
(2015) 10 MAD CK 0135

In the Madras High Court

Case No : W.P.(MD) No. 8362 of 2015 and M.P.(MD) Nos. 1 to 4 of 2015

The Kovilpatti Bajanai Madam Trust

APPELLANT

Vs

The District Collector, Virudhunagar District and Others

RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2016) 1 LW 308 : (2015) 8 MLJ 570

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : Veera Kathiravan, for the Appellant

Final Decision : Allowed

Judgement

R. Subbiah, J.—The writ petition has been filed praying to call for the records relating to the impugned proceedings of the 2nd respondent in Na.Ka. No. A2/4211/2014 dated 14.05.2015 and to quash the same and consequently, to direct the respondents 1 to 4 to permit the petitioner to conduct Vaikasi Pongal Festival for the five temples viz., 1. Sri Vinayagar Temple, 2. Muthalamman Temple, 3. Sri Krishnar, 4.A/m. Kaliaman and 5. Pattathu Arasi Amman situated in Kovilpatti Village, Mallanginaru, Kovilpatti Taluk, Virudhunagar District, from 27.05.2015 to 31.05.2015 in accordance with the customary practice and also not to allow the 5th respondent from creating any law and order problem in conducting the temple festivals.

2. The case of the petitioner, in brief, is as follows:--

"2-1. The petitioner is a registered Trust, having been registered on 20.04.2015 before the Joint Sub-Registrar, Virudhunagar. The object of the petitioner-Trust is to administer and practice the religious faith and custom in conducting religious festivals & bajanai in the temples situated at Kovilpatti Village, Kovilpatti Taluk. In Kovilpatti Village, there are five temples viz., Sri Vinayagar Temple, Muthalamman Temple, Sri Krishnar, A/m. Kaliaman and Pattathu Arasi Amman.

All the five temples are exclusively belonging to the residents of Kovilpatti Village and deities in the said temples are family deities of the Erakolla Raja Kambalam Thottiyanaicker community of Kovilpatti Village. Except the residents of Kovilpatti Village, no other persons have any right whatsoever either in the administration or conducting of the festivals in the said temples.

2-2. All the said five temples are public temples and there is no discrimination among the public in worshipping or giving donations to the temples for its functions as well as administration. But, so far as the entitlement of right in the temples is concerned, it is exclusively belonging to the Erakolla Raja Kambalam Thottiyanaicker community of Kovilpatti Village. Each family head (thalaikattu) is entitled to pay contribution for each and every function of the five temples and the said right is only vested with the residents of Kovilpatti Village. The neighbouring villagers can only visit the temple, present in the functions and worship the deities. They are not entitled to pay any contribution as mahimai, which will confer a right on the temple. On the other hand, they are entitled to offer donations and kanikkai in the hundials of the temples.

2-3. Arulmigu Kaliyamm Temple is one of the oldest temples in the Kovilpatti village and the residents of Kovilpatti Village decided to reconstruct the building of the temple and also to do Kumbabishegam. As per the decision of the Kovilpatti Village people, renovation and construction work of the temple was initiated. While so, the neighbouring villagers Viz., residents of Krishnapuram village filed a civil suit in O.S. No. 228 of 2012 on the file of the District Munsif Court, Aruppukkottai, seeking for a permanent injunction from in any way altering the physical features of the said temple, and obtained an interim order of status quo on 03.08.2012. Subsequently, at the instance of the residents of Kovilpatti Village, the said interim order of status quo was vacated on 10.08.2012 and renovation work was commenced. Later, the suit was also dismissed for non-prosecution. The 5th respondent herein, who is a resident of Krishnapuram Village, lost his right for himself and on behalf of Krishnapuram village claiming any right in the said temple. The Kumbabishegam was fixed by the residents of Kovilpatti Village and as per the schedule, the festivals of conducting Kumbabishegam was proceeded.

2-4. In the said circumstances, the 5th respondent filed W.P. No. 11336 of 2014 praying for police protection for conducting the Kumbabishegam and forbear the respondents therein from in any way preventing the residents of Krishnapuram Village in giving Mahimai in the Kappukattu as well as other functions in the temple. The said writ petition was disposed of by this Court on 05.08.2014 directing the officials to convene a Peace Committee Meeting and resolve the issue; however, with regard to "mahimai", there was no order passed by this Court whatsoever permitting the 5th respondent or his people to make their contribution. After the above said order and also convening of Peace Committee Meeting, another petition was filed by the Villagers of Krishnapuram invoking criminal law in CrI.O.P. No. 15603 of 2014 for identical prayer of police protection

and also claiming right to pay mahimai. The said criminal original petition was finally decided on 27.08.2014 and this Court passed orders observing that unless the residents of the 5th respondent-village are permitted to pay contribution, there shall not be any function of Kumbabishegam in the said temple. Against the said order, a Special Leave Petition was filed by the residents of Kovilpatti Village in SLP (Crl.). No. 7952/2014 and by final order dated 09.01.2015, the Hon'ble Supreme Court has directed the 5th respondent herein, who appeared through his counsel, to approach the Civil Court and the statutory authorities were directed only to maintain public peace. In spite of the said order of the Hon'ble Supreme Court, the 5th respondent filed another W.P. No. 929 of 2014 wherein by order dated 28.01.2015 this Court ordered that the 5th respondent's villagers can take part in the Kappukattu and they should not be prevented from worshipping in the temple; however, insofar as payment of mahimai is concerned, there was no order passed by this Court enabling the 5th respondent or his villagers from claiming any right over the said temples. Against the said order dated 28.01.2015, once again a writ appeal was preferred by the 5th respondent in W.A.(MD). No. 69 of 2015, wherein by order dated 04.02.2015, the Hon'ble Division Bench of this Court has held that the villagers of the 5th respondent viz., Krishnapuram Villagers should be permitted to pay contribution without claiming any equity for payment of such contributions and there shall not be any hindrance for the smooth conduct and the civil proceedings can be filed to resolve the dispute between the parties. But, in spite of the order passed by the Hon'ble Division Bench of this Court in the said writ appeal, the 5th respondent instead of approaching the Civil Court has approached the 2nd respondent by making representations dated 18.03.2015 and 23.04.2015. On the basis of the said representations of the 5th respondent, even without giving notice to the President of the petitioner-Trust, the 2nd respondent has passed the impugned order stating that without full participation of the villagers of Krishnapuram Village, the petitioner-Trust should not conduct the festival. Hence, the petitioner-Trust has filed the present writ petition contending that the 2nd respondent by rendering a finding that the petitioner should not conduct the temple festival without the full participation of the villagers of Krishnapuram Village, has decided the civil rights of the parties.

2-5. Along with the present writ petition, the petitioner-Trust has filed M.P. No. 1 of 2015 seeking for grant of interim stay of the impugned order. This Court by order dated 20.05.2015 has granted interim stay."

3. On appearance, the 5th respondent, who is the permanent resident of Krishnapuram Village, has filed a vacate stay petition in M.P. No. 4 of 2015 contending as follows:--

"3-1. Krishnapuram hamlet forms part of the petitioner's village viz., Kovilpatti Village. In fact, only one row of houses in a small street is called Krishnapuram and there are more than 50 families residing in Krishnapuram. Krishnapuram hamlet is situated just 50 meters away from Kovilpatti Village, which is the

parent village of Krishnapuram. In both the villages, one and the same community people are residing viz., "Kambalathu Naicker" and there are no other community people in the said village. All the people have the right over the temples and public places for common use, which are situated in the Kovilpatti Village and they are indiscriminately worshipping all the temples without any interference. While so, in the year 1975, a dispute arose between the villages of Kovilpatti and Krishnapuram, in respect of worshipping public temples situated in Kovilpatti village. Therefore, on 01.01.1975 a joint peace committing meeting was convened by the elders of that locality, wherein an unanimous decision was arrived at by both the villagers that the temples located at Kovilpatti namely Kalamman Temple, Pillaiyar Temple and common places should be maintained commonly by both the villagers and the same was reduced into writing on a stamp paper in the presence of panchayadars. Since then, the villagers are jointly worshipping all the temples and conducting festivals for the temples located at Kovilpatti and maintaining all the common places in the villages peacefully.

3-2. In the year 2012, the petitioner's villagers have made an attempt to demolish the Kalamman temple, which is situated at the Government Poramboke land. When villagers of Krishnapuram asked reasons for demolishing the temple which is in firm condition, the Kovilpatti villagers replied that they are going to renovate the temple out of their own fund. Therefore, the 5th respondent's villagers filed a Civil Suit in a representative capacity viz., O.S. No. 228 of 2012 on the file of the District Munsif Court, Aruppukkottai, seeking injunction against the petitioner-village and not to alter the structural stability of Kalamman Temple.

3-3. During the pendency of the said suit, Kovilpatti Villagers have demolished the public temple and renovated it without collecting poll-tax and other contributions from villagers of Krishnapuram Village. On the other hand, they were proclaiming that they are going to have a Kumbhabishekam (consecration ceremony) for the temple during the Tamil month "Avani" i.e., August 2014. On 25.06.2014, when the 5th respondent's villagers entered into Kalamman temple in order to tie sacred thread (Kappukattu), for participating in the consecration ceremony of the Kalamman Temple since it is a public common temple for both villagers, Kovilpatti Villagers had waylaid all the Krishnapuram Villagers and threatened them not to enter into the temple. The disputed Kalamman temple situated at Kovilpatti village is a common public temple for both the villagers of Kovilpatti and Krishnapuram, in view of a specific recital in peace agreement entered into by both villagers in the presence of elders of that locality in the year 1975. The 5th respondent's villagers have all rights over the temples located at Kovilpatti village. However, the 5th respondent's villagers viz., Krishnapuram Villagers were restrained by the petitioner's villagers from participating in the temple ritual ceremonies. Therefore, the 5th respondent's villagers made representation to the authorities concerned for police protection to participate in the consecration ceremonies of Kalamman Temple and also to accept their poll-

tax contributions for the temple. Since the said representations of the 5th respondent's villagers were not considered, the 5th respondent filed a writ petition in W.P.(MD). No. 11336 of 2014, which was disposed of by this Court on 05.08.2014 with a direction to the Tahsildar to conduct a Peace Committee. Pursuant to the said order passed by this Court, a Peace Committee meeting was held, but no amicable decision was taken in the said Peace Committee Meeting with regard to the participation of the 5th respondent's villagers in the temple festival by paying poll-tax and other contributions. Thereafter, the 5th respondent filed a petition in Crl.O.P. No. 15603 of 2014 seeking police protection for worshipping and fullest participation in the temple festival and the same was ordered by this Court on 27.08.2014. Against the said order, the petitioner's villagers filed S.L.P.(Crl). No. 7952 of 2014 before the Hon'ble Supreme Court and the said SLP was dismissed on 09.01.2015. Pursuant to the order passed by the Hon'ble Supreme Court, the 5th respondent had submitted representations to the official respondents through registered post on 20.01.2015, requesting to convene a peace committee meeting for both the villagers to conduct temple festival. It is incorrect to state that the 2nd respondent has decided the civil rights of the parties in the impugned order. In the impugned order, the 2nd respondent has only directed the petitioners to approach the civil Court. Thus, the 5th respondent has sought for dismissal of the writ petition."

4. The 2nd respondent has also filed a counter affidavit contending that Kovilpatti Village is the parental village to the Krishnapuaram Village and in both the villages, one and the same community people namely Kampalathu Naicker are residing. The 5th respondent has made representation to the authorities on 23.04.2015. Thereafter, a Peace committee meeting was convened at Taluk Office, Karipatti, wherein both the villagers participated, but no consensus was arrived. Therefore, the 3rd respondent referred the matter to the 2nd respondent for passing necessary orders. In view of the observations made in by this Court in Crl.O.P. No. 15603 of 2014 vide order dated 27.08.2014 and the observation of the Division Bench of this Court in W.A.(MD). No. 69 of 2015 vide order dated 04.02.2015, the 2nd respondent has passed the impugned order, whereby it was directed that the Vaikasi festival at Kaliyammann temple and other festivals should be conducted only with the fullest participation of the Krishnapuram Villagers and both the parties have been advised to work out their civil remedy before the competent Civil Court. The 2nd respondent has not adjudicated upon the right and obligations of the parties with regard to disputed temples and the 2nd respondent has exercised the powers only to maintain peace and to conduct all the festivals in a peaceful manner. Thus, the 2nd respondent has sought for dismissal of the present writ petition.

5. I have carefully heard the learned counsel appearing for the respective parties and perused the entire materials available on record.

6. The Trustees of the petitioner-Trust are the residents of Kovilpatti Village. In Kovilpatti Village, there are five public temples viz., 1) Sri Vinayagar Temple,

2)Muthalamman Temple, 3)Sri Krishnar temple, 4)A/m. Kaliaman Temple, 5) Pattathu Arasi Amman Temple. Krishnapuaram Village is situated adjacent to Kovilpatti Village. In both the villages, one and the same community people are residing viz., Erakolla Raja Kambalam Thottiyanaicker. All the said five temples are public temples and there is no discrimination among the public in worshipping or giving donations to the temples for its functions as well as administration. But, so far as the entitlement of right in the temples is concerned, it is exclusively belonging to the Erakolla Raja Kambalam Thottiyanaicker community of Kovilpatti Village. Each family head (thalaikattu) is entitled to pay contribution for each and every function of the five temples and the said right is only vested with the residents of Kovilpatti Village. While so, in the year 2012, the residents of Kovilpatti Village decided to renovate the Kaliaman Temple, but the same was objected by the residents of 5th respondent's village viz., Krishnapuram Villagers. The residents of Krishnapuram village also filed a civil suit in O.S. No. 228 of 2012 on the file of the District Munsif Court, Aruppukkottai, seeking for a permanent injunction from in any way altering the physical features of the said temple, and obtained an interim order of status quo on 03.08.2012. However, subsequently, at the instance of the residents of Kovilpatti Village, the said interim order of status quo was vacated on 10.08.2012 and renovation work was commenced. Later, the said suit was dismissed for non-prosecution.

7. In the said circumstances, the 5th respondent, who is the resident of Krishnapuaram Village filed a writ petition in W.P. No. 11336 of 2014 praying for police protection for conducting the Kumbabishegam and also forbear the respondents therein from in any way preventing the residents of Krishnapuram Village in giving Mahimai in the Kappukattu as well as other functions in the temple. The said writ petition was disposed of by this Court on 05.08.2014 directing the officials to convene a Peace Committee Meeting and resolve the issue; however, with regard to payment of "mahimai", there was no order whatsoever permitting the 5th respondent or his people to make their contribution.

8. However, once again, by invoking criminal law, the 5th respondent had filed a petition in CrI.O.P. No. 15603 of 2014 for identical prayer of police protection and also claiming right to pay mahimai. In the said petition, on 27.08.2014 this Court has passed the following orders:--

"14. Mr. Veera Kathiravan, learned counsel appearing for the respondents 6 and 7 is justified in making his submissions and after filing the writ petition, the petitioner cannot invoke Section 482 Cr.P.C. However, the peace meeting agreement dated 01.01.1975 was not reflected in the order passed in the writ petition in W.P. No. 11336 of 2014 dated 05.08.2014. When there is an existing right which is proved by agreement dated 01.01.1975, the same has to be safeguarded and the villagers of Krishnapuram Village have got every right. Technicality should not be a factor, to deny justice to the affected party. De hors

the technicality, this Court has to render justice, taking into consideration all the facts in toto. Therefore, the order passed in the writ petition cannot be an impediment for passing orders in this Criminal Original Petition.

15. With regard to other averments of Mr. Veera Kathiravan learned counsel appearing for the respondents 6 and 7, it has to be observed that the attempt of the petitioner to stop the demolition is only to see that the petitioner or the villagers are not denied their participation because of the demolition. Moreover, the temple itself was also demolished and reconstructed and therefore, the suit for permanent injunction filed by the petitioner practically has become infructuous and no adjudication can be done in the said proceedings.

16. Though the contention of Mr. Veera Kathiravan, learned counsel appearing for the respondents 6 and 7 that the civil right cannot be decided in the Criminal Original Petition is appealing, on close scrutiny, it lacks no merits. This Court under Section 482 Cr.P.C. only passes order to prevent the abuse of process and secure ends of justice. Based on the proved rights, this Court only directs the police to give appropriate protection to the petitioner and the villagers.

17. In view of the above position, this Court directs both the petitioner as well as the private respondents to sort out the issues amicably and to see that all the celebrations and festivals of the temple in the village are celebrated in a conducive atmosphere. Even in future, if any celebration is to be conducted, it is made clear that the respondents should conduct only with the fullest participation of the petitioner and villagers of Krishnapuram and with their contribution. Without participation and contribution by Krishnapuram Villagers, no festival can be conducted. The Official respondents are directed to take note of this order and take decision accordingly in future."

Aggrieved over the said order of the learned Single Judge of this Court, the residents of Kovilpatti Village filed SLP before the Hon"ble Supreme Court in SLP(Crl). No. 7952 of 2014 and in the said SLP, on 09.01.2015 the Hon"ble Supreme Court has passed the following order:--

"From the orders referred to above it is manifest that the High Court has not finally adjudicated upon the right and obligations of the parties in regard to disputed temple. All that is suggested is that the parties should attempt to maintain peace and to conduct all celebrations and festivals in a peaceful atmosphere. The direction issued to the authorities to take note of the said order would only mean that the authorities would take such steps as are necessary to maintain peace. This will not in any way prevent any one of the parties claiming any right to worship or to manage the affairs of the temple from approaching the competent Civil Court for such redress as may be legally permissible."

A reading of the above order it is clear that the Hon"ble Supreme Court has held that the learned Single Judge of this Court has not finally adjudicated upon the right and obligations of the parties in regard to the disputed temple and that the order passed by the learned Single Judge in criminal original petition will not in

any way prevent the parties claiming any right to worship or to manage the affairs of the temple from approaching the competent civil court for such redress as may be legally permissible.

9. But, inspite of the order passed by the Hon"ble Supreme Court, once again the 5th respondent has filed a writ petition in W.P.(MD). No. 929 of 2015 seeking to direct the official respondents to ensure that the temple celebrations, festivals and consecration ceremony in connection with the disputed temple is to be conducted only after the consensus was arrived in the peace meeting. In the said writ petition, on 28.01.2015 the learned Single Judge of this Court has passed the interim order, directing the Police to give necessary protection for the relevant period for the smooth conduct of the festival; in the said order, the learned Single Judge has not given any direction with regard to payment of mahimai (poll-tax) by the Krishnapuram villagers. Aggrieved over the order passed by the learned Single Judge, a writ appeal in W.A.(MD). No. 69 of 2015 was filed by the 5th respondent herein. In the said writ appeal, on 04.02.2015 a Division Bench of this Court has passed by the following order:--

"5. It is stated that the method of contribution of the "Mahimai" is by issuing of receipts by persons whoever are in the management of the temple. The apprehension expressed by the learned counsel for the private respondents is that such contribution, by the appellant group, may create specific equities in their favour which may be urged in civil proceedings. The learned Senior Counsel for the appellant, on instructions, fairly states that he will claim no special equities arising from such contribution but, it is only for the purpose of faith of the people, this contribution is being made.

6. Therefore, we are of the view that the impugned order is liable to be modified to the extent that any contribution made by the appellant group towards "Mahimai" would not create any special equities in their favour in case any civil proceedings are initiated. We have made the private parties conscious of the fact that if this dispute goes on ad-infinitum, without civil proceedings being filed, there would be little option for the respondents authorities but to put their lock and seal on the temple."

A reading of the above order passed by the Division Bench of this Court would show that any contribution is made by the villagers of Krishnapuram village would not create any special equities in their favour in case any civil proceedings are initiated.

10. When such being the position, without approaching the Civil Court, again the 5th respondent has approached the 2nd respondent by making representations and the 2nd respondent has passed the impugned order. In the impugned order, in the last but one para, the 2nd respondent has stated that as per the judgment passed by the Division Bench in W.A. (MD). No. 69 of 2015, the Kovilpatti village people should not conduct the festival without full participation of the Krishnapuram villagers. After having come to such conclusion, the 2nd

respondent in the impugned order at conclusion portion has given liberty to both the parties to approach the Civil Court to establish their rights over the disputed temples. Now, aggrieved over the findings rendered by the 2nd respondent, the present writ petition has been filed.

11. Before dealing with the impugned order, it would be appropriate to extract the relevant portion in the impugned order passed by the 2nd respondent, which reads as follows:--

12. On a perusal of the entire materials available on records, it would be clear that only in the order dated 27.08.2014 in CrI.O.P. No. 15603 of 2014, the learned Single Judge of this Court has observed that the respondents should conduct the temple festival only with the fullest participation of the 5th respondent herein and villagers of Krishnapuram and with their contribution. But, the said order was challenged in SLP and the Hon"ble Supreme Court has observed in the SLP that the parties have to redress their grievance with regard to their right in respect of management and affairs of the temple only before the competent Civil Court. Even in the subsequent writ petition and writ appeal also, there was no direction given to the effect that the Krishnapuram villagers can participate in the temple function by paying magimai (poll-tax). When that being so, by considering the order of the Hon"ble Supreme Court as well as the order of the Division Bench of this Court, the 2nd respondent ought to have directed the parties to approach the Civil Court to decide the right of Krishnapuram Villagers to enable them to fully participate in the temple function by paying magimai (poll-tax). But, instead of doing so, the 2nd respondent has observed in the impugned order that Kovilpatti villagers should not conduct the festival without the fullest participation of the Krishnapuram villagers. When there is serious dispute between the parties with regard to the management of the temple, they have to seek their remedy only before the competent Civil Court, because paying of magimai (poll-tax) will create a right on the parties with regard to the management of the temple. Even according to the writ petitioner, they have no objection for the Krishnapuram villagers to participate in the festival of the temples as devotees; however, they are objecting only for the participation of the Krishnapuram villagers in the temple festival by paying magimai (poll-tax), which will create a right on them in the administration of the temple.

13. But, it is the submission of the learned counsel appearing for the 5th respondent that with regard to payment of poll-tax to take part in the management of the temple by the Krishnapuram Villagers, already there was an agreement entered between the parties as early as in the year 1975. When there is already an agreement between the parties, according to the learned counsel for the 5th respondent, there is no need to go before the Civil Court. In this regard, the learned counsel for the 5th respondent has also invited the attention of this Court to the agreement entered into between the parties on 01.01.1975 and submitted that as per the said agreement, the Krishnapuram villagers are

having every right to take full participation in the administration of the temple by paying magimai (poll-tax).

14. But, the learned counsel appearing for the respondents 6 & 7 (impleaded parties) denied the said agreement dated 01.01.1975.

15. Therefore, when there is a dispute over the said agreement dated 01.01.1975, the validity and genuineness of the said agreement has to be decided only in the Civil Court and not in the writ petition or before the 2nd respondent/RDO. Therefore, I am not inclined to accept the submission made by the learned counsel appearing for the 5th respondent. Therefore, I am of the opinion that the impugned order passed by the 2nd respondent is not sustainable and the same is liable to be set aside.

16. For the foregoing reasons, the impugned order is set aside and the writ petition is allowed. The 5th respondent is at liberty to work out his remedy before the competent Civil Court, if he is so advised. Consequently, connected Miscellaneous Petitions are closed. No costs.