I am concerned with the allegations contained in the plaint and the nature of the reliefs asked for in this litigation. They are quite clear that he does not admit of the rights of any members of the Hindu community to whatever caste or sub-section they belong, except to the members of the plaintiff's family and the members of the Adaat Illom. That is, for all practical purposes he is asking for a declaration of the exclusive rights to himself, members of his family and members of Adaat Illom for worship in these institutions. As I mentioned earlier, whether he is entitled to get the declaration asked for in confirmation of the. rights claimed by him is a matter to be decided by the trial court.

51. In my opinion, the learned Judge is not right when he says that the question whether the plaint temple is a private temple or a public temple has to be decided by the Government in the first instance u/s 6 of the T.C. Act. Section 6 gives no jurisdiction to a Tribunal like the Government to decide the question that the suit properties are the absolute private properties of the plaintiff. Such a right can be asked for in and granted only by a civil court which has got ample jurisdiction u/s 39 of the C.P.C. especially when that jurisdiction could not be stated to have been taken away either expressly or impliedly by any of the provisions of the Travancore-Cochin Act. The further reasoning of the learned Judge that the Act itself has provided for the method by which an aggrieved party should get redress and therefore the aggrieved party has to follow the procedure does not also appeal to me because the rights that are claimed by the plaintiff, namely, absolute sole rights, are not rights created in his favour by the

T.C. Act. It may be that in those cases where rights are created by statutes and the mode of enforcing those rights are indicated in the statute itself then the parties will have to follow that procedure in the first instance to establish their rights. As I mentioned earlier, the rights claimed by the plaintiff certainly, were not granted to him by the Act itself in this case. Therefore, there was no obligation on the part of the plaintiff to approach the Government u/s 6 for two reasons: (1) there is no indication that it is persons like the plaintiff who have to approach the Government u/s 6; and (2) the nature of the suit is completely beyond the purview of any of the provisions of T.C. Act XXVII of 1950.

52. For the reasons given above, it follows that the decree and judgment of the learned Additional District Judge dismissing the plaintiff's suit for the grounds stated therein are to be set aside and the suit sent back for disposal on the merits in respect of all the other issues that have been already framed. If the court finds it necessary to frame any other additional issue it is perfectly open to that court to do so.

53. Costs of this appeal will abide and will be provided for in the fresh decree to be passed by that Court.

54. As the suit itself is of 1952, the learned District Judge is directed to give it a very expeditious disposal. The appellant is entitled to get half the court fees paid on the memorandum of appeal and in any event the other half of the court fees will not be included in the cost to be provided for by the lower court in the fresh decree.